Republic of Mauritius

Annual Report

Employment Relations Tribunal

Year 2020

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Message from the Acting President

Message from the Acting President

2020 has been a very challenging year for the reasons we all know. The COVID-19 global pandemic has not spared our country, and has affected all spheres of activity, albeit to varying degrees. With the national lockdown, cases before the Tribunal had to be rescheduled. When the Tribunal resumed with the hearing of cases, its staff has put in much effort to ensure that the Tribunal could safely accommodate parties and their representatives in the hearing rooms and proceed with hearings, as required. Rescheduled cases and new cases, some of which were referred under the new **section 70(4)** of the **Employment Relations Act** as added by **The COVID-19 (Miscellaneous Provisions) Act 2020**, had to be entertained side by side, bearing in mind the shorter time frame provided to dispose of cases referred under the new **section 70(4)** of the **Employment Relations Act**.

The Tribunal ultimately disposed of 239 cases during the period from January 2020 to December 2020. A total of 209 cases were lodged or referred to the Tribunal during the same period among which 146 cases were referred by the Commission for Conciliation and Mediation and 29 by the Rodrigues Commission for Conciliation and Mediation. The Tribunal delivered 10 Awards, 4 Orders and 3 Rulings.

The Tribunal certainly would not have been able to achieve this performance had it not been for the contribution and commitment of all its staff. I wish to thank the Vice-President, Mr S.Janhangeer for his help and support, the team at the Registry headed by the Acting Registrar, Mrs L.Horil, Mrs C.H.R.Wan Chun Wah, the Senior Shorthand Writer, and her team, Mr K.Munoruth, the Acting Office Management Executive and his team, Mrs W.Davis, our part-time Human Resource Executive, Mrs S.Jhurreea, the Financial Officer/Senior Financial Officer, our Confidential Secretaries Mrs D.Dosieah and Mrs I.Lam To and, last but not least, the Office Auxiliaries headed by Mr M.N.Bhugaloo, Head Office Auxiliary.

I.Sivaramen

Acting President

ERT

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 I. 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. Mr I. Sivaramen has been assigned duties of the President of the Tribunal with effect from 3 November 2019.

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's Office in 2002. In 2004, he joined the Judiciary as Acting District Magistrate and was later appointed as same. He was the Deputy Returning Officer for Constituency No. 6 at the National Assembly Elections of 2005. He chaired a Board of Assessment in 2007 and upon returning to the Attorney-General's Office, 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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Professional Level				
1	Mr SIVARAMEN Indiren	Acting President	isivaramen@govmu.org	Thro' CS 213 2892
2	Mr JANHANGEER Shameer	Vice-President	sjanhangeer@govmu.org	Thro' CS 210 0998
3	Mrs HORIL Luxmi	Acting Registrar	registrar-ert@govmu.org	212 5184
Administrative/Supportive Levels				
1	Mrs JHURREEA Sandhya	Financial Officer/ Senior Financial Officer	Fin_ert@govmu.org	211 1303
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3	Mrs DAVIS Wilma	Human Resource Executive (Part-time)	ert@govmu.org	208 0091
4	Mr MUNORUTH Karishdeo	Office Management Assistant	ert@govmu.org	212 4636
5	Miss UJOODHA Lakshana	Shorthand Writer	ert@govmu.org	211 6913
6	Mrs DOOBUR Vidiawatee	Shorthand Writer	ert@govmu.org	211 6913
7	Mrs PURREMCHUND Priya Ashvini	Shorthand Writer	ertgovmu.org	211 6913
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9	Mrs DOSIEAH Deeneshwaree	Confidential Secretary (Mr Sivaramen)	ddosieah@govmu.org	213 2892
10	Mrs LAM TO Ivonnette	Confidential Secretary (Mr Janhangeer)	ylamto@govmu.org	210 0998
11	Mrs CHANDUL BOWOL Ashwani	Management Support Officer	ert@govmu.org	212 4636
12	Ms NEERUNJUN Binta Devi	Management Support Officer	ert@govmu.org	212 4636
13	Mrs JHANGEER Bibi Faranaz	Management Support Officer	ert@govmu.org	212 4636
14	Mrs DAUHAWOO GUNGADIN Priscilla	Management Support Officer	ert@govmu.org	212 4636

15	Miss AULEEAR Bibi Nagma	Management Support Officer	ert@govmu.org	212 4636
16	Mr BHUGALOO Mohammud Naguib	Head Office Auxiliary	ert@govmu.org	208 0091
17	Mrs RAMPHUL Nivedita	Office Auxiliary/ Senior Office Auxiliary	ert@govmu.org	208 0091
18	Mr MOHUN Purmessursingh	Office Auxiliary/ Senior Office Auxiliary	ert@govmu.org	208 0091

Summary of Cases

NOTE: This summary is provided to assist in understanding the decisions of the Tribunal. It does not form part of the reasons for the decisions. The full opinion of the Tribunal is the only authoritative document. Awards are public documents, and the awards delivered in 2020 are available at: https://ert@govmu.org

ERT/RN 173/17 – Mr Deoduth Fokeerchand (Disputant) And Mauritius Post Ltd (Respondent); i.p.o: Mr Rajruttun Ramtohul; Mr Iswarparsadsing Bandhoa; Mr Toomeswar Canhye; and Mr Anand Boojhawon (Co-Respondents)

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

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.*

Having examined the arguments put forward by the Disputant to assert that the selection exercise for the post of Area Manager was unfair, unreasonable or arbitrary, the Tribunal did not uncover any evidence to suggest that there were any particular undesirable elements present in the selection exercise. Nor did it find any substantive evidence of bias and partiality in the selection exercise in favour of the Co-Respondents during the interview.

The Tribunal could not therefore award that the appointment/promotion selection exercise made on 29 September 2015 was not fair, reasonable and non-arbitrary as per the first limb of the Terms of Reference. Having pronounced on the first limb of the dispute in the negative, the Tribunal was not required to determine the second limb of the Terms of Reference of the dispute.

ERT/ RN 20/19 - Mr Ringanaden Sawmynaden (Disputant) And Mauritius Cane Industry Authority (Respondent)

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

"Whether the formula used to calculate the piece rate paid to the complainant should have used the rate of Rs 165 per 1000 bags for the 1 to 2500 bags and Rs 264 per 1000 bags for 2501 to 3500 bags instead of Rs 152 per 1000 bags for 1 to 3000 bags Rs 264 per 1000 bags for 3001 to 3500 bags for the wages paid in the year 2017."

