Republic of Mauritius

Annual Report

Employment Relations Tribunal

Year 2022

Table of Contents

Note from the Acting President

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There has been a sharp rise in the number of cases lodged/referred to the Tribunal in the calendar year 2022 (i.e 98 cases) when compared to the previous calendar year 2021 (60 cases). 2022 has also been marked by amendments brought to the **Employment Relations Act** and the **Workers' Rights Act** by the **Finance (Miscellaneous Provisions) Act 2022.** These amendments have, inter alia, added a new jurisdiction for the Tribunal where cases for reinstatement may be referred to the Tribunal by the supervising officer of the Ministry of Labour, Human Resource Development and Training under the new **section 69A** of the **Workers' Rights Act**.

Moreover, the complexity of cases referred to or lodged before the Tribunal especially in the context of the Covid-19 pandemic will be apparent from the résumé of cases contained in this report.

In this particular 'transitional period' impacted by the Covid-19 pandemic, the current war in Ukraine and the rise in prices or scarcity of goods and commodities worldwide and where there is a need to sustain the momentum of economic recovery, the Tribunal is encouraging willing parties to reach win-win settlements, wherever possible. Adequate time and facilities are provided to those parties (with their express consent) to reach such settlements, sometimes at the expense of the prescribed delays to dispose of cases. The Tribunal has nevertheless delivered 8 awards, 6 orders and 7 rulings, and has disposed of a total of 85 cases during the calendar year 2022.

Despite the relative increase in number and complexity of cases, and the facilities offered to parties to try to find mutually acceptable solutions, the Tribunal has managed to contain the number of pending cases as at 31 December 2022 to 64. This achievement has been possible only with the contribution of all the staff and members of the ERT. I wish to thank the Vice-President **Mr S. Janhangeer** for his support and collaboration, and all the staff for their commitment to enable the Tribunal to meet its objectives. I also need to thank the members of the Tribunal who have shown, over the years now, their professionalism and utter sense of responsibility bearing in mind the exigencies of the work of the Tribunal.

I hope that 2023 is an even better year for all our stakeholders, and that good employment relations prevail in the Republic of Mauritius.

I.Sivaramen

Acting President

E.R.T

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. As from 3 November 2019, he is the Acting 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's Office in 2002. 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' Association and (CMJA) Judges' 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 Kevin C. Lukeeram

Staff List

SN	NAME	TITLE	EMAIL	PHONE NO (230)
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	Registrar	registrar-ert@govmu.org	212 5184
4	Miss BEESOON Devi Rameshwaree	Temporary Deputy Registrar	ert@govmu.org	212 4636
Administrative/Supportive Levels				
1	Miss KADER Nasia	Human Resource Executive (Part - time)	nkader@govmu.org	2602936/212 8286
2	Mrs BOODHUN Saraspady	Principle Financial Operations Officer	Fin_ert@govmu.org	211 1303
3	Ms MOHINDEE Ganeshwaree	Office Management Assistant	gmohindee@govmu.org	212 4636
4	Mrs SHAMSOODEEN Beebee Zubeida	Assistant Procurement and Supply Officer	zshamsoodeen@govmu.org	212 4636
5	Mrs PEEROO Khushali	Safety and Health Officer/Senior Safety and Health Officer (As and when required basis)	ert@govmu.org	212 4636
6	Miss UJOODHA Lakshana	Acting Senior Transcriber	ert@govmu.org	208 0091
7	Mrs DOOBUR Vidiawatee	Transcriber	ert@govmu.org	208 0091
8	Mrs PURREMCHUND Priya Ashwini	Transcriber	ert@govmu.org	208 0091
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 NEERUNJUN-GUJADHUR Binta Devi	Management Support Officer	ert@govmu.org	212 4636
12	Mrs DAUHAWOO-GUNGADIN Priscilla	Management Support Officer	ert@govmu.org	212 4636
13	Mr POONOOSAMY Srinivassen	Management Support Officer	ert@govmu.org	212 4636
14	Mrs SANTOO Ricamah	Management Support Officer	ert@govmu.org	212 4636
15	Miss DABOO Lakshana Devi	Management Support Officer	ert@govmu.org	212 4636
16	Mr SAMY Rainganaden	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 those decisions. The full opinion of the Tribunal is the only authoritative document. Awards are public documents, and the awards delivered in 2022 are available at: https://ert.govmu.org

