

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/RN 132/2024

Before:

Shameer Janhangeer	-	Vice-President
Bhawantee Ramdoss (Ms)	-	Member
Christelle P. D'Avrincourt (Mrs)-		Member
Ghianeswar Gokhool	-	Member

In the matter of:

- 1. Chemical Manufacturing and Connected Trades Employees Union (CMCTEU)**
- 2. Private Enterprises Employees Union (PEEU)**

Applicants

and

C-Care (Mauritius) Ltd (Wellkin and Clinique Darné)

Respondent

The present matter concerns an application under *section 58 (2)* of the *Employment Relations Act* (the "*Act*") for a variation of the Collective Agreement on the ground that there has been a substantial change of circumstances warranting the variation.

The Applicant Unions were assisted by their Negotiator, Mr R. Chuttoo. The Respondent was assisted by Mr M. King Fat, of Counsel. Both parties have submitted their respective Statement of Case in the matter.

THE EVIDENCE OF THE PARTIES

Mr Reez Chuttoo, Negotiator, adduced evidence on behalf of both Applicant Unions. He stated that in 2022, a Collective Agreement was signed with the same terms and conditions and wage structure; the wage structure covers employees from Cleaner to Manager and even Doctors. As per the wage structure, the workers have a fixed yearly increment and this varied from Rs 225 to Rs 1000 for different categories. The Collective Agreement is more favourable than the Remuneration Order for the sector. The Collective Agreement was registered with the Tribunal and is law for C-Care. The salary compensation paid each year is applicable to the wages in the Collective Agreement, not the salary of the Remuneration Order and the adjustments are made according to the wage structure of the Collective Agreement. They are asking, according to *section 58 (1)(b) of the Act*, that the Collective Agreement be varied as there has been a change in circumstances.

Mr Chuttoo moreover stated that there have been discussions with the employer, who recognised that this has created anomalies, meaning when the minimum salary was increased in January 2024 from Rs 11,575 to Rs 16,500, employees received Rs 16,500 irrespective of their years of service, job title and of their category. The employer disregarded the Collective Agreement by bringing workers to Rs 16,500 despite the difference of Rs 200 to Rs 300 that existed between a Cleaner and an Assistant Cashier. In January 2024, all the workers received an increment. Those who were recruited were on the same pay with those having 10 or more years of service. This was demotivating and they met with management who were disposed to review the salaries. But they were disposed to review in July when Government introduced the law on correlativity of Rs 4,925 on the December salary. They have set aside the Collective Agreement not respecting the gap, differential in salaries and increments that represent years of service. They are before the Tribunal as several companies in Mauritius have signed a Collective Agreement.

Mr Chuttoo also stated that as the Collective Agreement is not being respected, it is no longer in force as the employer can breach same as it likes. This was what was done by giving salary compensation in anticipation without consulting the Union, without an agreement. This means that the element of variation is not an obligation for the employer for two parties to agree. The Collective Agreement is non-existent as workers are not being paid according to the established wage structure. So, they are asking the Tribunal to continue to keep the agreement, especially the salary structure, as collective bargaining is an obligation in our country. The ILO

Conventions on collective bargaining have been ratified and the elements of the Collective Agreement must be respected while it is in force. Today, they no longer have this guarantee.

Mr Chuttoo was thoroughly questioned by Counsel for the Respondent. He agreed that point 3 of his Joint Statement of Case regarding advance payment of salary compensation does not concern the issue; it is only an example of the employer breaching the Collective Agreement without consulting the recognised Union. The dispute is regarding the minimum wage in January 2024, the Respondent, according to the Collective Agreement, had to take certain steps to review the salary grid and the legal basis for same is *section 58* of the *Act*. Mr Chuttoo was referred to paragraph 10 A (i) of the Collective Agreement. He agreed that the main issue is regarding points 1, 2 and 4 of his Joint Statement of Case. Being referred to a letter from C-Care dated 29 October 2024 at Annex 12 of the Joint Statement of Case, he stated that he does not agree that there has been no decision or a final position regarding the request from salary relativity applicable as from January 2024. They have had discussions over a year and found that it was a strategy used by management to buy time. They then decided to go before the Conciliation Service of the Ministry of Labour.

Mr Chuttoo also stated that he does not agree that C-Care did put in place salary relativity even before the Remuneration Order took effect in 2024 as the dispute does not concern the correlativity of July 2024 and the dispute starts in January 2024 when workers who were earning less were put on Rs 16,500. The Union made a first salary grid on the January 2024 adjustment and C-Care agreed to this. They then said sign a variation and pay arrears, but C-Care did not agree to pay arrears saying adjust everything in July. The employer agreed to the grid they proposed but did not pay arrears. Several points were negotiated during the one year. One cannot change a Collective Agreement without both parties agreeing to a variation. Management refused to apply the grid and pay arrears as from January 2024 as in January 2024 there was a change in circumstances. He agreed that the Ministry of Labour is still considering the report that the two Unions made; the Ministry is supposed to conduct an enquiry.