"Whether the formula used to pay the piece rate of the complainant working both at Albion Dock and New Warehouse during a single month should be the same as the formula used to pay the piece rate of those working at the New warehouse solely during a single month."

The Tribunal observed that the Edge Consulting Report of 2014 provided under the heading "Piece Rate" that "In the meantime, the current practice at the BSSD [later taken over by

Respondent] will remain unchanged until such time that a new working arrangement and formula is worked out at the satisfaction of all parties concerned". The Tribunal observed on the facts of that case that one could not aver that an existing (or previous) collective agreement was being wrongly applied over a period and that the "current practice" should thus be or be deemed to be what was provided for under that collective agreement.

The Tribunal stated that the unchallenged evidence on record was that even for "imported sugar for local consumption" and "local production", relevant parties at that time (the relevant trade union and the BSSD) thought it wise and appropriate to provide different rates for the same grade of workers, that is, Bag Handlers. These different rates were not being challenged at all by the Disputant as being discriminatory, unfair or against the principle of equal remuneration for work of equal value.

For the reasons given in its award, the Tribunal found that the Disputant had failed to prove that the formula used to calculate the piece rate paid to the Disputant for the wages paid in the year 2017 was wrong. The first limb of the dispute was set aside.

As regards the second limb of the dispute, the Tribunal concluded that there was no evidence on record that Disputant was "working both at Albion Dock and New Warehouse during a single month". There was no evidence as to which month/s this would have occurred if this was indeed the case. The Tribunal also reiterated that it did not deliver awards in relation to hypothetical or academic questions (vide **Mr Ugadiran Mooneeapen And The Mauritius Institute of Training and Development, RN 35/12; Mr Y.I.A Cheddy And The State of Mauritius, i.p.o The Ministry of Civil Service and Administrative Reforms and Anor, RN 92/17**). The Tribunal added that it did not deliver awards which were of a declaratory nature (**vide Mr Ugadiran Mooneeapen (above); Mr Abdool Rashid Johar And Cargo Handling Corporation Ltd, RN 93/12; Mr Dhan Khednee And National Transport Corporation, RN 52/14; Mr Satianund Nunkoo And Beach Authority, RN 121/17**).

For all the reasons given in its award, the second dispute was also set aside.

ERT/ RN 49/20, ERT/RN 50/20 - Mrs Bibi Sahida Codobaccus (Disputant No. 1) And Mauritius Ports Authority (Respondent), Mrs Yasmin B. Mooraby (Disputant No. 2) And Mauritius Ports Authority (Respondent)

The above two cases were referred to the Tribunal by the Commission for Conciliation and Mediation under Section 70(4) of the Employment Relations Act, as amended. Both cases were consolidated. The terms of reference were similar in both cases (except for the respective post concerned) and read as follows:

> *"Whether I should be granted three increments on my upgrading in the post of Senior Officer/Chief Officer Finance or otherwise."* (in the case of Disputant No 1)
>
> *Whether I should be granted three increments on my upgrading in the post of Senior Officer/Chief Officer Audit or otherwise."* (in the case of Disputant No 2)

The Tribunal found that the letters issued to the disputants did not refer at all to any promotion and instead provided clearly that the Board had at its meeting of 16 June 2017,

approved the merging of the post of Senior Officer (Finance) with that of Chief Officer (Finance) and the merging of the post of Senior Officer (Audit & Risk Management) with that of Chief Officer (Audit & Risk Management). Disputants No 1 and 2 were thus informed that they would accordingly hold the post of Senior Officer/ Chief Officer (Finance) and Senior Officer /Chief Officer (Audit & Risk Management) respectively. The Tribunal concluded that there was no ambiguity in the said letters and noted that the disputants were not saying and could not say that they believed that they were offered a promotion.

The Tribunal also referred to the case of **E. César and C.W.A RN 785 (Award delivered on 12.10.05)** where the Permanent Arbitration Tribunal (as the Tribunal was then named) had stated the following:

> *The Tribunal holds that, "subject to an abuse of powers on the part of management (**Mrs D.C.Y.P. and Sun Casinos RN 202 1988**), matters regarding appointment and promotion of employees are essentially within the province of management. (**M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998**)."*
>
> *However sympathetic a view one wishes to take regarding Mr César's claim, the moreso as it appears to be his last wish before embarking on retirement, there must be some basis upon which the Tribunal can hold to, lest it may create a bad precedent. However small and petty his request may appear to be, we cannot intervene in the absence of evidence in support of his claim. The Tribunal is not here to grant by the mere asking. A claim must be justified."*

The Tribunal found no reason to intervene in the said matter in the absence of evidence to suggest that the disputants had been promoted and both disputes were set aside.

The Tribunal however commented on the way the merging of posts had been carried out and added that if the merging of posts had been carried out in an appropriate manner and sufficient information had been provided to the relevant staff as to the modalities and conditions of the merging of the said posts, there would not have been such misunderstandings among the employees concerned.

ERT/ RN 36/20 - Mr Assif Beharee (Disputant) And Cargo Handling Corporation Ltd (Respondent)

The above case was referred to the Tribunal by the Commission for Conciliation and Mediation under Section 70(4) of the Employment Relations Act, as amended. The terms of reference of the points in dispute read as follows:

> *"Whether I, Mr Beharee Assif, holding the post of Senior Supervisor in the Cargo Handling Corporation Limited, should be granted an increment of Rs 1000/- to put me at par with my other colleagues in the same department being the most senior with effect from 15.12.2017 or otherwise."*

The Tribunal concluded that the Disputant had not adduced sufficient evidence to show that he was actually the most senior in the post of Senior Supervisor. The Tribunal referred to a letter of promotion dated 15 December 2017 issued to Disputant which provided as follows:

*"**Confirmation in your promotional grade will be considered after having completed six months' service and will be subject to being favourably reported upon by your Head of Department**."*

The Disputant was relying on a document (seniority list for Senior Terminal Officer) to say that he was the most senior and yet he was at the same time challenging an important date mentioned on the same document, that is, his date of appointment in his last grade. In the light of all the evidence on record including the stand of the Respondent, the Tribunal found that it would be unsafe to find conclusively that Disputant was currently the senior most in the grade of Senior Supervisor. The Tribunal could not make assumptions or inferences on such an issue.