ERT/ RN 52/21 – PORT LOUIS HARBOUR AND DOCKS WORKERS UNION (Applicant) AND 1. PORT LOUIS MARITIME EMPLOYEES ASSOCIATION (Respondent No. 1) 2. THE CARGO HANDLING CORPORATION LTD (Respondent No. 2) I.P.O: 1. THE MARITIME TRANSPORT AND PORT EMPLOYEES UNION 2. THE STEVEDORING AND MARINE STAFF EMPLOYEES ASSOCIATION 3. THE DOCKS AND WHARVES STAFF EMPLOYEES ASSOCIATION (Co-Respondents Nos. 1, 2 and 3 respectively) - Order

This was an application made by the Applicant union under section 39(1) of the Employment Relations Act, as amended (the "Act"), for an order to revoke the Tribunal's Order in the case bearing cause number ERT/RN 08/14 granting sole recognition to Respondent No. 1 on 7 March 2014 to represent the workers in the bargaining unit comprising of manual employees and staff employees excluding top management at Respondent No. 2. The Applicant averred that there had been a change in representativeness which warranted the Tribunal to grant the order prayed for. Respondent No. 1 resisted the application whilst the Co-Respondents agreed with the application made by the Applicant union. Respondent No. 2 adopted a neutral position in the matter.

The Tribunal examined all the evidence adduced before it. The Tribunal observed that with the passage of time, the representativeness of trade unions in a particular bargaining unit may change. The Tribunal stated that under section 39(1)(a) of the Act there was no requirement for a trade union applying for an order to revoke or vary the recognition of another trade union to be also a recognised trade union in the bargaining unit. The Tribunal found that the applicant had a 'locus standi' and could make the said application since the evidence suggested that the applicant union too had members in the bargaining unit *in lite*. An objection taken to the effect that the applicant union did not have 'locus standi' to lodge the application was thus set aside.

The Tribunal had no qualms to use reliable evidence adduced by an employer to ascertain the representativeness of a trade union. In that case, the Applicant had made an averment in his statement of case against certain officers of the management of Respondent No 2 and the representative of Applicant did not agree in cross-examination that this was not true. There was unchallenged evidence from one worker to the effect that he is a member of Respondent No 1 and that though he never withdrew as a member from his trade union, that is, from Respondent No. 1, yet his check-off for the month of November 2021 was made in favour of the Applicant union. Another worker was called as a witness for Respondent No. 1 and he stated that he is a member of Respondent No. 1 and that he learned that for the month of November 2021, no check-off was made for his trade union, Respondent No. 1. He stated that he never sent any letter to withdraw from the union or any form to management to stop his check-off in favour of Respondent No. 1. Both workers stated that they did not know how this situation arose.

Also, the representative of Respondent No. 2, the employer, was not called to depose before the Tribunal to at least confirm under oath or solemn affirmation the figures in relation to check-offs. There was absolutely no evidence at all from the employer in relation to the averments made by the two workers and the representative of Respondent No. 1. The figures provided by Applicant in his statement of case differed from figures mentioned in the statement of case of Respondent No. 2. Very importantly, the Tribunal noted that the figures provided by Respondent No. 2 could not stand and could not be

relied upon since from a mere total of the figures provided in the statement of case of Respondent No. 2, the 'union membership' at Respondent No. 2 as at 25 November 2021 would give a total of 1497 workers whereas it was averred earlier in the same statement of case that there were only 1277 workers in the said bargaining unit.

The Tribunal found that this was not in line with section 29(1A) of the Act which provides as follows:

> 29(1A) "A worker shall have the right to join only one trade union, of his choice, in the enterprise where he is employed or his bargaining unit."

For all the reasons given in its Order, the Tribunal found that there was no reliable evidence which would show conclusively that there had been a change in representativeness which would warrant the Tribunal to revoke its order dated 7 March 2014 in the case bearing cause number ERT/RN 08/14. The application was set aside.

