Republic of Mauritius

Annual Report

Employment Relations Tribunal

Year 2019

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Note from the Acting President

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Mr Rashid Hossen, former President of the Employment Relations Tribunal, retired from the service on 3 November 2019 after spending 17 years at the Permanent Arbitration Tribunal (which was subsequently renamed the Employment Relations Tribunal by virtue of the Employment Relations Act 2008) and the Employment Relations Tribunal and a long and fruitful career in the Judiciary and the State Law Office. The case of **Mrs Sooleka Dalwhoor And Belle Mare Beach Development Co. Ltd, ERT/RN 77/18** was one of the last Awards delivered by a division of the Tribunal with Mr R.Hossen as the presiding member. The facts of the case were fairly straightforward but involved an issue on which the Tribunal was called upon, for the very first time, to give an award. The case of **Mrs Sooleka Dalwhoor (above)** sheds light upon the principles applied in the arbitration of employment relations matters. I invite our stakeholders including barristers, attorneys, trade union leaders, HR Managers, law students and the public at large to consult our website where this decision and other decisions of the Tribunal (including those delivered by the Permanent Arbitration Tribunal) since 1974 to date are available.

The Tribunal has disposed of 147 cases for 2019 whilst 184 cases were lodged or referred to the Tribunal during the said period. We take note of the increase in the number of cases being lodged or referred to the Tribunal during the last few years. This trend is not likely to change with the recent amendments brought by the Employment Relations (Amendment) Act 2019. Indeed, apart from the jurisdiction granted to the Tribunal by the said amendments in the case of a relevant dispute which relates wholly or mainly to the reinstatement of a worker where the employment of the worker is terminated on one of the listed grounds, the procedure for referral of cases to the Tribunal has also been amended thereby allowing the Commission for Conciliation and Mediation to refer cases which previously the Commission could not refer to the Tribunal.

The Tribunal will endeavour to meet these new challenges and "provide an efficient, modern, reliable and rapid means of arbitrating and settling disputes between workers or trade unions of workers and employers or trade unions of employers so that peace, social stability and economic development are maintained in the country" (as per our "Mission statement"). I would like to thank the former President, Mr R. Hossen and the Vice-President, Mr S. Janhangeer for their contribution and the whole staff of the Tribunal for their support and efforts to enable the Tribunal to deliver on its mandate.

Indiren Sivaramen
Acting President

Mission

To provide an efficient, modern, reliable and rapid means of arbitrating and settling disputes between workers or trade unions of workers and employers or trade unions of employers so that peace, social stability and economic development are maintained in the country.

Vision

To be the expert tribunal for the settling of industrial disputes.

Composition of the Tribunal

ACTING PRESIDENT

Indiren SIVARAMEN, LLB (Hons), MBA (Finance) (University of Leicester), FCIArb, Barrister was called to the Bar in 1996. He practised at the Bar from 1996 to 1999. He was also acting as Legal Consultant for International Financial Services Ltd from 1998 to 1999. He joined the Civil Service in 1999 as Temporary District Magistrate and was appointed District Magistrate in 2000. In 2003, Mr Sivaramen was appointed Senior District Magistrate. He was also a part-time lecturer at the University of Mauritius from 2005 to 2007. He was the Returning Officer for Constituency No. 20 for the National Assembly Elections in 2005. After a brief span as Legal Counsel for Barclays Bank PLC, Mauritius Branch and Barclays Bank (Seychelles) Ltd in 2006, he occupied the post of Vice-Chairperson at the Assessment Review Committee from 2006 to 2010. In February 2010, he was appointed as Vice-President of the Employment Relations Tribunal.

VICE-PRESIDENT

Shameer JANHANGEER, LLB (Hons) (London), MBA (Business Finance), Barrister (Lincoln's Inn) FCIArb was called to the Bar in the U.K. in 1999. He also holds a LLM in Law and Economics from Queen Mary University of London. After shortly practicing at the Bar, he joined the service as State Counsel at the Attorney-General'sOfficein2002. In 2004, he joined the Judiciary as Acting District Magistrate and was later appointed as same. He was Deputy Returning Officer for Constituency No. 6 at the National Assembly Elections in 2005. He chaired a Board of Assessment in 2007 and upon returning to the Attorney-General's Office he was appointed Senior State Counsel in 2007. In 2009, he was appointed Temporary Principal State Counsel at the Attorney-General's Office/Office of the Director Of Public Prosecutions. In June 2011, Mr. S. Janhangeer joined and was appointed as Vice-President of the Employment Relations Tribunal. He is also a member of the Commonwealth Magistrates' and Judges' Association (CMJA) since 2013 and the International Council for Commercial Arbitration (ICCA) since 2015.

Members of the Tribunal

Representatives of Workers

1. Mr Raffick Hossenbaccus
2. Ms Marie Désirée Lily Lactive
3. Mr Abdool Kader Lotun
4. Mr Vijay Kumar Mohit
5. Mr Francis Supparayen

Representatives of Employers

1. Mr Abdool Feroze Acharauz
2. Mr Rabin Gungoo
3. Mrs Jeanique Paul-Gopal
4. Mr Bharuth Kumar Ramdany
5. Mrs Karen K. Veerapen

Independent Members

1. Mr Parmeshwar Burosee
2. Mr Yves Christian Fanchette
3. Mr Ghianeswar Gokhool
4. Mr Arassen Kallee
5. Mr Kevin C. Lukeeram

Staff List

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3	Mrs HORIL Luxmi	Acting Registrar	registrar-ert@govmu.org	212 5184
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7	Mrs DOOBUR Vidiawatee	Shorthand Writer	ert@govmu.org	211 6913
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15	Miss DAUHAWOO Priscilla	Giving assistance at Management Support Officer level	ert@govmu.org	212 4636

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17	**Mr BHUGALOO Mohammud Naguib**	**Head Office Auxiliary**	**ert@govmu.org**	**208 0091**
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19	**Mr MOHUN Purmessursingh**	**Office Auxiliary/ Senior Office Auxiliary**	**ert@govmu.org**	**208 0091**
20	**Mr RAMLAL Ken Hemant Kumar**	**Intern Service to Mauritius Programme**	**ert@govmu.org**	**212 4636**

Summary of Cases

NOTE: This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for that decision. The full opinion of the Tribunal is the only authoritative document. Awards are public documents, and the awards delivered in 2019 are available at: https://ert.govmu.org

ERT/RN 151/18 – 1. Port Louis Maritime Employees Association and 2. Union of Employees of Port Louis Harbour AND The President of the Commission for Conciliation and Mediation, in presence of: Mauritius Cane Industry Authority (Appeal)