Disputant also relied on the principle of '*Equal remuneration for work of equal value'*. The Tribunal made it clear that this principle did not preclude the setting up of salary scales whereby officers would move up in a salary scale with time. The Tribunal observed that the case was far from a case where a more senior employee who had been in a particular grade well before other employees ended up earning less than employees who joined the grade after him.

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

ERT/RN 66/20 – Syndicat des Travailleurs des Etablissements Privés (Applicant) And Metinox Ltd (Respondent)

The Applicant Union applied for an order for recognition of a trade union pursuant to section 36 (5) of the Employment Relations Act, as amended. The Union notably averred that it had the support of no less than 20% and not more than 50% of the workers in the bargaining unit, having five members at the workplace. Upon the accord of both parties, a secret ballot exercise was held in the relevant bargaining unit, which revealed that the union had complete support among the workers in the bargaining unit applied for.

The Tribunal therefore ordered, in view of the union having more than 50% support of the workers in the bargaining unit, that the Applicant union be recognised by the Respondent as sole bargaining agent in respect of the bargaining unit consisting of welders and cleaners.

ERT/ RN 62/20 - Special Education Needs School and Other Education Employees Union (Applicant) And Anna Medical College (Respondent)

This was an application made by the Applicant union under section 36(5) of the Employment Relations Act for an order directing the Respondent to recognise the Applicant as the bargaining agent in a bargaining unit consisting of workers in the following categories: Receptionist, Admission Assistant, Administrative Assistant, Clerk, Housekeeping, Security, Librarian, Lab Attendant and Driver employed by the Respondent and posted at Anna Medical College, Sans Souci road, Montagne Blanche and Labourdonnais street, Port-Louis. *Ex facie* the application before the Tribunal, the Applicant had sent a letter dated 8 February 2020 to the

Respondent seeking for recognition as bargaining agent for the said bargaining unit. The Respondent resisted the application and the Tribunal proceeded to hear the application.

Following evidence adduced before the Tribunal, the Tribunal was satisfied that a secret ballot had to be held in the interest of good industrial relations. The Tribunal thus ordered that a secret ballot be held in the relevant bargaining unit.

The secret ballot was organised and supervised by the Tribunal at the Respondent at Sans Souci Road, Montagne Blanche on Thursday 23 July 2020. There was a total number of thirty-four employees in the relevant bargaining unit as agreed by the parties and all thirty-four employees participated in the secret ballot. Only two employees were in favour of the recognition of Applicant as their bargaining agent in the bargaining unit at the Respondent whilst thirty-one employees were against the recognition of the Applicant as their bargaining agent at the Respondent. There was one void ballot paper. The Applicant thus secured the support of only 5.9 per cent of the workers in the bargaining unit.

The Tribunal thus found that the Applicant had failed to show that an order granting recognition to the Applicant as bargaining agent should be granted. The application was set aside.

ERT/RN 9/20 to 15/20 – Mr Kajeerow Coonlic and Ors. (Disputants) And Mauritius Telecom Ltd (Respondent)

The seven consolidated matters were referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation ("CCM") pursuant to section 69 (9)(b) of the Employment Relations Act 2008, as amended (the "*Act*"). The identical Terms of Reference of the disputes read as follows:

> *Whether correction of anomaly in the grade of SS8A and SS8B, considered and accepted as at 1st July 2016, should have backdating effects for the employees who retired before July 2016, hypothetically or otherwise.*

The Respondent put in a Notice of Objection to the present disputes. It provided as follows:

> *The Employment Relations Tribunal has no jurisdiction to entertain the present matter in as much as the Commission for Conciliation and Mediation erred in law in referring the matter to the Tribunal pursuant to section 69 (9)(b) of the Employment Relations Act 2008 given that the dispute was brought before the Commission prior to the coming into force of section 69 (9)(b) of the Employment Relations Act 2008.*

Learned Senior Counsel for the Respondent notably submitted that the CCM could not have relied on section 69 (9) of the Act to make the present referral. It had no power to do so. As matters stood, the case had been wrongly referred to the Tribunal and therefore the latter could not proceed. Counsel for the Disputants notably submitted that the error, if error there was, had

not been caused by the Disputants and they could not be prejudiced for an error that was not of their doing.

The Tribunal notably found that the said disputes, which had been reported to the CCM in January 2019, had been clearly notified to the President of the CCM prior to 27 August 2019, which was the commencement date of the Employment Relations (Amendment) Act 2019. It was thus incumbent on the CCM to refer the matter in accordance with the relevant provisions of section 69 of the principal Act as if same had not been amended or repealed and replaced. Therefore, the said disputes ought to have been referred pursuant to section 69 (7) of the Act as it stood prior to the 2019 amendments.

Given that the objection taken by the Respondent went to the root of the Tribunal's jurisdiction to inquire into the consolidated disputes, the Tribunal could not proceed to arbitrate on them based on the referrals wrongly made in law by the CCM. The disputes were therefore set aside.

ERT/ RN 25/18 to ERT/RN 31/18 - Mr Santaram Ramma and others (Disputants) And Mauritius Institute of Training and Development (Respondent) i.p.o: (1) Ministry of Education, Tertiary Education, Science and Technology (Co-Respondent No 1) (2) Ministry of Public Service, Administrative and Institutional Reforms (Co-Respondent No 2) (3) Pay Research Bureau (Co-Respondent No 3) (4) State Insurance Company of Mauritius (SICOM) (Co-Respondent No 4) and (5) Ministry of Labour, Human Resource Development and Training (Co-Respondent No 5)

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 and Co-Respondents Nos 1 to 5 were joined as parties in the said cases. The terms of reference were identical in all the cases and read as follows:

1. *"Whether the post of Officer-in-Charge should be placed on the establishment and organisation structure of the Mauritius Institute of Training and Development (MITD)."*

2. *"Whether the MITD should recognise me as Officer-in-Charge since the time I have been performing the duties as such."*

3. *"Whether the unilateral decision of the MITD to change the appellation of the acting/responsibility allowance which was paid to Officers-in-Charge as per the conditions of the post to an Adhoc allowance be declared null and void."*

4. *"Whether the allowance (3 increments worth) forming part of my remuneration should:*
   (i) Be computed for the purposes of the lump sum and pension payable to me at the time of my retirement and;

(ii) Should form part of my salary for all purposes."