ERT/ RN 125/18, ERT/RN 127/18 - Mr Gulshan Raj Anand Teeluck (Disputant No. 1) And Mauritius Institute of Training & Development (Respondent); Mrs Pamela Narainsamy (Disputant No. 2) And Mauritius Institute of Training & Development (Respondent) - Award

These two cases were referred to the Tribunal by the Commission for Conciliation and Mediation under the then Section 69(7) (repealed since then by section 21 of the Employment Relations (Amendment) Act 2019) of the Act. The two cases which raised similar issues were consolidated. The terms of reference were similar in both cases and read as follows: "*Whether, I,[….], should be appointed as Coordinator at Ecole Hoteliere Sir Gaetan Duval (EHSGD) by the Mauritius Institute of Training and Development (MITD) since the post is vacant*."

Disputant No 2 deposed before the Tribunal and she stated that she went through a selection process for the post of Coordinator in 2006, and attended interviews but was never informed of the outcome of the selection process. She stated that on 7 September 2006, she was invited to act as Coordinator at the Ecole Hoteliere – Sir Gaetan Duval (EHSGD) and since then she is still acting as Coordinator. She stated that she has been performing the duties of Coordinator for 15 years. There was a vacancy for the post of Coordinator in 2006, and in the 2013 Pay Research Bureau (PRB) Report, the post of Coordinator (at the Respondent) had been made personal to officers in post. This was maintained with the PRB Report of 2016. She agreed that there was no vacancy for the post of Coordinator but averred that since she had been doing the duties of Coordinator well before 2013 and was still performing same, she should also be considered for the post of Coordinator which was made "personal". Disputant No 1 also adduced evidence before the Tribunal and agreed with what Disputant No 2 had stated in examination in chief.

The Tribunal referred to relevant provisions in the PRB Reports of 2016 and 2021.

The Tribunal also quoted from the award delivered in the case of **Mrs D.C.Y.P And The Sun Casinos Ltd, R.N 202 (GN No. 1390 of 1988)** where the then Permanent Arbitration Tribunal (as the

Tribunal was then called) had stated the following: "*There is no doubt that employers do have a discretion and powers in matters of appointment and promotion. Such discretion and powers must, however, be exercised in such a way as not to cause prejudice and frustration to employees whose only 'fault' would seem to be loyalty, expertise and efficiency. Whenever, as in the above case, officers are recruited and employed to work, they are entitled to expect a normal reward for their good work and acquired experience, and this necessarily includes access to promotion upon occasion arising. Unless such a basic concept of employer/employee relations is present in modern enterprises, industrial disputes and bad blood are bound to be the order of the day*." The Tribunal however took note of the reasons given for the non-filling of the posts of Coordinator. The Tribunal also noted that the then IVTB had indeed reserved its right not to make any appointment following the internal advertisement dated 12 May 2006 for different posts including for the posts of Coordinator- Tourism and Leisure, and Coordinator- Front Office & Housekeeping.

The Tribunal stated that it could not intervene in the matter, however pathetic the situation might be for the Disputants, because contrary to what was suggested in the terms of reference, there was strictly, as per the evidence adduced, no vacant post of Coordinator at the Respondent and this since the implementation of the PRB Report 2013.

The Tribunal stated that it would not pronounce itself or interfere with policy decisions which should be left to those who had been duly mandated to take such decisions. The Tribunal however referred to the cases of **Mr P.E Fidèle & others And Cargo Handling Corporation Ltd, RN 1062-RN1064**, where the Tribunal quoted from a previous award in the case of **Mr E. Cesar And Central Water Authority, RN 785**, where the then Permanent Arbitration Tribunal stated the following: "*It is worth stressing that for the sake of good industrial relations, vacancies should be filled in as soon as possible and period of actingship should not be made to last for more than is necessary*." In the light of the particular facts of that case including the relevant PRB reports and that there was no vacancy in the post of Coordinator at the Respondent, the Tribunal could not award that the disputants "should be appointed as Coordinator at EHSGD by the Respondent since the post is vacant". The Tribunal however added that the Respondent should see to it that matters were dealt with expeditiously so that the disputants might at long last know where matters stand for their organisation in terms of organisation structure and for them in terms of promotional prospects. The Tribunal highlighted that this was a sine qua non for harmonious employment relations and from which all parties and stakeholders of the Respondent might only benefit.