The Port Louis Maritime Employees Association and Union of Employees of Port Louis Harbour jointly appealed, pursuant to *section 66* of the *Employment Relations Act* ("*Act*"), against a decision of the President of the Commission for Conciliation and Mediation ("CCM") rejecting the report of a labour dispute under the then *sections 64 (2)*, *65(1)(c)* and *(d)* of the *Act*. The grounds of appeal read as follows:

1. *The Respondent was wrong to determine that the dispute reported to the Commission for Conciliation and Mediation had yet to reach stage whereby "meaningful negotiations" had taken place and a stage of deadlock had yet to be reached.*

2. *The Respondent was wrong to opine that sufficient particulars had not been disclosed in the application to particularise the issues giving rise to the dispute.*

3. *The Respondent was wrong to opine that the procedures of the dispute as stated in the Employment Relations Act had not been complied with.*

The Tribunal notably found that the appellants did not state when a deadlock had occurred in negotiations; did not mention the meeting of 6 April 2018 in the Report of Dispute Form when reporting their dispute to the CCM; and that the Notes of Meeting stated that another meeting was to be held. Thus, the decision of the President of the CCM, in rejecting the labour dispute under *section 65 (1)(d)* of the *Act*, could not therefore be faulted. The Tribunal therefore found that the first and third grounds of appeal could not succeed.

In relation to the second ground of appeal, the Tribunal noted that the appellants recognised that they did not enclose any evidence as to the deadlock. It was not disputed that the situation of deadlock is one of the issues which has given rise to the dispute. Thus, failure to particularise same when reporting the dispute on 3 October 2018, by e.g. producing a document to sustain same, entitled the President of the CCM to opine that

the report did not contain sufficient particulars of the issues giving rise to the labour dispute. The Tribunal therefore found that the second ground of appeal could not succeed.

The Tribunal therefore confirmed the decision of the President of the CCM in rejecting the report of the labour dispute. The appeal was set aside.

ERT/RN 51 /17 - Mr Satroohun Shamloll (Disputant) And Mauritius Telecom Ltd (Respondent)

The case was referred to the Tribunal for arbitration under the then section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The terms of reference of the dispute read as follows: "Should Mr. Shamloll Satroohun actually posted as Senior Accounts Officer in the Grade SS8 be upgraded to the Grade of SS9 with relevant salary alignment with peers in the Commercial Division with effect from year 2015 or otherwise."

Counsel for the Respondent raised a preliminary objection to the effect that the dispute failed to qualify as a labour dispute inasmuch as it fell outside the three years' time limit prescribed for a "labour dispute" such that the jurisdiction of the Tribunal was ousted.

The case was heard on the merits to ascertain more effectively the exact point in time where that contention between the worker and the employer took place. It was as from that time that the time-limit of three years started to run.

The Tribunal concluded that the "act or omission which gave rise to the dispute", for the purpose of Section 2 of the Act occurred in 2010 when the disputant felt aggrieved by his salary and grade being inferior to that of his peers despite all of them having the same level of duties. The said matter was thus time-barred and the Tribunal found that it had no jurisdiction to hear the matter so that the preliminary objection was upheld and the dispute set aside.

ERT/RN 77/18 - Mrs Sooleka Dalwhoor (Disputant) And Belle Mare Beach Development Co. Ltd (Respondent)

The Commission for Conciliation and Mediation referred the labour dispute with the consent of the worker to the Tribunal for arbitration, in terms of the then Section 69(7) of the Employment Relations Act 2008. The terms of reference read as follows:-

1. "Whether Belle Mare Beach Development Company Ltd should allow me to wear the "tikka" on my forefront during working hours."

2. "Whether Belle Mare Beach Development Company Ltd should remove the warnings issued to me on 24 March 2018, 29 March 2018 and 10 April 2018."

In a nutshell, the Disputant averred before the Tribunal that as from 28 February 2018 she started having complaints in relation to her wearing the "tikka". She was allegedly requested by the Human Resource Manager to remove her "tikka" at her place of work. Disputant stated that the "tikka" was a sacred marital symbol. Disputant stated that she was aware that the restriction on "tikka" applied only to employees in the Kitchen Department and that she was not posted in that department. On 15 March 2018, the Head of Department allegedly informed her that a warning would be issued to her. Disputant continued wearing the "tikka" and received warnings.

The Tribunal recited the averments made in the Statements of Case filed on behalf of the parties and analysed the evidence adduced before it. The Tribunal found that the facts of the case gave rise to the following issues:

Firstly, the employer's power as conferred under the contract of employment to unilaterally alter the terms and conditions of employment of the Disputant. Secondly, the nature of such alteration and whether it was not such as to warrant an assent on the part of the Disputant. Thirdly, the contention that the extension of the banning of tikka was because of an alleged need for equal treatment of all employees at the workplace needs to be addressed in the light of the relevant laws on anti-discrimination. And further, given the specific circumstances in which the change in policy was communicated, the Tribunal proposes to deal specifically with that issue given its duty under the law to examine the conduciveness of labour practices to good industrial relations and to try to mend deteriorating industrial relations when such practices are deemed unfair.

The Tribunal referred to relevant case law and "considered the manner in which the Respondent implemented its decision to ban the tikka to all employees". The Tribunal concluded that this decision was based on a misconceived interpretation of the law and the Tribunal found that on the principles of fairness and best practices of good employment relations (Section 97 Employment Relations Act 2008), the Respondent's action was irrational, unmeasured and undesirable. The Tribunal awarded that Disputant

should be allowed to wear the "tikka" on her forefront during working hours. All the warnings issued to the Disputant in relation to the wearing of the tikka were to be removed. The Tribunal awarded accordingly.

ERT/RN 50/18 – The Union of Employees of the C.E.B. and Other Energy Sectors and Central Electricity Board (Award)

The dispute was voluntarily referred to the Tribunal by the two parties to the dispute on the following Terms of Reference:

> *Whether for 2014 the quantum of the Bonus should be three quarter month as proposed by the CEB or one month as claimed by the Union as per content of the Collective Agreement signed between parties on 2nd July 2014.*

In considering the evidence before it, the Tribunal could not find, how the Central Electricity Board should pay one-month bonus for the year 2014 inasmuch as the Domah Award had clearly lapsed in July 2013 and it was the Collective Agreement which now applied, for the period 1 July 2013 to 30 June 2017, in relation to the issue of the Productivity Bonus. Also, the Tribunal could not find that the Pre-Existing Agreement, which the Domah Award used as a principle for maintaining the one-month bonus, would find its application in relation to the quantum of the Productivity Bonus as the Collective Agreement has clearly taken over since July 2013. The Tribunal, furthermore, could not find that a vacuum had been created by the non-respect of procedures relating to the Productivity Bonus for the year 2014 inasmuch as the relevant provisions of the Collective Agreement clearly found their application for the year under reference.