One of the disputants (Disputant No 7) deponed on behalf of all seven disputants before the Tribunal. He suggested that they were appointed as Officer in Charge following interviews which were held. He considered that 'Officer-In-Charge' was a post at the Respondent though he conceded that the post was not on the establishment of the Respondent. The other disputants were at some point in time earning an acting/responsibility allowance, which was only later referred to as *ad hoc* allowance.

The representative of Respondent stated that there was a need to have people to head the centres set up to run only pre-vocational courses. He averred that since they were requested to run the project on a temporary basis, no post was created on the establishment of the IVTB as Head of those training centres. Training Officers were instead assigned duties to head those training centres since there was no established position of Head of those training centres. It was merely a 'designated position' which Respondent termed as Officer in Charge to head the training centres dedicated to pre-vocational education.

The Tribunal concluded that the first point in dispute did not fall strictly within the definition of "labour dispute" and more particularly paragraph (a) of the definition. The dispute was whether the post of "Officer-in-Charge" should be placed on the establishment and organisation structure of the Respondent. The dispute thus did not relate wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker. The Tribunal also observed that the creation of a post or the placing of a post on the establishment and organisation structure of an employer was something essentially within the "*pouvoir de direction*" of the employer. The Tribunal could not award that the post of Officer in Charge should be placed on the establishment and organisation structure of the Respondent. For the reasons given in the award, the point in dispute no. 1 was purely and simply set aside.

As regards point in dispute no. 2, as drafted, the Tribunal concluded that it could not award that Respondent should recognise Disputant as Officer in Charge in the sense that Respondent should accept or agree that the post of Officer in Charge was an established post at the Respondent. Even the disputants had nowhere averred that the post of "Officer-in-Charge" was on the establishment of the Respondent at the relevant period. The Tribunal found that the first part of the dispute had been drafted in a too vague manner to allow the Tribunal to award that the Respondent should recognise the disputants as Officers in Charge. For reasons given in the award, the point in dispute no. 2 was thus set aside.

As regards the point in dispute no. 3, the Tribunal stated that 'higher post' or 'higher office' whether under the PRB Report 2016 or under The Statutory Bodies Pension Funds Act would necessarily refer to a post or office which was on the establishment of an organisation (and graded by Co-Respondent No 3 if the organisation just like Respondent was governed by Co-Respondent No 3). The 'higher post' or 'higher office' would have a salary on its own, be it a flat salary or a salary scale. Despite the initial internal advertisements referred to in the case, there was no evidence of any salary (be it flat or in a scale) prescribed for Officer in Charge at the Respondent. The Tribunal found that it could not, even if it was minded to, award or declare that a change in nomenclature of the allowance paid to the disputants was null and void. The quantum of the

allowance paid remained the same and the Tribunal found no reason to intervene on this score. The change in appellation of the allowance (for relevant disputants) *per se* did not amount to a "*modification d`une condition essentielle du contrat de travail*" as could, for example, be a decrease in the quantum of the allowance paid. The Tribunal also referred to previous decisions of the Tribunal whereby it had stated that the Tribunal does not give awards which are of a declaratory nature (**vide Mr Ugadiran Mooneeapen (above) [Mr Ugadiran Mooneeapen And The Mauritius Institute of Training and Development, RN 35/12] ; Mr Abdool Rashid Johar And Cargo Handling Corporation Ltd, RN 93/12; Mr Dhan Khednee And National Transport Corporation, RN 52/14; Mr Satianund Nunkoo And Beach Authority, RN 121/17**). For reasons given in the award, the point in dispute no. 3 was also set aside.

As regards point in dispute no. 4, the Tribunal referred, amongst others, to provisions of The Statutory Bodies Pension Funds Act and The Statutory Bodies Pension Funds Regulations as guidance. The Tribunal concluded that it could not award that the allowance paid to the disputants, as matters stood and whereby the post of Officer in Charge (for Pre-Vocational Centres) had not been put on the establishment of Respondent, should be computed for the purposes of the lump sum and pension to be paid to the disputants. Though the allowances formed part of the salaries earned by the disputants for quite some time, the Tribunal could not make a blanket declaration that the allowance should form part of the salary of each disputant for all purposes. For the reasons given in its award, the Tribunal awarded that it could not intervene to grant an award as per the prayer in point in dispute no 4 which was set aside.

However, the Tribunal went further and drew the attention of all relevant parties that good and harmonious relations were sine qua non in the realm of employment relations matters. The Tribunal highlighted a series of shortcomings in the said case, including the fact that relevant disputants were making contributions to Co-Respondent No. 4 for pension purposes based on the allowances paid to them, and invited relevant authorities to consider seriously means and ways, on an exceptional basis, how best to remediate the unfortunate situation which had been created in that case.

The Tribunal quoted from the case of **Government Servants' Association and The Master & Registrar & Anor, RN 298** where the then Permanent Arbitration Tribunal had stated the following: "*These proceedings have involved a number of institutions, including the Public Service Commission and we are grateful to all those concerned for their utmost cooperation. The Tribunal is conscious that it should not be seen as seeking to usurp the exclusive rights of other authorities. Our sole aim is and can only be industrial peace and the promotion of Justice.*" For the reasons given in the award, the disputes were otherwise set aside.

ERT/ RN 75/20 - Farm Workers Union (Applicant) And Poulet Arc en Ciel Ltee (Respondent)

This was an application made by the Applicant union under section 36(5) of the Employment Relations Act, as amended, for an order directing the Respondent to recognise the Applicant as the bargaining agent in a bargaining unit consisting of workers in the following categories: factory operators, factory attendants, unskilled employees, watch persons, drivers, helpers, loaders, attendants, cold room workers, farm workers and maintenance workers

excluding those in managerial posts employed by the Respondent. The Respondent resisted the application.

The support which the Applicant had among the workers in the bargaining unit was at issue. Both parties were agreeable to a secret ballot being carried out. Following the evidence adduced before the Tribunal, the Tribunal was satisfied that a secret ballot should be held in the interest of good industrial relations.

The secret ballot was organised and supervised by the Tribunal at the Respondent at Beau Vallon, Mahebourg on Wednesday 9 September 2020. There was a total number of one hundred and twenty-five (125) employees in the relevant bargaining unit as agreed by the parties and one hundred and seven (107) employees participated in the secret ballot. Fifty (50) employees were in favour of the recognition of Applicant as their bargaining agent in the bargaining unit at the Respondent whilst fifty-seven (57) employees were against the recognition of the Applicant as their bargaining agent at the Respondent. There was no void ballot paper. The Applicant thus secured the support of 40 per cent of the workers in the bargaining unit.