For all the reasons given in its award, the Tribunal found that the disputants had failed to show that the Tribunal should award that they should be appointed by the Respondent as Coordinators since the posts were vacant. The disputes were set aside.

ERT/ RN 41/21 - Mr Abdool Reshad Lalloo (Disputant) And Mauritius Ports Authority (Respondent) in presence of: (1) Mr Louis Edwin Bignoux (Co-Respondents) (2) Mr Kinsley Wilson Thomas - Award

The above case was referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Act. The Co-Respondents were joined as parties in the interest of justice and there was no objection on the part of Disputant and Respondent to them being joined as parties. The Co-Respondents informed the Tribunal that they would abide with the decision of the Tribunal.

The terms of reference of the point in dispute read as follows: "*Disparity between my pension and that of my junior colleagues due to the payment of two increments received by them in the grade of Controller and three increments received on promotion in the grade of Superintendent. My claim is that my salary/ pension be adjusted from Rs 74,300/ Rs 37,150 to Rs 79,650/ Rs 39,825 to be at par with my colleagues Bignoux and Thomas".*

The Tribunal observed that the Disputant had retired from the service on or with effect from 1 February 2020 and the said dispute was reported to the President of the Commission for Conciliation and Mediation only on 1 March 2021 that is more than one year after the Disputant had retired from the service. The Tribunal referred to the statement of case of Disputant and concluded that the Disputant was nowhere claiming that he ought to have benefited from the 'Long Service Increment' (LSI) following the HRD Report 2016 since he was qualified for such increment or that he satisfied the conditions for the granting of such LSI. It was unchallenged that Disputant opted to accept the revised emoluments, Job Guidelines and Terms and Conditions of Service as per the HRD Report 2016 which was the relevant salary commission report at the time that Disputant retired from the service. Since Disputant had opted to be governed by the recommendations on emoluments, the Job Guidelines, the terms and conditions of service and organizational structures in the HRD Report 2016, the Disputant could not declare a dispute in relation to his remuneration or allowances.

The Tribunal referred to the Supreme Court case of **Federation of Civil Service and Other Unions and others v. The State of Mauritius and Anor, 2009 SCJ 214**, where the Supreme Court stated the following: "*It was submitted on behalf of the plaintiffs that the new provisions have denied them the opportunity, following the declaration of an industrial dispute, of having their grievances heard and adjudicated upon by bodies set up by statute and that accordingly the new provisions have breached the principle of separation of powers as well as their right to the protection of the law. We do not agree. On the coming into operation of a new PRB report, whether before or after the new provisions became effective, every public officer or employee was and continues to be free to choose whether to opt to be governed by the recommendations of the new report. Should he opt not to be governed by the recommendations in the new report, he is at liberty to declare an industrial dispute, now referred to as a labour dispute, pursuant to the provisions of the law – formerly the Industrial Relations Act and now the Employment and Labour Relations Act 2008. Should he of his own free will, however, opt to be governed by the recommendations in the new report, he is presumed like any citizen to know the law, including the new provisions, and cannot declare a dispute in relation to his remuneration or allowances. (*…)" The (relevant) proviso to the definition of "labour dispute" at the relevant time for the purposes of the Supreme Court judgment was similar to the one at paragraph (b) of the definition of "labour dispute" except that in 2009, the proviso existed only in relation to recommendations made in a report of the Pay Research Bureau. This was later extended in 2013 to include recommendations made in a report of a salary commission, by whatever name called.