The Tribunal thus could not either award that for the year 2014, the quantum of the Productivity Bonus should be three-quarter month as proposed by the Central Electricity Board or that it should be one-month as claimed by the Union as per the content of the Collective Agreement signed on 2 July 2014. The dispute was therefore set aside.

ERT/RN 02/19 – Private Sector Employees Union AND Mauritius Freeport Development Co. Ltd, in presence of: Port Louis Maritime Employees Association (Order)

The Private Sector Employees Union entered an application under the then *section 38* of the *Employment Relations Act* ("*Act*") seeking recognition as sole bargaining agent at the Mauritius Freeport Development Co. Ltd ("MFD"), claiming to have the support of 265 workers in the bargaining unit applied for. The Port Louis Maritime Employees Association ("PLMEA") was, at the time, recognised as the sole bargaining agent at MFD. The MFD stated that they would be abiding by the decision of the Tribunal as did the PLMEA.

The Tribunal proceeded to organise and supervise a secret ballot in the bargaining unit at the seat of MFD at Mer Rouge, Port Louis on 13 March 2019. The secret ballot exercise confirmed the overall majority support held by the Private Sector Employees Union among the workers in the bargaining unit (i.e. 85.49%).

The Tribunal therefore ordered that the Private Sector Employees Union be recognised as sole bargaining agent by the Mauritius Freeport Development Co. Ltd for the relevant bargaining unit.

ERT/ RN 03/19 - Private Sector Employees Union (Applicant) And Froid des Mascareignes Ltd (Respondent) i.p.o Port-Louis Maritime Employees Association (Co-Respondent)

The present matter is an application made by the Applicant union under the then section 38 of the Employment Relations Act (the "Act") for an order directing the Respondent to recognise the Applicant as the sole bargaining agent in a bargaining unit consisting of the categories of manual employees and operative staff under employment at the Respondent. There was another trade union, that is, the Co-Respondent, which was already recognised as sole bargaining agent at the Respondent.

The Tribunal found that this was a fit and proper case for the Tribunal to organise a secret ballot in the relevant bargaining unit. The Tribunal in the circumstances thus proceeded for a secret ballot exercise which was organised and supervised by the Tribunal at the seat of the Respondent. The Applicant secured the support of 82.7 per cent of the workers in the bargaining unit, that is, a support of more than 50 per cent of the workers in the said bargaining unit. The Tribunal thus ordered that henceforth the Respondent is

to recognise the Applicant as the sole bargaining agent, that is, with sole bargaining rights in the bargaining unit consisting of manual workers and operative staff employed by the Respondent. The Respondent and the Applicant are to meet at such time and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.

ERT/ RN 126/18 - Mr Muslim Abdul (Disputant) And Mahatma Gandhi Institute (Respondent)

The case was referred to the Tribunal by the Commission for Conciliation and Mediation (CCM) under the then Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The Disputant and the Respondent were assisted by counsel. The terms of reference of the point in dispute read as follows: "*Whether I, Muslim Abdul, should be reinstated on the Driver Roster/ Duties at the Mahatma Gandhi Institute*."

The Tribunal proceeded to hear evidence and after evidence was adduced, Counsel for Respondent took a preliminary objection which read as follows: The Respondent moves that the dispute be set aside in as much as the dispute is misconceived as the Disputant has neither been suspended nor dismissed and is still performing his duties as per his Scheme of Service. The issue of reinstatement thus did not arise in the circumstances according to Respondent.

Though the job title, scheme of duties (on paper) and the basic salary of Disputant remained the same, the Tribunal found that the decision complained of would still relate to a "modification" of the terms and conditions of employment of Disputant. By removing driving duties from someone who is employed as Driver and who would thus, as per the unchallenged evidence on record, not be able to perform necessarily any of the other duties (listed on his scheme of duties) which are directly related to "being in charge of a vehicle", the Respondent had brought "une modification" to the contract of employment of Disputant. This was done unilaterally in the said case. Disputant's duty to perform messengerial duties "as and when required" (which duty was only provided as duty number 7 in his scheme of duties) had now become basically his only duty at the Respondent. Also, the decision to prevent Disputant from performing driving duties and to remove him from the Driver Roster had an impact on his pay packet. Disputant made it

clear that he had been earning overtime every month since 2003 and that he can only obtain overtime when performing driving duties.

The Tribunal observed that this was not a case where "le régime des heures supplémentaires" had been changed. Here, Disputant had been stopped from driving and removed unilaterally from the Driver Roster because of the number of accidents he had been involved with, whilst driving or being in charge of vehicles of the Respondent. The Tribunal stressed on the importance given to "le critère alimentaire du salaire" under Mauritian case law (vide Raman Ismael v UBS 1986 MR 182).

The Tribunal referred lengthily on the case law on "modification du contrat de travail". Whilst the Tribunal was of the opinion, based on the evidence before it, that Respondent needed to have the consent of the Disputant to proceed as he did, that is, to remove the latter from the Driver Roster and to prevent him from driving vehicles of the Respondent, the Tribunal was not satisfied that the Disputant in turn reacted as he should have, the more so when his pay packet was being affected and that he was allegedly falling sick because of his work. This was not a case where he could proceed doing his job as before, as if no change had been brought to his contract of employment and thus leaving it to the Respondent to take 'steps' when the Respondent contented himself with the new arrangements. The Tribunal observed that this was exactly why the present matter ended up being reported to the President of the CCM on no less than two occasions and the parties finally appearing before this Tribunal. The remedy which the Disputant was trying to obtain was to force his employer to reinstate him on the Driver Roster despite the decision taken by the Respondent in view of the numerous accidents Disputant had been involved with. The award, being sought, would be akin to an order compelling the Respondent to allow Disputant to drive vehicles of the Respondent and to put him back on the Driver Roster. This remedy could not be granted in the light of all the evidence on record just like the Respondent could not seek an order compelling Disputant to provide his services to the Respondent if Disputant was unwilling to do so. Thus, even making abstraction of possible other issues such as safety of passengers and property, the Tribunal found that it had no power, in the light of the evidence adduced before it, to award that the employer was to reinstate the Disputant on the Driver Roster or to award that the Respondent should allow the Disputant to drive vehicles of Respondent. The remedy of the disputant, if any, lied elsewhere. For all the reasons given in the award, the dispute was set aside.