Mr Chuttoo agreed that the Collective Agreement was signed on 18 May 2022 and that after three years, the date will occur for it to be renewed. Despite the Collective Agreement lapsing, he insists with the application for variation as the dispute is because the Respondent has applied the salary grid but is not willing to sign to vary the Collective Agreement. A change in circumstances is not necessarily in relation to salary, it can have several circumstances. When the employer recruits, it is on the initial starting point and this causes prejudice; if the Collective

Agreement is not updated, workers will be recruited on less favourable conditions as the Agreement is not updated. The Respondent is not supposed to comply with the Remuneration Order but with the Collective Agreement, which is over and above the Remuneration Order.

Mr Jean David Steven Back was called as a witness on behalf of the Applicants. He works at C-Care as a Laundry Attendant for 16 years. In December 2023, he was earning Rs 15,700 and in January 2024, it became Rs 16,500. New workers in the same department were earning the same as him, Rs 16,500. They complained that with all their years of service, a worker who does not know the job is earning same as him. When questioned by Counsel for the Respondent, the witness notably agreed that the increase to Rs 16,500 was due to the law enacted. In January 2024, the law provided for everyone to earn Rs 16,500. The law provided for new recruits to earn Rs 16,500. In July 2024, C-Care made adjustments and new recruits were not earning less than him. They received an increase in July. He is aware that a collective agreement was made. In July, even new recruits were increased but he is not aware by how much. His issue is why a worker who joined in January was earning same as him.

Mr Bhanand Kumar Pudaruth, Senior Labour & Industrial Relations Officer, was called as a witness on behalf of the Respondent. He stated that the enquiry relating to the matter reported to his Ministry by the Applicants has not yet been completed. The dispute reported was in relation to salary increase. The enquiry is to see whether salary adjustment, additional remuneration has been complied or not. He also stated that the dispute is not in relation to additional remuneration when questioned by Applicants' Negotiator.

THE SUBMISSIONS OF THE PARTIES

Mr Chuttoo, on behalf of the Applicant Unions, notably stated that they are before the Tribunal to ensure that their rights, agreements are respected according to law. The employer has recognised that the Union submitted a grid with updated salaries according to the change in circumstances and applied it. However, the employer has not agreed to sign a variation to the proposition made by the Union *in toto*, i.e. to adjust salaries as per the salary grid as from January 2024. The dispute is that the employer does not wish to implement the salaries as from January 2024. The employer has in the past decided on amendments without consulting the Union. This is a case which will impact on negotiations and the only company which has refused to sign the variation is C-Care.

On the other hand, Counsel for the Respondent has highlighted three issues in his submissions. First, the application is premature as there has not been any decision or position taken in relation to the Unions' request. Secondly, although the Unions are seeking a variation of the Collective Agreement, the Agreement is sure to lapse and on this basis proceedings would be unnecessary. Third regards the interpretation of *section 58* of the *Act*. The Tribunal should determine whether a change in circumstances would find its application. Counsel drew the Tribunal's attention to *section 67 (2)* of the *Act* where when there is a Collective Agreement, dispute cannot be declared as to wages. A change of circumstances under *section 58* cannot cover these type of cases as regard an increase of wages when a Collective Agreement is in force. Counsel also alluded to the law of contract whereby, if the Tribunal were to find in favour of the Applicants, it would be intervening into contractual issues and importing matters not intended by the parties. It is not the case that there has been any breach of applicable legislation. It was not foreseen that there would be an increase in the minimum wage nor that there would be a relativity issue. Everything is within the four corners of the Collective Agreement.

In reply, the Applicants' Negotiator notably stated that there has been no request for an increase in wages. Management has implemented the Unions' salary grid but have refused to sign a variation of the existing Collective Agreement to cater for the new wage structure as they do not want to pay arrears from January to July. They have varied it but it is not official because parties have not signed and it has not been registered, so how can it be enforced.

THE MERITS OF THE APPLICATION

In the present matter, the Applicant Unions have applied under *section 58 (2)* of the *Act* for a variation of the Collective Agreement which is in force between them and the Respondent. It is useful, for the purposes of the present application, to note the relevant provisions of *section 58*:

58. *Variation of collective agreement*

(1) *A collective agreement may jointly be varied by the parties –*

(a) *in such manner and as a result of the occurrence of such circumstances as are provided in the agreement;*

(b) where there is a substantial change of circumstances which warrants such variation.

(2) (a) Subject to subsection (1), where a party to a collective agreement which is in force refuses a variation of the agreement, any party to the agreement may apply to the Tribunal for a variation of the agreement and the Tribunal, on hearing the parties, may –

(i) where it is satisfied that the variation is warranted in accordance with subsection (1), make an order for the variation; or

(ii) make such other order as it may deem fit.