In the light of all the evidence on record, the Tribunal ordered that the Respondent was to recognise the Applicant as bargaining agent, with bargaining rights in the relevant bargaining unit. The Tribunal ordered that the Respondent and the Applicant were to meet at such time and on such occasions as the circumstances may reasonably require for the purpose of collective bargaining. A copy of the order was also to be submitted to the supervising officer for record purposes.

ERT/RN 50/19 to 113/19 – Mr Mohammad Yousuf Abdool Raheem & Ors. (Disputants) And The State of Mauritius as represented by Ministry of Health and Quality of Life (Respondent); i.p.o: Ministry of Civil Service and Administrative Reforms and Pay Research Bureau (Co-Respondent)

The sixty-four consolidated disputes were referred to the Tribunal by the Commission for Conciliation and Mediation ("CCM") on the following identical terms:

1. *Whether the computation of hourly rate for the in-attendance allowance payable to me as Medical Imaging Technologist/Senior Medical Imaging Technologist for being in attendance after normal working hours, should be based on 33.75 hrs weekly or 40 hrs, as presently implemented by the Ministry of Health.*

2. *Whether my job in the grade of Medical Imaging Technologist/Senior Medical Imaging Technologist should be considered as shift worker as actually implemented or otherwise.*

3. *Whether a meal time should be deducted from the computed in-attendance allowance paid to me as Medical Imaging Technologist/Senior Medical Imaging Technologist for work after normal working hours or otherwise.*

The Respondent raised certain preliminary objections in the matter as regards whether the labour disputes fell within the definition of a labour dispute under section 2 of the Employment Relations Act 2008 (the "Act"); whether the disputes were time barred; whether the Disputants were seeking an award of a declaratory nature; and whether the Tribunal was the proper forum to consider the disputes.

Having considered arguments on the preliminary objections, the Tribunal ruled that as the dispute under the first limb was regarding the mode of computation of the hourly rate of the Medical Imaging Technologist cadre and was not directly related to remuneration or allowances, the Tribunal could not find that the said dispute did not amount to a labour dispute pursuant to sub-paragraph (b) of the definition of a labour dispute under section 2 of the Act. Point (a) of the preliminary objections was thus set aside.

However, the Tribunal could not find that the point in dispute under the third limb of the Terms of Reference was a labour dispute within the meaning of a labour dispute inasmuch as the term '*computed in-attendance allowance*' in the third limb of the Terms of Reference would relate directly to the terms '*allowances of any kind*' as is envisaged by paragraph (b) of the definition of a labour dispute under section 2 of the Act. The dispute under the third limb of the Terms of Reference was thus set aside.

It was also argued that the second limb of the Terms of Reference of the dispute was time-barred. A labour dispute does not include a dispute that is reported more than three years after the act or omission that gave rise to the dispute. The Tribunal found that the shift pattern in which the Disputants were working was introduced by the Pay Research Bureau ("PRB") Report of 1993. The disputes having been reported on 3 December 2018 to the CCM, the Tribunal could only find that same had been reported more than three years after the act that gave rise to the dispute. Hence, the second limb of the Terms of Reference of the dispute was also set aside.

However, the Tribunal, did not find that the Disputants were seeking an Award of a declaratory nature and this particular aspect of the preliminary objections was thus set aside. Also, the Tribunal did not find any merit in the objection taken that it was not the proper forum to consider the dispute and this limb of the preliminary objections was accordingly set aside.

The Tribunal thus proceeded to examine the first limb of the Terms of Reference on its merits. Having notably considered relevant provisions of various PRB Reports, in particular that of 2016, as well as an award of the Civil Service Arbitration Tribunal (**RN 527**) and evidence adduced, the Tribunal could not find that the Disputants should not be classified as shift workers. As shift workers, the normal working week of the Disputants would be 40 hours or an average of 40 hours weekly in a cycle (as per the PRB Report 2016 Volume 1). Thus, the Tribunal found that the computation of the hourly rate for In-attendance Allowance for being in attendance after normal working hours should be based on 40 hours weekly. The dispute under the first limb of the Terms of Reference was therefore set aside.

ERT/ RN 69/20 to ERT/RN 71/20 - Mrs Anuradha Bundhun (Disputant No 1) And ABSA Bank (Mauritius) Ltd (Respondent), Mrs Bhojraj Daby (Disputant No 2) And ABSA Bank (Mauritius) Ltd (Respondent), Mrs Sujata Retif (Disputant No 3) And ABSA Bank (Mauritius) Ltd (Respondent) i.p.o Barclays Bank Mauritius Staff Association (Co-Respondent) (Ruling)

The above cases were referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (the "Act"). The Co-Respondent was joined as a party in the interests of justice and all three cases were consolidated. The terms of reference were identical in all three cases, except in the case of Disputant No 3 where the effective period mentioned was as from November 2016 (instead of July 2017), and read as follows:

> *"Whether the terms and conditions of employment (salaries, end of year bonus, financial bonus, travelling, travel grant, leave entitlement, merit increase among others) following my promotion to the grade of AVP should be realigned with those of staff which have been promoted prior to January 2016 with effect from July 2017 or otherwise."*

The Respondent took a plea *in limine* which read as follows:

> *"(1) All three disputants are bound by the terms and conditions of a contract of employment that they have voluntarily signed and are therefore stopped from raising a dispute before the Tribunal.*
>
> *(2) The disputants are relying on a collective agreement between the bank and the union which had already expired at the time that they had signed their contract of employment.*
>
> *(3) The collective agreement is between the union and the Respondent and the individual disputants cannot report and try to enforce any dispute under same. They do not have a locus to decide.*
>
> *The Respondent moves that the case be set aside."*

The plea *in limine* was resisted on behalf of the disputants and the Tribunal proceeded to hear arguments on the plea *in limine*.

The Tribunal was not impressed by the submission made on behalf of Respondent that because the disputants had voluntarily signed their contracts of employment they were simply stopped from raising a dispute before the Tribunal. The Tribunal stated that though a contract of employment was intrinsically a contract, yet it was subject to the "*caractère protecteur et impératif du droit du travail*". The Tribunal went on to say that a contract of employment was characterised by the "*lien de subordination juridique qui existe entre l'employé et l'employeur*."