ERT/RN 114/18 to 121/18 – Mr Hansraj Adaya & Ors. And Mauritius Ports Authority (Award)

The eight disputes were referred to the Tribunal by the Commission for Conciliation and Mediation ("CCM") on the following identical Terms of Reference:

> *Whether work performed by me on Sundays at the Port Control/Harbour Radio, while overseeing/monitoring shipping operations/movements inside and outside harbour as an essential communication link with the different units of the Marine/Shipping operations falling under the responsibility of the Port Master at the Mauritius Ports Authority, should be remunerated at the same rate (i.e. double rate) of the different units falling under the Marine/Shipping operations falling under the Mauritius Ports Authority or otherwise.*

All eight disputes were consolidated. The Mauritius Ports Authority ("MPA") had in its Amended Statement of Case in Reply raised two preliminary objections as follows:

> 1. *The point in dispute does not tantamount to a labour dispute as defined in section 2 of the Employment Relations Act since it arose as far back as in 2010.*
>
> 2. *Respondent moves that the present dispute be set aside in as much as the granting of an award in terms of the Terms of Reference of the labour dispute before the Tribunal will be inconsistent with section 14 (a) of the Ports Act and thus, be contrary to section 72 (5) of the Employment Relations Act.*

Under the first limb of the preliminary objections, the Tribunal found that the dispute was reported on 24 May 2018 to the President of the CCM under the then *section 64* of the *Act*. Being given that the act which gave rise to the dispute arose in January 2011 and that it was reported by the Disputants in May 2018, it was clear that the dispute was reported more than three years after the act which gave rise to it. The Tribunal thus

could not find the dispute to be a labour dispute pursuant to *paragraph (c)* of the definition of a '*labour dispute*' under *section 2* of the *Act*.

In relation to the second limb of the preliminary objections, the Tribunal found that in view of the powers of the Board of the MPA under the *Ports Act* to govern the conditions of service of its employees and in particular their pay, the Tribunal would be acting contrary to *section 72 (5)* of the *Employment Relations Act* in awarding that the disputants should be remunerated at the same rate for their work performed on Sundays as are paid the different units of the Marine/Shipping operations at the MPA.

As the Tribunal found that both aspects of the preliminary objection raised by the MPA should succeed, the dispute in each case was therefore set aside.

ERT/RN 42/17 – Mr Alain Gaetan Sylvio Arthur And Rights Management Society, in presence of: Pay Research Bureau (Award)

The dispute was referred to the Tribunal by the Commission for Conciliation and Mediation on the following Terms of Reference:

> *Whether the Board of the Rights Management Society could recommend the post of Senior Officer/Lead Licensing to the PRB.*

Mr Arthur worked at the Rights Management Society ("RMS") since July 2003. Initially on contract as Licensing Officer, he was designated by the Board of the RMS to lead the Licensing Department and was eventually appointed as Senior Officer/Lead Licencing Officer on the permanent and pensionable establishment. However, the post of Senior Officer/Lead Licensing Officer did not exist on the establishment of the Respondent nor was it mentioned in the various Pay Research Bureau ("PRB") Reports.

The Tribunal notably found that if it were the stand of the Board that Mr Arthur was not qualified to hold the aforesaid post or even the post of Senior Officer, to which he was being paid, it would have been open for the Board to seek appropriate remedies to have him removed from the post occupied. In having offered and confirmed the post of Senior Officer/Lead Licensing Officer to Mr Arthur, the Tribunal found that the Board

should stand by its responsibilities and make this post a reality on its establishment by, at the very least, recommending the post to the PRB.

The Tribunal therefore awarded that the Board of the RMS, now known as the Mauritius Society of Authors, could recommend the post of Senior Officer/Lead Licensing Officer to the PRB.

ERT/RN 81/18 – Dr Dushyant Dissipal Purmanan And the State of Mauritius as represented by the Ministry of Health and Quality of Life, in presence of: Ministry of Civil Service and Administrative Reforms (Award)

The dispute was referred to the Tribunal by the Commission for Conciliation and Mediation on the following Terms of Reference:

> *Whether the 10% increase in coverage allowance as proposed and approved by the High Powered Committee and paid to me with effect from 01 January 2013 and thereafter revoked as from 01 January 2016 must be reinstated and paid to me as from that date.*

The High Powered Committee ("HPC") granted a 10% increase in coverage allowance to particular grades in the medical cadre following its meeting held on 1 December 2014. Dr Purmanan was a Specialist in Pathology. The 10% increase in coverage allowance was paid to all the grades mentioned and was paid with effect from 1 January 2013. However, payment of the 10% increase was stopped as from January 2016. It was borne out that it was an erroneous decision of the Ministry of Health and Quality of Life to pay the 10% increase to Specialists/Senior Specialists on their on-call and in-attendance allowances and they are not entitled to the coverage allowance. Dr Purmanan however disagreed that there was an erroneous interpretation of the decision of the HPC and claimed that he was entitled to payment of the coverage allowance.

The Tribunal notably found that the 10% increase in coverage allowance was applied to the on-call and in-attendance allowances of Dr Purmanan; that Dr Purmanan was operating under the on-call and in-attendance system and not under the coverage system; that Dr Purmanan, being a Specialist in Pathology, was never entitled to the coverage allowance in the first place; and that the Ministry had erroneously applied the

10% increase in coverage allowance to the on-call and in-attendance allowances of Dr Purmanan.

The Tribunal could not therefore award that the 10% increase in coverage allowance approved by the HPC be reinstated to Dr Purmanan and be paid to him as from 1 January 2016 as was being asked for in the Terms of Reference of the said dispute. The dispute was set aside.

ERT/RN 114/19 – Airports of Mauritius Limited Employees Union And Airports of Mauritius Co Ltd (Order)

The Applicant Union applied for an order under *section 51 (8)* of the *Employment Relations Act* requiring the Respondent to comply with the Procedure Agreement. The Airports of Mauritius Limited Employees Union ("AMLEU") notably averred, in its application, that Airports of Mauritius Co. Ltd ("AML") had breached Article 5.1 of the Procedure Agreement in as much as the President of the Applicant Union was suspended following a free expression of views on social media.

The Tribunal notably found that the Applicant Union had failed to evoke the facts that gave rise to the alleged breach of the impugned article of the Procedure Agreement when making its case and noted that it was not a foregone conclusion that Mr Sunassee made the Facebook post as President of the AMLEU.

The Tribunal thus did not find that there had been a breach of Article 5.1 of the Procedure Agreement by AML in the matter and could not therefore order that AML should comply with the impugned provision of the Procedure Agreement. The application was set aside.