The Tribunal observed that though the dispute and claim had been termed as 'that my salary/pension be adjusted from Rs 74,300/ Rs 37,150 to Rs 79,650/Rs 39,825 …', the crux of the matter was whether the salary of Disputant ought to be adjusted. The dispute thus related clearly to remuneration of the Disputant. Also, it was unchallenged that at the material time, Disputant was drawing the top salary (or "last point of the salary scale" as Disputant had averred in his Statement of Case) of Rs 74,300- of the post of Superintendent. The claim thus was that the salary, which the Tribunal understood in view of the figure of Rs 74,300- in the terms of reference, to be the basic salary of Disputant in the grade of Superintendent to be adjusted to Rs 79,650. The Tribunal found that in the light of the option exercised by Disputant to be governed by the recommendations made in the HRD Report 2016, the latter could not declare a dispute in relation to his salary, the more so when he was already drawing the top salary of his grade. For all the reasons given in its award, the Tribunal found that the said dispute, which had been referred as concerning "salary/pension", was clearly in relation to remuneration and in the light of the option exercised by the Disputant, it was not included in the definition of a labour dispute which may be enquired into by the Tribunal. The dispute was thus purely and simply set aside.

ERT/RN 51/21 – Bank of Mauritius Employees Union (Applicant) AND Bank of Mauritius (Respondent) – Order

The Bank of Mauritius Employees Union (the "Union") entered an application under section 51 (8) of the Employment Relations Act requiring the Bank of Mauritius to comply with certain provisions of the Procedure Agreement at the Seventh Schedule of the Employment Relations Act. The latter resisted the application on the ground that the Union did not have recognition as a sole bargaining agent.

Having thoroughly examined the evidence on record, the Tribunal was not convinced that the Union was recognised. In the absence of any substantial evidence demonstrating the Union's recognition, the Tribunal was not prepared to find that the Union holds recognition as a sole bargaining agent or otherwise with the Respondent. The Procedure Agreement, found at the Seventh Schedule of the Employment Relations Act, would not therefore apply between the parties.

The Tribunal could not therefore grant an order requiring the Bank of Mauritius to comply with Articles 5 (5), 7 (1) and 4 (1) of the Procedure Agreement set in the Seventh Schedule of the Employment Relations Act. The application was therefore set aside.

ERT/RN 44/21 – Dr Hemraj Soonder (Disputant) AND Mahatma Gandhi Institute (MGI) (Respondent) – Award

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

Unpaid Vacation Leaves – Proper recommendation of the applicable PRB Report was not applied.

The Disputant, a retired Associate Professor at the MGI, was seeking the refund of his accumulated vacation leaves following his retirement on 13 July 2018. He notably relied on paragraph 25.32 of the Pay Research Bureau ("PRB") Report 2016 Volume 2 Part II, contending that he was required to work during the period he was supposed to be on vacation leave prior to retirement.

In considering the evidence adduced, the Tribunal notably found that the Disputant had no intention of cashing his vacation leaves and retiring prior to his effective retirement date as per paragraph 15.75 of the PRB Report 2016 Volume 1. The Tribunal also found that paragraph 25.32 of the PRB Report 2016 Volume 2 Part II did not apply to the Disputant.

The Tribunal could not therefore conclude that the proper recommendation of the relevant PRB Report was not applied in relation to Dr Soonder's unpaid vacation leaves and the dispute was accordingly set aside.

ERT/ RN 45/21 - Mr Chitanand Luchman (Disputant) And Mauritius Post Limited (Respondent) - Award

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

> "*The Mauritius Post Ltd is not complying with the recommendation and the clause of the Terms and Conditions thereof, in connection with cash grant/allowance payable to officers eligible for it in the grade of Senior Postal Executive*."

The Disputant deposed before the Tribunal and he stated that he had to come previously before this Tribunal in relation to an increment to which he was entitled and which was not given to him. Following that case before the Tribunal, he was eventually paid his increment. He stated that because of this increment he became qualified for a 70% duty free remission which was however not mentioned to him. Later, he wrote letters to claim his privilege for the 70% duty free remission but he was informed by the Human Resources Department that he was not entitled to same.

The Tribunal examined all the evidence on record. The Tribunal observed that it was clear that the Respondent considered that Disputant was eligible for the '70% duty free Remission' subject to conditions mentioned in a letter dated 5 January 2021 emanating from the Respondent.