The Tribunal observed that the legislator had deemed it fit in certain circumstances to supplement what a contract of employment already provided for, with additional provisions or safeguards by way of statutory provisions. In the same vein, the Tribunal was given wide powers under the Act which were more consonant with a less legalistic approach to the resolution of disputes. The Tribunal referred, for instance, to sections 6(2)(a), 15 and 20(1) of the Act and to principles which could be applied by the Tribunal under section 97 of the Act.

The Tribunal also stated that in the realm of employment relations, any blinkered or excessive fixation on a contract of employment to deny or stop a worker from having access to the Tribunal, might, apart from not being conducive to good employment relations, go against the essence of employment relations law. There was no evidence that any of the disputes fell under section 71 or any other section of the Act which would exclude these disputes from the jurisdiction of the Tribunal. The Tribunal ruled that the issue raised under the first limb of the plea *in limine* was at best premature and the Tribunal decided that it had to hear all parties before reaching any decision on the said disputes. The plea *in limine* under limb 1 was thus set aside.

The Tribunal stated that the plea *in limine* under limb 2 was misconceived. Averments made in the Statement of Case of a disputant were deemed to be accepted for the purposes of dealing with a plea *in limine*. Ex facie, the Statements of Case and Reply filed, the period for which the collective agreement of 2013 applied was disputed between the parties. The Tribunal could not make any pronouncement on this issue or any related issue without having given the opportunity to all parties, including disputants, to be heard in relation to same. The disputants relied also on the principle of 'equal remuneration for work of equal value'. The Tribunal concluded that the plea *in limine* under that limb could not stand and the plea in limine was thus set aside.

As regards limb 3 of the plea *in limine*, the Tribunal, again, found no reference at all in the terms of reference to the collective agreement. The disputants had raised a dispute which pertained to their terms and conditions of employment and this fell squarely within the definition of what could constitute a labour dispute under the Act. There was nothing which showed that the disputants had no locus 'to decide' or could not report the above disputes. The Tribunal ruled that the plea *in limine* under this limb was at best premature and this limb of the plea *in limine* was also set aside. For all the reasons given in its ruling, the Tribunal decided that it would thus proceed to hear the consolidated cases on their merits.

ERT/ RN 78/20 - Rodrigues Private Industries and Allied Workers Union (Applicant) And Mammouth Trading Co. Ltd (Respondent) (Ruling)

This was an application made by the Applicant union under section 36(5) of the Employment Relations Act, as amended (the "Act"), for an order directing the employer to recognise the Applicant as the sole bargaining agent in a bargaining unit "***consisting of all the categories of workers excluding management, under employment at Mammouth Trading Co. Ltd (Rodrigues Branch).***" The Respondent objected to the recognition of the Applicant union and raised preliminary objections which read as follows:

> "*2. The present application for recognition should not be entertained inasmuch as, inter alia:*
>
> *2.1. The application is made for an order to recognise the trade union at Mammouth Trading Co. Ltd (Rodrigues Branch), which does not exists (sic), is not a legal entity and is not a bargaining unit in an enterprise.*
>
> *2.2. The claim for recognition is based on, inter alia, discrimination as to national extraction and place of work, in breach of Article 97 of the Code of Practice under the 4th Schedule of the Employment Relations Act 2008*."

The Tribunal referred to the definition of "Enterprise" as per the interpretation section (section 2) of the Act which includes a unit of production. The Tribunal concluded that there is thus no requirement for a bargaining unit, as opposed to an employer, to be *stricto sensu* a legal entity. The Tribunal also referred to "bargaining unit" which is defined in section 2 of the Act as "*workers or classes of workers, whether or not employed by the same employer, on whose behalf a collective agreement may be made*." The Tribunal found nothing wrong for the Applicant to have described the bargaining unit as the abovementioned categories of workers under employment at Mammouth Trading Co. Ltd (Rodrigues Branch) which Respondent clearly understood to stand for the branch situated in Rodrigues.

The Tribunal however added that it could not consider the last part of the objection under paragraph 2.1 since this had not been addressed by the parties and no evidence had been adduced in relation to same, that is, whether the branch at Rodrigues could properly constitute in the present matter a bargaining unit in an enterprise. This was something which would have to be determined on the merits of the case if there was still disagreement between the parties on this issue. For the reasons given in its ruling, the Tribunal found that the objection taken under paragraph 2.1 above could not stand, and was at best premature under the last part, and was set aside.

As regards the objection under paragraph 2.2 above, that the claim for recognition was based on, *inter alia*, discrimination as to national extraction and place of work, the Tribunal was not favoured with any evidence suggesting that the claim for recognition was in fact based on discrimination as to national extraction or place of work. The Tribunal highlighted that it was for the worker to decide whether to join a trade union and which trade union to join in the light of the worker's constitutional right to freedom of assembly and association and sections 29(1) and 29(1A) of the Act. The Tribunal also stated that as per Article 92 of the same Code of Practice, 'the organisation and location of the work' was considered as a relevant factor which should be considered in establishing a bargaining unit.

For the reasons given in its ruling, the Tribunal found that the objection under paragraph 2.2 above was at best premature and the objection was set aside. The Tribunal ordered the case to proceed on its merits.

ERT/ RN 78/20 - Rodrigues Private Industries and Allied Workers Union (Applicant) And Mammouth Trading Co. Ltd (Respondent) (Order)

Following the ruling delivered in the said application (see above), the Respondent still resisted the application and the Tribunal proceeded to hear the case. The Tribunal examined all the evidence adduced and observed that the starting point for any determination of an application for an order for recognition of a trade union as a bargaining agent or sole bargaining agent was the determination of the bargaining unit.

The Tribunal referred to previously decided cases, relevant provisions in the Code of Practice (Second Schedule to the Employment Relations Act) and to the definition of "bargaining unit". The Tribunal concluded that the Applicant union had not adduced relevant evidence to show why the **two branches** in Rodrigues (Port Mathurin and La Ferme) (and not Mammouth Trading Co Ltd (Rodrigues Branch) as wrongly described by Applicant in his application to the employer

and to the Tribunal) should be considered as forming a bargaining unit in the present matter. There was no iota of evidence as to any differences or special circumstances which would warrant the Tribunal to find that the relevant workers or classes of workers in the branches at Port Mathurin and La Ferme (both in Rodrigues) could appropriately be considered as forming part of one separate bargaining unit from other workers having exactly the same job descriptions in Mauritius. There was unchallenged evidence that all relevant workers, be it in Mauritius or in Rodrigues, were being treated equally and had the same terms and conditions of employment. The list of job descriptions applicable to all the different branches, be it in Port Mathurin or La Ferme or branches in Mauritius was very telling and showed that in this case most of the workers in Rodrigues belonged to categories of workers which existed in far larger numbers in branches in Mauritius.