ERT/RN 45/19 Mr Mungul Mahendra Kumar (Disputant) And The State of Mauritius as represented by Mauritius Prison Service (Respondent)

The President of the Commission for Conciliation & Mediation referred the said labour dispute to the Tribunal under Section 70(3) of the Employment Relations Act 2008 with the following Terms of Reference: "Whether I, Mr Mungul Mahendra Kumar, should have been promoted to the grade of Principal Prison Officer during the last promotion exercise

of Prison Officers/Senior Prison Officers/Lead Prison Officers to Principal Prison Officer held on 03 April 2019".

The Tribunal proceeded to hear all the evidence and considered the Statements of Case filed on behalf of the parties. In the light of the evidence given by the witnesses, the Tribunal was satisfied that firstly, the trainee prison officers were enlisted by the Public Service Commission according to a given order which going by a letter dated the 26th of December 1990 it was for the prison department to follow when preparing an official staff list.

Secondly, the Tribunal was satisfied that the reasoning of the Disputant to the effect that those enlisted officers who assumed duty later than him or took leave during the six months' probation were necessarily "junior" to him, was clearly flawed in the light of the clear wording of the PSC Circular No. 3 of 2001. If the delay to assume training or the number of leaves taken during the probation period did not exceed a period of two-months, the relative seniority of each trainee officer as already determined by the PSC at the time of their enlistment was never disturbed. It was only their date of appointment that was reported to a later date by the number of days they assumed training later than required or by the number of leaves they took during their training. Therefore a person having an appointment date that is later than that of the Disputant was not junior to the Disputant since those delays as described above fell in the two months' time frame.

The Tribunal also observed that a "labour dispute" as defined by the then Section 2 of the Employment Relations Act of 2008 (the Act) was between an employer and an employee. Granted that the employer might have been the State of Mauritius as represented by the Mauritius Prison Service, an action for being aggrieved by a promotion exercise made by the Disciplined Forces Service Commission on a staff list that is prepared according to an order then determined by the relevant Commission ought not to have been directed against the Mauritius Prison Service who has no say in the above matters.

For all the reasons given in its award, the Tribunal has set aside the dispute.

ERT/ RN 94/17- ERT/RN 96/17, Mrs Rookchana Jewan-Doolub & others (Disputants) And Central Electricity Board (Respondent)

The above cases were referred to the Tribunal by the Commission for Conciliation and Mediation under the then Section 69(7) of the Employment Relations Act. All the cases

were consolidated following a motion made by Counsel for Disputants to which there was no objection on the part of the Respondent. The terms of reference were identical in all the cases, except for the particular names of the disputants and read as follows:

> *"Whether I, ….. employed as Computer Data Base Operator holding a Diploma in IT should have been upgraded to Salary Scale 7a instead of Salary Scale 5 with effect from July 2014 or otherwise."*

Counsel for Respondent took two preliminary points which were as follows:

1. "The present matter does not fall within the meaning of a labour dispute inasmuch as the disputants have already opted to abide by the salary review agreement reached between the parties and are now precluded from coming before the Tribunal on the issue of remuneration; and
2. since the agreement reached between the parties pertains to a salary review which relates to 2009, it is more likely that the dispute is time-barred within the meaning of the Act."

At another sitting of the Tribunal, Counsel for Respondent added that "the dispute is prohibited under Section 67 of the Employment Relations Act".

The Tribunal examined carefully the arguments submitted on both sides. The Tribunal found that the objection as taken under limb 1 of the objections above could not stand since there was no option as such exercised by the disputants. Counsel for Respondent suggested that the referral was invalid since it contravened section 67 (repealed and replaced since then) of the Act. The Tribunal observed that the then section 67 of the Act applied where a labour dispute is reported to the President of the Commission. There was nothing in that section or in the Act to suggest that the Tribunal could refrain from hearing a labour dispute referred to it by the Commission (apart from situations envisaged under section 71 of the Act and section 6(2)(a) & (b) of Part I of the Second Schedule to the Act). There was no right of appeal against a decision of the Commission to refer a labour dispute to the Tribunal as opposed to when the President of the Commission rejected a report of a labour dispute under the then section 65 of the Act. Provided it was a labour dispute, as defined in the Act, and was not covered by section 71 of the Act which deals with exclusion of jurisdiction of the Tribunal, a dispute had to be enquired into by the Tribunal in line with (the then) section 70 of the Act. The preliminary objection taken under the then section 67 was also set aside.

As regards the preliminary objection under limb 2, the Tribunal found that it could not ascertain, without first hearing evidence, when the act or omission that gave rise to the disputes arose. The preliminary objection taken under limb 2 was thus, at best,

premature and was also set aside. The Tribunal thus ruled that it would proceed to hear the case on its merits.

ERT/ RN 94/17 to ERT/RN 96/17 Mrs Rookchana Jewan-Doolub (Disputant No. 1) And Central Electricity Board (Respondent); Mr Danapermal Vencatachellum (Disputant No. 2) And Central Electricity Board (Respondent); and Mr Mohamed Moussa Emambocus (Disputant No. 3) And Central Electricity Board (Respondent)

The above cases were referred to the Tribunal by the Commission for Conciliation and Mediation under the then Section 69(7) of the Employment Relations Act. All the cases were consolidated following a motion made by Counsel for Disputants to which there was no objection on the part of the Respondent. The terms of reference were identical in all the cases, except for the particular names of the disputants and read as follows: "Whether I, ….. employed as Computer Data Base Operator holding a Diploma in IT should have been upgraded to Salary Scale 7a instead of Salary Scale 5 with effect from July 2014 or otherwise."

The Tribunal examined all the evidence on record including the submissions made by counsel. For the reasons given in its award, the Tribunal found that, not only there was absolutely nothing on record which would warrant the Tribunal upgrading the disputants to grade 7a (or to any other grade) but there was also nothing which showed that they had been unfairly or wrongly treated which would warrant the intervention of the Tribunal. In fact, the Tribunal concluded that accepting the arguments made on behalf of Disputants would have created anomalies in relation to other grades. Also, any other conclusion bearing in mind the circumstances of the cases could have affected basic principles of collective bargaining. For all the reasons given in the award, the disputes were set aside.

ERT/ RN 112/18 Mr Jean Eric Soonil Ramdhun (Disputant) And Cargo Handling Corporation Ltd (Respondent) I.P.O: (1) Port Louis Maritime Employees Association (2) Mr Alain Edouard (3) Mr Gino Michael Duval (4) Mr Maghen Sunjevee (5) Mr Dario Steeve Laguette (Co-Respondents)

The case was referred to the Tribunal by the Commission for Conciliation and Mediation (CCM) under the then Section 69(7) of the Employment Relations Act. Co-Respondent No 1, a trade union having exclusive bargaining rights on behalf of the relevant employees,

and Co-Respondents No 2 to 5, who had been selected as trainers for a batch of RTG ("Rubber, Tyre and Gantry", that is handling of containers in the yard as opposed to loading or unloading of containers on or from ships) Trainees, were joined in as parties in that case. The terms of reference of the point in dispute read as follows: "Whether I was unfairly and wrongly treated when I was not selected as trainer for RTG Trainees or otherwise." All the parties were assisted by Counsel.