As per the application, the Applicants have applied for a variation of the Collective Agreement on the ground that there has been a substantial change of circumstances. When adducing evidence, the Applicants' Negotiator notably stated that when the new minimum wage came into effect in January 2024, the Respondent put every worker earning less on Rs 16,500 despite the wage difference that existed between grades. Moreover, new recruits were recruited on the new minimum salary of Rs 16,500 being on the same wage as those already in service. The Negotiator notably stated that they are asking that the Collective Agreement be varied as there has been a change in circumstances.

It must be noted that when questioned by Counsel for the Respondent, Mr Chuttoo notably stated that the issue concerns point 1, 2 and 4 of his Joint Statement of Case. He also stated that the Respondent agreed to the salary grid proposed by the Unions but refused to apply same as from January 2024, when there was a change of circumstances. As per the Applicants' Joint Statement of Case, the three points referred to read as follows:

Contention of the Unions:

1. In January 2024, with the increase in minimum wage to Rs 16,500, the Employer violated the existing Collective Agreement by increasing all employees earning below Rs 15,000 monthly, **irrespective of category and years of service**, to Rs 16,500.
2. The Unions claim that the existing Collective Agreement, under section 58 (1)(b) of the Employment Relations Act 2008 as amended, ought to be updated through a Variation of Collective Agreement.

3. ...

4. *The Employer had agreed in August 2024 to adjust their wage structure **without any arrears payable since January 2024.***

Section 58 (1)(b) of the Act notably provides that a collective agreement may be varied where there has been a substantial change of circumstances which warrants a variation. As per the evidence adduced in the present matter, the Applicants' Negotiator has stated that there was a change of circumstances in January 2024. It should be noted that the Negotiator has not been precise as to what was this change of circumstances; however from the evidence adduced, it can be gathered that this was the revision of the national minimum wage to Rs 16,500. It must also be noted that Mr Chuttoo has spoken of a change of circumstances and not of a substantial change of circumstances as has been provided in the law.

The Tribunal has also noted that the Applicants' Negotiator has not been precise as to the terms of the variation for which the Applicant Unions have made the present application. In his evidence, the Negotiator has only asked that the Collective Agreement be varied as there has been a change in circumstances. However, he has not elaborated on what provision of the Collective Agreement that ought to be varied and on what terms this should be done. It can also be noted that as per the second point of contention, the Applicant Unions are claiming that the Collective Agreement ought to be updated through a variation of the Collective Agreement. However, this contention is general and lacks precision as it does not specify what aspect of the Collective Agreement ought to be updated and in what terms this ought to be done.

Moreover, under the Applicants' first contention, it has been averred that the employer has violated the existing Collective Agreement by increasing all employees earning below Rs 15,000 monthly to Rs 16,500 irrespective of categories and years of service. It must however be noted that this particular contention relates to an alleged breach of the Collective Agreement which cannot be determined under the present application for variation of collective agreement. Mr Chuttoo has also stated that the dispute is that the Respondent does not wish to implement the salaries as from January 2024. It must be noted that this issue of implementation of salaries concerns a dispute which would not fall within the ambit of an application for a variation of the Collective Agreement.

On the other hand, the Respondent has notably contented that there has not been any decision or position taken as to the Applicants' request. As per *section 58 (2)(a)* of the Act, any party to the agreement may apply for a variation of the agreement where the other party to the agreement has refused a variation of the collective agreement. Regarding this issue, Mr Chuttoo, upon a letter dated 29 October 2024 from the Respondent being put to him, notably stating that he did not agree that there has been no decision or final position regarding the request for salary relativity applicable as from January 2024.

The Respondent called an Officer of the Ministry of Labour as witness and he stated that the enquiry into the dispute, which was reported by the Applicant Unions, in relation to salary increase has not yet been completed. The Officer specified that the enquiry was to see whether salary adjustment, additional remuneration has been complied or not by the Respondent. It must be noted that the Respondent's representative did not adduce any evidence in the present matter. In absence of any substantive evidence on the issue, particularly from the Respondent itself, the Tribunal cannot reasonably find that the Respondent has not refused to enter into a variation of the Collective Agreement.

Having duly considered the evidence on record, the contentions of the Applicant Unions and submissions offered, the Tribunal cannot be satisfied that the Applicants have demonstrated that a variation of the Collective Agreement is warranted. In the circumstances, the Tribunal cannot make any order for a variation.

The present application is therefore set aside.

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(SD) Shameer Janhangeer
(Vice-President)

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(SD) Bhawantee Ramdoss (Ms)
(Member)

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(SD) Christelle P. D'Avrincourt (Mrs)
(Member)

.....
(SD) Ghianeswar Gokhool
(Member)

Date: 6th March 2025