The Tribunal examined carefully the wording of relevant provisions and observed that the relevant paragraph 1.31 was clear and that the Respondent undertook to bear the duty paid up to a maximum of Rs 100,000. This was the only obligation of the Respondent and irrespective of new or second hand car, the officer, as an applicant claiming entitlement to benefit from this provision, had to show essentially (apart from other conditions mentioned in that paragraph and which would be to the knowledge of the Respondent) that he had purchased a car during the period concerned and had incurred duty on the purchase of the car. The Tribunal added that the Respondent does not and cannot

reimburse part of the price paid for a car. That paragraph dealt specifically with duty to be borne by the Respondent up to a maximum of Rs 100,000. In the light of the admission by Disputant that he did not pay any duty for the purchase of his car and in the absence of any document certifying the amount of duty incurred by the Disputant, the Tribunal found that the Respondent could not in turn bear duty which had not been incurred in the first place. It added that in accordance with good governance, Respondent was perfectly entitled and duty bound to ask for a certificate emanating from the appropriate authority to certify as to the amount of duty incurred by the Disputant on the purchase of his car. In the absence of such a certificate and since no duty was incurred by the Disputant following the purchase of his car, the Respondent could not bear any amount of duty.

There was also an issue as to whether the monthly allowance payable should continue after the retirement of the beneficiary from the service. The Tribunal observed that there was nothing in evidence which indicated that the monthly allowance was to continue after the retirement of the beneficiary. The Tribunal added that the relevant paragraph had been phrased very differently from another provision where reference was made specifically to "a cash grant equivalent to the duty remission". The Tribunal concluded that under the relevant provision, the allowances were earned on a monthly basis. The Tribunal thus found that the Disputant could not pretend that he ought to have continued to benefit from monthly allowances of Rs 2000- even after his retirement from the service of Respondent.

For the reasons given in its award, the Tribunal found that the Disputant was, at best, entitled to the said monthly allowance of Rs 2000- as from January 2017 up to 10 March 2017 on a pro-rata basis. The Tribunal held that the Disputant had failed to prove his case on a balance of probabilities and the dispute was set aside.

ERT/ RN 60/21 - Mr Nidishwar Ramphul (Disputant) And Airports of Mauritius Co Ltd (Respondent) - Ruling

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

> *"Whether Mr Nidishwar Ramphul should be reinstated in his position of Airport Security Officer having been dismissed on 18 March 2020 without reference to any disciplinary committee, on the charge of gross misconduct."*

A preliminary objection was taken on behalf of Respondent and it read as follows:

1. *Ex facie the Disputant's Statement of Case/Terms of Reference the present application for reinstatement of the Disputant by the Respondent falls outside the jurisdiction of the Employment Relations Tribunal as laid down in S (64)(1A) of the Employment Relations Act, as amended, in as much as the Disputant's employment was terminated summarily on the ground of gross misconduct and he was paid severance allowance together with one-month remuneration in lieu of notice, in line with the Workers' Rights Act of 2019.*

2. *The Respondent accordingly moves that the present application be dismissed with cost.*

The Tribunal observed that it only had jurisdiction to enquire into a dispute which related wholly or mainly to the reinstatement of a worker where the employment of the worker is terminated by reason of one or more of the grounds laid down in section 64(1A) of the Act. (*It is apposite to note that the law has been amended by Act No.15 of 2022 since then*).

The Tribunal found that at that stage of the proceedings and without having given the parties the opportunity to adduce any evidence, it would not be safe in the said matter for the Tribunal to simply find that the dispute was not within the jurisdiction of the Tribunal. The Tribunal observed that an employer who was terminating the employment of a worker might avoid referring to the termination of the employment being by reason of any of the grounds listed in section 64(1A) of the Act. The Tribunal decided that it would have to hear evidence just like in the case of **Mr Shavindra Dinoo Sunassee And Airports of Mauritius Co Ltd, ERT/RN 97/20** where the preliminary objection was taken together with the merits of the case. For the reasons given in its ruling, the Tribunal found that the preliminary objection taken was premature. The Tribunal ruled that it would proceed with the hearing of the matter and that the objection might be taken together with the merits of the case, if need be.