Disputant averred that he was the senior most RTG Operator and he relied on a seniority list of 2013. He came to know of the existence of another seniority list which is dated March 2017. He was ranked third on this new list of seniority. A new criterion which is the date on which one was "Physically Trainer RTG", that is, the date on which one started to do the work physically on the relevant site was added. He suggested that his rights would be prejudiced if he remained third on the seniority list.

The Tribunal observed that the award being sought would be of a declaratory nature. The Tribunal stated that it delivers awards which are binding on parties (section 72 of the Act) and as per section 7A of the Second Schedule to the Employment Relations Act, as amended, the Tribunal has the power to issue execution of its orders. However, in the light of the novel point raised in the present matter and in the interests of all parties and in furtherance of good and harmonious industrial relations within the organisation, the Tribunal felt that it should throw some light on the core of the issue raised in the said case. The crux of the matter was whether the Respondent was entitled to bring changes to an existing seniority list emanating from Respondent himself following a new collective agreement entered into with the trade union having exclusive negotiating rights at the Respondent.

For the reasons given in its award, the Tribunal observed that the union and management may, no doubt, bargain for changes in seniority rules but unless the intention was clearly laid down in the agreement that the rules were to be given retrospective effect (**vide Supreme Court of India judgment in the case of P. Mohan Reddy v E.A.A Charles (2001) 4SCC 433**) and there were compelling reasons for the new rules such as a prior discriminatory practice, new seniority rules cannot be given retrospective effect. For the reasons given in its award and more particularly the manner in which the terms of reference had been drafted, the dispute was otherwise set aside.

ERT/RN 156/2019 Rodrigues Tourism and Allied Industries Workers Union (Applicant) and Escale Vacances Ltee (Respondent)

The Rodrigues Tourism and Allied Industries Workers Union entered an application under the then section 38 of the Employment Relations Act seeking to be recognised as sole bargaining agent at the Escale Vacances Ltee. The Applicant Union claimed to have the support of 18 workers in the bargaining unit as per its application.

In view of the evidence adduced and the membership forms produced, the Tribunal, pursuant to section 38 (2)(b) (as it then was) of the Act, proceeded to organise and supervise a secret ballot in the bargaining unit at the seat of Escale Vacances Ltee at Fond La Digue, Rodrigues on 11th September 2019. The secret balloting exercise confirmed the overall majority support held by the Applicant Union among the workers in the bargaining unit applied for (i.e. 77.8%). Out of 17 voters (1 Absent), 14 voted for recognition and 3 voted against. The Tribunal therefore ordered that the Rodrigues Tourism and Allied Industries Workers Union be recognised as sole bargaining agent by the Escale Vacances Ltee in the relevant bargaining unit and that parties meet at specified intervals or at such time and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.

ERT/ RN 34/19 Mr Hendry Stephan Martial (Disputant) And Cargo Handling Corporation Ltd (Respondent)

The case was referred to the Tribunal by the Commission for Conciliation and Mediation under the then Section 69(7) of the Employment Relations Act. The terms of reference of the disputes read as follows:

"Whether, in its redeployment exercise, the Cargo Handling Corporation Ltd should provide Hendry Stephan Martial an alternative job with monthly revenue more or less equivalent to his revenue at his initial post or otherwise."

"Whether the Cargo Handling Corporation Ltd should grant Hendry Stephan Martial his annual increment for the year 2019 and should the Company reinstate him on the salary point of the salary scale of RTG Operator or otherwise."

The Tribunal observed that there was no evidence of any provision of a collective agreement or of any established practice at the Respondent whereby offers for redeployment are made for jobs with "monthly revenue more or less equivalent" to the revenue of the initial post which an injured worker can no longer occupy. Also, the Tribunal found that the terms of reference were vague in the sense that "monthly

revenue more or less equivalent to his revenue at his initial post" did not carry with it the precision and certainty which one would expect for remuneration which one expects for one's work. In any event, in that particular case, it was admitted that there had been no reduction in the basic salary of the Disputant. Though Disputant was performing a job with a lower salary scale, his basic salary was maintained so as not to penalize him.

The Respondent has an inherent power of administration and can organize his business to ensure the efficient running of the undertaking whilst complying with relevant employment laws and regulations including any remuneration orders (**vide Cayeux Ltd v De Maroussem 1974 MR 166, L'ingénie v Baie du Cap Estates Ltd, 2000 SCJ 171, G.Rousseau & Ors v Le Warehouse Ltd, RN 1013, The State Bank of Mauritius Staff Union v State Bank of Mauritius Ltd, RN 1001**). The Tribunal stated that in a case involving redeployment following injury sustained, there were many factors and parameters to be considered including, availability of suitable alternative work, reasonable accommodation which can be made by the employer, the willingness of the worker to continue offering his services and so on. Redeployment of a worker following 'light duty' required proper communication and consultation between management and the worker concerned, and mutual effort on each side. "Fairness" is very important in employment matters and even more important in a redeployment exercise following an injury sustained by a worker. However, the Tribunal could not make an award of a general nature that Respondent should provide Disputant an alternative job with monthly revenue more or less equivalent to his revenue at his initial post when Disputant was previously working as RTG Operator (with benefits such as overtime, productivity bonus and staggered meal allowance) and could no longer perform as such. The basic salary of Disputant had been maintained though and the Tribunal could not find that there was an obligation on the Respondent to provide overtime or productivity bonus to Disputant when these did not arise in the Stores department where he was now posted. The dispute under limb 1 was thus set aside.

As regards the dispute under limb 2, there was unchallenged evidence on record that there is a long established practice in the port that when someone is on 'light duty' and is thus not performing in his substantive post, then the worker is not entitled to increments. It was not challenged that Disputant was not performing in his substantive post (that is as RTG Operator) and thus the Tribunal had no hesitation in finding that Disputant had not proved on a balance of probabilities that he ought to be granted his annual increment for the year 2019. The second part of the dispute under limb 2 was closely related to the first part of the dispute under the same limb. No evidence had been adduced as to why Disputant should be reinstated on the salary point of the salary scale of RTG Operator.

The Tribunal stated that the dispute could not stand since Disputant was no longer working as RTG Operator but performing an alternative job in relation to the store. Only his basic salary had been maintained in fairness to him even though he was performing in a post with a relatively lower salary scale. For the reasons given in the award, the dispute under limb 2 was also set aside.