Also, there was no evidence at all to show that the "(Rodrigues Branch)", which should in fact have been the branches in Rodrigues, constituted a "self-contained" unit. In fact, the unchallenged evidence on record was that all relevant workers, be it in Rodrigues or in Mauritius, benefitted from equal treatment and from the same terms and conditions of employment. The Tribunal thus found no reason in that case to depart from previously decided cases. It was not challenged that the representativeness of the Applicant union, as per the application itself, was very much less than the required minimum of 20 per cent (as per section 37 of the Employment Relations Act) of the relevant workers if the bargaining unit was not restricted to the two branches at Port Mathurin and La Ferme.

For the reasons given in its order, the Tribunal found that the Applicant Union had failed to show that the workers or classes of workers on whose behalf the application for recognition was made did indeed constitute a bargaining unit on whose behalf a collective agreement could be made. The application was thus set aside.

ERT/ RN 97/20 - Mr Shavindra Dinoo Sunassee (Disputant) And Airports of Mauritius Co Ltd (Respondent)

The above case was referred to the Tribunal by the Commission for Conciliation and Mediation under Section 70(4) of the Employment Relations Act, as amended (the "Act"). The terms of reference of the point in dispute read as follows:

> *"Whether I, Sunassee Dinoo Shavindra, President of the Airport of Mauritius Ltd Employees Union and Ex- Airport operations control center operator of the AML, summarily dismissed on the 25th of July 2020, must be re-instated in my post as mentioned above, pursuant to Section 64(1A)(d) and (f) of the Employment Relations Act 2019."*

The Tribunal observed that the legislator, in his wisdom, had decided that the grounds mentioned in section 64(1A) of the Act carried with them matters so wrong, which flouted basic principles of fairness, mutual respect and fundamental rights of a worker, that termination of employment on any one of such grounds required an even greater protection for the worker. Termination of employment on any such grounds warranted a speedy, accessible and less formal system of enquiry for the worker whose employment had been terminated, and above all, could lead to an award for reinstatement.

The Tribunal stated that the burden of proof was on the worker to show that his employment had been terminated because of one or more of such grounds laid down under section 64(1A) of the Act. The Tribunal stated that *ex facie* the charges as levelled against Disputant in that case, there was nothing to show that the charges related to Disputant becoming or being a member of a trade union, seeking or holding of trade union office or participating in trade union activities. The Tribunal sought guidance from section 31 (Protection against discrimination and victimisation) of the Act at its sub-section 3 where the term "involvement in trade union activities" is defined. The Tribunal concluded that the charges levelled against Disputant did not relate to any of the activities mentioned under the definition at section 31(3) of the Act. The Tribunal added that if that had been the case, such as if charges had been levelled against Disputant following a bona fide expression of grievance on behalf of another worker to an employer, the Tribunal would certainly have intervened if all other applicable conditions were met, that is, that the relationship had not been broken down irretrievably and that it was just and reasonable in the circumstances to order reinstatement.

The Tribunal also highlighted that there was nothing on record which showed that the charges levelled against Disputant related to Disputant exercising a right under his agreement, any collective agreement, an award, the Act or any other enactment or the Constitution. The Tribunal added that it could not, for obvious reasons, enquire whether a breach or an offence under the Information and Communication Technologies Authority Act had indeed been committed. In that case, the Tribunal was satisfied that the Disputant had not adduced any evidence to show that the charges levelled against him related, for example, to protection granted under section 31(1)(b)(ii) of the Act.

The Tribunal quoted from the case of **M.Hanzaree v. Maritim (Mauritius) Ltd 2015 IND 44**, where the Industrial Court stated the following:

> *It is further to be reminded any citizen of this country is free to express his opinion so long as it does not affect the rights and freedoms and reputation of others; and such right is protected by law (see articles 12, 14 and 18 of the Code civil) and more importantly entrenched provisions in the Constitution, particularly Sections 3 and 12 …*

The Tribunal also referred to **Jurisclasseur, Droit du travail, Licenciement pour motif personnel, Fasc. 30-42 note 122**, as quoted by the Industrial Court in the same case of **M.Hanzaree (above),** and which read as follows:

> *122. Un abus de la liberté d'expression peut constituer une faute justifient un licenciement. Si le salarié jouit, dans l'entreprise et en dehors d'elle, de sa liberté d'expression à laquelle il ne peut être apporté que des restrictions justifiées par la nature de la tâche à accomplir et proportionnées au but recherché, il ne peut abuser de cette liberté par des* ***propos injurieux, diffamatoires ou excessifs****.*

The Tribunal concluded that any further examination of the particulars of the charge in that case could impede upon the jurisdiction of the Industrial Court and hinder the Disputant in the manner he might wish to proceed further in relation to that case. The Tribunal, however, stressed that if there had been a clear indication that the ground for termination was in contravention of section 64(1A)(d) or (f) of the Act, the Tribunal would have proceeded to the next stage of the exercise which was to assess the reasonableness or otherwise of giving an award for the reinstatement of the Disputant.

For all the reasons given in its award, the Tribunal found that the Disputant had not shown on a balance of probabilities that he should be reinstated, and the dispute was set aside.

ERT/ RN 106/20 - Mr Jean-Marc Kevin Noel (Disputant) And Airports of Mauritius Co Ltd (Respondent)

The above case was referred to the Tribunal by the Commission for Conciliation and Mediation under Section 70(4) of the Employment Relations Act, as amended. The terms of reference of the point in dispute read as follows:

> *"I, Mr. Jean-Marc Kevin Noel should be paid two incremental credit* [sic] *upon completion of Level 2 Diploma in Engineering – Electrical and Electronics Technology as per the Terms and Conditions of employment prevailing at the AML."*

Though the qualification obtained by Disputant was recognised by the Mauritius Qualification Authority (MQA), the latter stated that the "*indicative level of the aforesaid qualification is Level 3 on the National Qualifications Framework*". There was no evidence to challenge this and there was no evidence either to suggest that the MQA was not the appropriate body to recognise and evaluate a qualification like the one in that case.