ERT/ RN 184/20 - Mauritius Freeport Development Co. Ltd (Disputant) And Private Sector Employees Union (Respondent) - Ruling

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

"*Whether the existing wages, terms and conditions of employment of employees of Mauritius Freeport Development Co. Ltd (MFD) contained in the Collective Agreement signed between MFD and Port Louis Maritime Employees Association (PLMEA) on 30 May 2017 be extended for a minimum period of three years from the date of the award of the Tribunal, as the demands of the Private Sector Employees Union to review the latter Collective Agreement are estimated at around Rs 200 Millions in 2020 and Rs 100 Millions per year as from 2021- costs that are unreasonable, unacceptable and unsustainable, the more so, that the economic climate prevailing in Mauritius due to the unprecedented COVID-19 pandemic provides no visibility on the foreseeable future*".

The Tribunal heard arguments from Counsel on either side. The gist of the arguments for Senior Counsel appearing for Disputant was that once the CCM had referred the dispute to the Tribunal, the latter should enquire into the matter and make an award thereon. Senior Counsel also argued that it was within the province and powers of the CCM to decide how to bring and refer the matter to the Tribunal. Reference was made to section 69(10) of the Act to support this argument.

Counsel for Respondent on the other hand argued that the dispute which had been referred to the Tribunal had been substantially altered when compared to the dispute which had been reported to the President of the CCM. He referred to the Covid-19 issue and stated that this did not form part of the

terms of reference before the CCM so that there could not have been a deadlock between the parties in relation to same.

The Tribunal observed that there were marked differences between the dispute reported to the President of the CCM and the dispute referred to the Tribunal. The main differences were (1) the dispute reported to the President of the CCM related to the demands of the union and whether these were reasonable and acceptable whilst the dispute which was ultimately referred to the Tribunal was amended substantially so that the dispute incorporated essentially a 'demand' of the employer as to whether the existing wages, terms and conditions of employment of employees of Respondent contained in a collective agreement signed between Disputant and another trade union on 30 May 2017 should be extended for a minimum period of three years as from the date of the award of the Tribunal; and (2) the initial dispute reported to the President of the CCM did not refer at all to the COVID-19 pandemic whilst the terms of reference of the dispute before the Tribunal laid much emphasis on the economic climate prevailing in Mauritius due to the unprecedented COVID-19 pandemic. These substantial differences moreover represented essential elements of the dispute which the Tribunal was being called upon to enquire. The Tribunal observed that, irrespective of the version of the Respondent, there was no single averment in the Statement of Case of Disputant that the extension of the wages and terms and conditions of employment contained in the 2017 Collective Agreement had been discussed meaningfully between the parties. The Tribunal was at a loss to understand how the extension sought of the existing wages and terms and conditions of employment contained in the 2017 Collective Agreement and more especially for a minimum period of three years from the date of the award of the Tribunal found its way in the terms of reference of the dispute.

Also, the Respondent decided to amend his 'claims' so that the earlier demands of the Respondent were no longer "d'actualité". The Tribunal held that the parties should, in the circumstances, ideally engage in collective bargaining as contemplated by the ILO Collective Bargaining Convention, 1981 (No. 154), the Act and the Code of Practice (more specially sections 112 to 118) instead of the Tribunal being asked to enquire into the matter when very importantly, one party (the Respondent) had undertaken to engage in collective bargaining based on the revised claims made. The coming into operation of a crucial piece of legislation, the Workers' Rights Act, with effect from 24 October 2019 (by way of Act No. 20 of 2019) and the consequential repeal of the Employment Rights Act would require amendments to the 2017 Collective Agreement. It was thus clear that the "existing wages, terms and conditions of employment of employees of Mauritius Freeport Development Co. Ltd contained in the Collective Agreement signed between MFD (Disputant) and Port Louis Maritime Employees Association (PLMEA) on 30 May 2017" could not simply be extended for a minimum period of three years as from the date of the award of the Tribunal as per the terms of reference.