ERT/ RN 95/18 to ERT/RN 99/18 - Mr Andre Herold Vernis & others (Disputants) And Cargo Handling Corporation Limited (Respondent), I.P.O Port-Louis Maritime Employees Association & others (Co-Respondents)

The above cases were referred to the Tribunal by the Commission for Conciliation and Mediation under the then Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). All the cases were consolidated following a motion made by Counsel for Disputants and to which there was no objection. Co-Respondents were then joined as parties in the above cases. The terms of reference were similar (except for the names of the Disputants) in all the cases and read as follows:

"Whether I, […], holding the post of 'Winchman' and carrying a longer period of service at the company should be given priority on the seniority list for the post of 'Winchman' to be promoted to the post of 'Senior Winchman' over the employees who hold the post of 'Winchman' with a lesser period of service and who previously held the post of 'Stevedore'."

One of the disputants, a Winchman, deponed before the Tribunal and he produced a copy of a seniority list for Winchmen where the Disputants were ranked from 12th to 16th. The Co-Respondents (Nos 2 to 10) were ranked from 3rd to 11th on the same list. He stated that the Disputants were Operators before being appointed Winchmen whilst the Co-Respondents Nos. 2 to 10 were previously Stevedores. He conceded that moving from Operator to Winchman was not a promotional route but averred that for Stevedores too it was not a promotional route. He stated that all Disputants and Co-Respondents Nos. 2 to 10 were appointed on the same date, that is, on 8 December 2008 as Winchmen. He stated that the Disputants (in fact most of them) joined the Respondent well before Co-Respondents Nos. 2-10. The representative of Respondent and one of the Co-Respondents also deponed before the Tribunal.

The Tribunal examined all the evidence on record and concluded that the Disputants had the burden to show that they should be given priority on the seniority list for the post of

Winchman to be promoted to the post of Senior Winchman over the Co-Respondents. The Tribunal found that there was no evidence to that effect. On the other hand, the evidence suggested that the contrary was more plausible. Indeed, Plant Operator to Winchman was not a promotional route whilst previously one had to be a Stevedore to become a Winchman. As per the evidence, in 2007, there was a shortage of Winchmen and an invitation was then made to other categories of workers to apply. There was however a condition in the notice of invitation to apply that priority would be given to Stevedores for Trainee Winchman. The Tribunal found that it was not unreasonable for the 'Stevedores' eventually appointed Winchmen following the above said notice to be considered as ranking higher among other Winchmen appointed on the very same day but coming from other grades (who would not normally have been entitled to be considered for the post of Winchman).

For all the reasons given in its award, the Tribunal has set aside the dispute.

ERT/RN 133/18, 135/18 to 138/18, 141/18 to 143/18, 145/18, 147/18 – Mr Rajesh Khoodeeram & Ors. And Air Mauritius Ltd (Award)

The ten disputes were referred to the Tribunal by the Commission for Conciliation and Mediation ("CCM") on the following identical Terms of Reference:

> *Whether Air Mauritius Ltd should have promoted me as Flight Purser further to the internal vacancy notice dated 1 August 2017*.

Mr Khooderam and his fellow colleagues form part of the Cabin Crew at Air Mauritius Ltd working either as Steward or Air Hostess and applied to an internal vacancy notice for the post of Flight Purser advertised on 1 August 2017. Eighty-three Cabin Crew members were shortlisted for the selection process for the post of Flight Purser following the internal vacancy notice. The selection process comprised *inter alia* a written examination and an interview of each candidate was carried out by a panel of four members of management. In November 2017, Mr Khooderam and his colleagues came to know that twenty-seven Cabin Crew members had been selected and appointed as Flight Purser and they felt aggrieved by this.

The Tribunal, in the matter, notably examined the complaints of Mr Khooderam in relation to the selection exercise for the post of Flight Purser; the process of the selection

exercise itself; and considered the powers of the employer in relation to matters of promotion, appointment and recruitment. The Tribunal could not come to the conclusion that the selection exercise was unfair, unjust, unreasonable or inequitable vis-à-vis Mr Khooderam and his colleagues.

The Tribunal could not therefore find that Mr Khooderam and the other disputants should have been promoted as Flight Purser further to the internal vacancy notice as per the Terms of Reference of the disputes. The disputes were therefore set aside.

ERT/ RN 30/19 - ERT/RN 31/19 - Mr Christ Darbary & another (Disputants) And Air Mauritius Ltd (Respondent), I.P.O: Air Mauritius Technical Services Staff Union (Co-Respondent)

The above cases were referred to the Tribunal by the Commission for Conciliation and Mediation under the then Section 69(7) of the Employment Relations Act. The two cases were consolidated following a motion made by Counsel for Disputants and to which there was no objection. The Co-Respondent was then joined as a party in the above cases. The terms of reference were similar in both cases and read as follows:

"Whether I should have benefited 2 increments in year 2014 and 4 further increments in year 2015 to sort out the relativity issue of my salary with that of other colleagues in the same grade and henceforth my salary re-adjusted accordingly."

At the hearing, Counsel for Respondent raised a preliminary point in law to the effect that both disputes were time barred inasmuch as both Disputants had been appointed as per their contracts of employment on 21 October 2014 as Certified Workshop Technicians whilst the dispute was reported to (the President of) the Commission for Conciliation and Mediation on 11 December 2017 in both cases. Counsel suggested that both disputes were time barred as per the Employment Relations Act since they had been reported more than three years after the act or omission that gave rise to the said dispute.

For the reasons given in its ruling, the Tribunal came to the conclusion that it could not, at that stage of the proceedings, discard the possibility that it was the 'omission' to pay (rightly or wrongly) the Disputants four increments in 2015 which gave rise to the said disputes or at least to a substantial part of the disputes *in lite*.

The Tribunal found that the preliminary point in law taken, was at best, premature and could not stand. The preliminary point was thus set aside and the Tribunal ruled that it would proceed to hear the cases on their merits.

ERT/RN 32/19 – Mr Balakrishna Kuppan And Central Electricity Board, in presence of: 1. Mr Dheeraj Seegoolam; 2. Mr Zubeir M. Mooraja; and 3. Mrs Pratima Conhye (Award)

The matter was referred to the Tribunal by the Commission for Conciliation and Mediation on the following Terms of Reference:

> *To consider my years of actingship as IT Technician and be confirmed to the post on the 22nd of October 2017 instead on the 22nd of April 2018 after the probational period.*

Mr Kuppan worked as Administrative Assistant in the IT/MIS Department. From 01 June 2014 to 22 October 2015, he acted as Information Technology ("IT") Technician. The post of Trainee IT Technician was advertised in October 2015 and provided for a minimum two-year training period, following which, upon successful completion, the successful applicant would be appointed as IT Technician on a probationary period of six months. Mr Kuppan applied for the post of Trainee IT Technician and was appointed to same as from 22 October 2015. He accepted the post of IT Technician on 21 November 2017 after completing the two-year training and was thereafter confirmed as same on 22 April 2018.