The Tribunal found nothing wrong with the procedure adopted by the Respondent and in fact, the Tribunal observed that the said procedure enabled the Chief Executive Officer (CEO) of Respondent to exercise his duty in a fair and enlightened manner when approving or not approving the grant of increment(s) to a staff member. The Tribunal concluded that the dispute as referred to the Tribunal was devoid of merit the more so in the face of the letter from the MQA addressed to the Disputant. The Tribunal added that any other conclusion emanating from the Tribunal would have sent the wrong signal that the Tribunal could evaluate qualifications and pitch them at relevant levels in complete disregard to the recognition and evaluation of such qualifications by the MQA, the more so in a case where there was no suggestion at all that the MQA went wrong.

For all the reasons given in its award, the Tribunal concluded that the Disputant had failed to show that he should have been paid two incremental credits and the case was set aside.

ERT/RN 157/19 – Mr Rama Krishna Mudaliar (Disputant) And Mauritius Housing Company Ltd (Respondent)

This case was referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation in accordance with section 69 (7) of the Employment Relations Act. The Terms of Reference of the dispute read as follows:

> *Whether I should have been appointed to the post of Deputy Managing Director following my 'reinstatement' on 06.02.19.*

Disputant, an Internal Auditor at the Mauritius Housing Company Ltd ("MHC"), was assigned duties of Deputy Managing Director ("DMD") in 2008. He was, however, charged with corruption offences in 2009 and underwent trial for same before the Intermediate Court. He was therefore suspended from his functions at the MHC. Upon his acquittal in 2018, he was reinstated by the Respondent's Board in his substantive post of Internal Auditor and resumed duty in February 2019. He wished to know whether he should have been appointed to the post of DMD following his reinstatement.

The Tribunal notably found that the Disputant was appointed to the post of DMD on an assignment basis as per the letter of offer dated 8 October 2008 despite his arguments to the contrary and that the assignment was in accordance with the prevailing conditions of employment as per the Gobin Report of 2008. The Tribunal could not therefore award that Mr Mudaliar be substantively appointed to the post of DMD following his reinstatement in February 2019. The dispute was accordingly set aside.

ERT/ RN 73/20 - Mrs Neelah Maharaj Tilhoo (Disputant) And The State Investment Corporation Ltd (Respondent)

This case was referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act (the "Act"). The terms of reference of the point in dispute read as follows:

> *"I consider my transfer to Casino de Maurice Ltd in Curepipe as punitive and that I should be posted back to the State Investment Corporation Ltd in Port Louis."*

Disputant deponed to the effect that her work environment at the Casino de Maurice was not the same as the environment she enjoyed at the Respondent. According to her, this amounted to a demotion. Disputant also deponed as to her precarious health condition and she produced copies of medical certificates and correspondences sent to management. Disputant prayed that she be transferred back to her place of work in Port Louis.

The Tribunal examined carefully all the evidence adduced before it including the letters sent by Disputant following her 'posting' at the Casino Cluster of the Respondent. There was no single suggestion in those letters that she should not have been transferred to the Casino Cluster of Respondent. There was no suggestion either that she considered herself to have been demoted or that she was unilaterally and unlawfully transferred or that there was a major modification ("*modification substantielle*") of her conditions of work.

Disputant in fact accepted that she had been involved with the Casinos for a little over ten years and had been assigned to the Casino Cluster with another person as from 2018. She had been a director from 2015 up to 2018 on the Board of 'SICMS' which was a company managing the Casinos. The Tribunal found nothing wrong, given the experience that the Disputant had with casinos, for the Respondent to have decided that Disputant would be posted at the Casino Cluster

of the Respondent. The Tribunal was satisfied that there was no evidence on record and no suggestion that the Disputant was no longer employed by the Respondent but by another entity.

The Tribunal observed that it was trite law that the responsibility of ensuring "*le bon fonctionnement*" of any enterprise rested, and must rest, with the management, however constituted (**vide Raman Ismael v United Bus Service 1986 MR 182**). The Tribunal added that management could thus, in the discharge of his responsibility of ensuring "le bon fonctionnement" of the enterprise, modify the organization of services delivered and the functions of his employees. This was possible so long as the employer did not interfere with the acquired rights of his employees or « *dès l'instant où il ne porte pas atteinte pour autant aux « éléments substantiels du contrat» ou ne lui apporte pas de « modification essentielle - concernant la qualification, les attributions principales, les conditions de travail ou la rémunération*» (**vide A.J. Maurel Construction Ltee v Froget HRN 2008 MR 6**). Each case was to be decided on its own merits/facts and the Tribunal had to ascertain whether the change brought by management constituted a unilateral and substantial modification of the conditions of the contract of employment of the Disputant or a mere "*aménagement*" of the terms and conditions of work.

The Tribunal found nothing wrong with the reason put forward on behalf of the Respondent for the posting of the Disputant physically at Le Casino de Maurice where the administration staff dealing with Casino matters were posted. Also, the Tribunal was not satisfied that the change of posting of Disputant, based on the facts in that case and bearing in mind all the evidence on record, including the scheme of duties of the Disputant, was such as to amount to a substantial modification of the terms and conditions of employment of the Disputant.

The Tribunal however hastened to add that the primary responsibility for the promotion of good employment relations rested with management and that management at all levels had to pay regular attention to employment relations (Articles 27 and 28 of the Code of Practice – Fourth Schedule to the Act). The Tribunal also added that management should provide a safe workplace and decent work in conditions of freedom, equity, security and human dignity to workers (Article 17 of the same Code). The Tribunal trusted that both parties would endeavour to do their best so that any misunderstandings between them were cleared and that the Disputant was reassured of her valuable contribution to the organization. For all the reasons given in its award, the dispute was otherwise 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 2020:

- The number of disputes lodged before (and referred to) the Tribunal was 209 out of which 146 cases were referred to the Tribunal by the Commission for Conciliation and Mediation and 29 by the Rodrigues Commission for Conciliation and Mediation.

The number of cases disposed of summarily (through conciliation and agreements between parties) was 155.

- There were 10 Awards and 4 Orders issued and the Tribunal had to deliver 3 Rulings.

- The Tribunal has disposed of 239 cases during the period January to December 2020. As at 31st December 2020, there were 91 cases/disputes pending before the Tribunal.