Mr Kuppan was therefore asking that his experience acquired when acting as IT Technician from June 2014 to October 2015 be considered against his years of training by six months. Thus, rendering his confirmation as IT Technician effective as from 22 October 2017 instead of 22 April 2018.

The Tribunal notably found, after having heard the evidence, that the Disputant voluntarily accepted the letter of offer for the post of Trainee IT Technician on the terms set out therein; that there had been no abuse by the Respondent with regard to the contract entered into with the Disputant nor had any abusive aspect of the employment contract been invoked; and that it would be usurping the powers of the Central Electricity

Board and acting contrary to *section 72 (5)* of the *Employment Relations Act* in backdating the Disputant's confirmation.

The Tribunal could not therefore award that Mr Kuppan's years of actingship as IT Technician be considered and that he be confirmed to the aforesaid post on 22 October 2017 instead of 22 April 2018 as was being asked in the Terms of Reference of the dispute. The dispute was set aside.

ERT/ RN 43/19 - Ms Delanee Ramsamy (Disputant) And The State of Mauritius as represented by Ministry of Finance and Economic Development (Respondent) i.p.o 1. Ministry of Civil Service and Administrative Reforms (Co-Respondent No 1) 2. Pay Research Bureau (Co-Respondent No 2)

The case was referred to the Tribunal by the Commission for Conciliation and Mediation under the then Section 69(7) of the Employment Relations Act. Co-Respondent No 2 was then joined as a party to the proceedings. The terms of reference of the point in dispute read as follows:

"Whether my appointment to the grade of Internal Control Officer/ Senior Internal Control Officer (ICO/SICO) from the grade of Management Support Officer should be based on Recommendation 1 Paragraph 18.8.9 or 18.8.10(iii) of PRB report 2016."

Disputant deponed before the Tribunal and she averred that following a selection exercise, she was offered appointment as ICO/SICO in a temporary capacity at the Ministry of Finance and Economic Development. Later, she was offered appointment in a substantive capacity. She averred that her appointment from the grade of Management Support Officer to the grade of ICO/ SICO was a class to class promotion and that she should have been paid three increments on her substantive appointment in the grade of ICO/SICO.

Guidance was sought from the observations made and various changes brought in successive PRB reports in relation to "salary on promotion". Bearing in mind how Recommendation 1 Paragraph 18.8.10(iii) of the PRB Report 2016 had been drafted, the Tribunal was of the view that the "qualifications of a completely different line" than those of the actual grade of the serving officer do not refer necessarily and only to (educational/professional) qualifications of a higher level in the sense relied upon by the

Disputant, that is, where there is a shift from qualifications of a general nature to professional ones.

The case of the Disputant before us was based on the averment that the qualifications required for the post of ICO/SICO were not professional qualifications as such but only components of a qualification. The Tribunal observed that this could well have been the case but added that what mattered most was whether the qualifications required for the grade of ICO/SICO were of a completely different line than those of the grade of Clerical Officer/Higher Clerical Officer. The words used indicate that the qualifications for the grade applied for were "tangential" (in relation to a line) to the qualifications required for the actual grade of the applicant, that is, the qualifications for the actual grade of the applicant were of superficial relevance only for the qualifications of the grade applied for. The Disputant before us did not proceed at all along that line.

In the light of the evidence on record and the particular circumstances of the case, the Tribunal was unable to say that the Standing Committee erred or that the decision communicated to Disputant that paragraph 18.8.10(iii) of the PRB Report 2016 was applicable to her appointment as ICO/SICO was wrong. The case was thus set aside.

ERT/RN 137/17 – Mr Deoduth Fokeerchand And Mauritius Post Ltd, in presence of: 1. Mr Rajruttun Ramtohul; 2. Mr Iswarparsadsing Bandhoa; 3. Mr Toomeswar Canhye; and 4. Mr Anand Boojhawon (Award)

The matter was originally referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation ("CCM") on the following Terms of Reference:

> *Whether I should have been promoted to the post of Area Manager in the Mauritius Post Ltd.*

Mr Fokeerchand proposed to revert to the CCM while the case was still pending before the Tribunal in order to have the Terms of Reference amended to enable the Tribunal to hear the matter on the proper issue in dispute. Thereafter, the CCM sent the matter back to the Tribunal on the following amended Terms of Reference:

> 1) *Whether the appointment/promotion selection exercise made on 29 September 2015 by the Mauritius Post Ltd from the grade of Senior*

Postal Executive to that of Area Manager was fair, reasonable and non arbitrary. And

2) *If the assessment in 1) above is in the negative, whether Mr Deoduth Fokeerchand should have been promoted/appointed to the post of Area Manager as from 15 October 2015 or otherwise.*

In relation to the amended Terms of Reference, Mauritius Post Ltd ("MPL") raised certain Preliminary Objections as follows:

The Respondent moves that the dispute be set aside on the ground that –

(a) the Disputant has failed to comply with the procedures under the Employment Relations Act ("the Act");

(b) the Disputant has introduced a new dispute which has been referred without compliance with the Act;

(c) the Tribunal has no jurisdiction to entertain the present matter to the extent that it does not fall within the ambit of the definition of a labour dispute under section 2 of the Act.

In considering the arguments, the Tribunal notably found that as Mr Fokeerchand had reverted to the CCM with regard to the same dispute to have the Terms of Reference amended, it could not be said that a new dispute had been reported by him to the CCM. Nor did the CCM state that a new dispute had been reported by Mr Fokeerchand in the matter. The Tribunal also noted that it is not the proper forum to challenge whether the CCM had followed proper procedures as per the *Act* in relation to the dispute before it. The Preliminary Objections raised by the MPL were therefore set aside.

Statistics

This annual report is published in accordance with Section 86(2)(d) of the Employment Relations Act 2008, as amended.

During the year 2019:

- The number of disputes lodged before the Tribunal was 184 out of which 132 cases were referred to the Tribunal by the Commission for Conciliation and Mediation.

The number of cases disposed of summarily (through conciliation and agreements between parties) was 105

- There were 15 Awards and 5 Orders issued and the Tribunal had to deliver 3 Rulings.

- The Tribunal has disposed of 147 cases during the period January to December 2019. As at 31st December 2019, there were 121 cases/disputes pending before the Tribunal.