The Tribunal concluded that the dispute no longer had any raison d'être or basis given that the demands mentioned in the terms of reference were no longer there. The Tribunal stressed that it could not embark on an academic exercise in relation to old demands which were no longer sought

The Tribunal added that allowing such a case to proceed before the Tribunal on the basis of the terms of reference of the dispute might be tantamount to the Tribunal itself violating employment laws and fundamental principles of good employment relations. The Tribunal referred, as an example, to section 30 of the Act which provides that no person shall interfere with the functioning of a trade union

of workers. The Tribunal stated that it has to encourage collective bargaining, be it in favourable economic conditions, or be it in less favourable economic conditions. The Tribunal laid emphasis on bargaining in good faith which is a must and that every opportunity must be given to parties to indulge in collective bargaining. The Tribunal referred to section 1(c) of the Code of Practice to the effect that collective bargaining carried out in a reasonable and constructive manner between employers and strong representative trade unions, is the best method of conducting employment relations.

The Tribunal found that this was a fit and proper case to remit to the parties for the parties to engage in collective bargaining in good faith. This would, according to the Tribunal, at the same time ensure compliance with section 64(2) of the Act in relation to any dispute which might be contemplated.

For all the reasons given in its ruling, the matter was remitted to the parties under section 6(2)(a) of the Second Schedule to the Act subject to the conditions mentioned in the said ruling.

ERT/ RN 50/21 - Mr Diovanni Cotte (Disputant) And Collège de la Confiance (Respondent) in presence of: (1) Private Secondary Education Authority (Co-Respondent No 1) (2) Mr Jocelyn Poudret (Co-Respondent No 2) - Award

The above case was referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Act. Co-Respondent No 2 was joined as a party to the proceedings by the Tribunal since the latter could be affected by an award of the Tribunal. The terms of reference of the point in dispute read as follows:

"*Whether the Manager of Collège de la Confiance should assign duties of Head of Department of Agriculture for the year 2021-2022 on a seniority basis in the respective Private Secondary School according to PRB 2016, Recommendation 5, OR on seniority reckoned as from the date of joining the mainstream according to a PSEA letter Ref ST/33/87 Vol. 15*."

The Disputant did not agree that because he joined the mainstream only in January 2020, he was thus not the most senior in the department of Agriculture. He stated that he was at the Respondent since 2002 and was thus the most senior in that department. The Principal Supervisor of Co-Respondent No 1 stated that Disputant was recruited as a teacher of Pre-Vocational and that for seventeen years he continued to teach the package of subjects specified for the pre-vocational stream. He stated that Disputant was at no point reckoned as being a teacher of Agriculture in the mainstream department of Agriculture, which was totally different.

The Tribunal referred extensively to provisions of The Private Secondary Education Authority and to several provisions of PRB Reports. The Tribunal noted that the PRB in its 2016 Report deliberately referred to and acknowledged criteria for eligibility to the position of Head of Department which had been "elaborated" by Co-Respondent No 1. The Tribunal referred to one particular guideline which read as follows: An Educator is reckoned in the department in which he/she has the highest number of periods. The Tribunal found that this might be a convenient, practical and reasonable guideline/criterion in a relevant case. The Tribunal also referred to the evidence of the representative of Co-Respondent No

1 to the effect that Disputant was teaching Agriculture in 2020 for very much less time than as provided under paragraph 99.26 of the PRB Report 2016.

The Tribunal was not satisfied, on the basis of the evidence before it and on a balance of probabilities, that Disputant was teaching Agriculture in the mainstream before he was actually absorbed in the mainstream. For the reasons given in its award, the Tribunal found that it could not deliver an award as per the terms of reference of the dispute based only on Recommendation 5 of the PRB Report 2016, taken separately and independently, whereas the said PRB Report 2016 or any PRB Report was to be construed as a whole (including references made in the PRB Report itself to criteria for eligibility for the position of Head of Department elaborated by Co-Respondent No 1). The Tribunal also observed that an award of a declaratory nature was being sought in relation to the PRB Report 2016 which predated the phasing out of the prevocational stream so that the particular situation arising in that case might not have been envisaged in the said PRB Report 2016. For all the reasons given in its award, the Tribunal found that it could not award as per the terms of the dispute, and the dispute was set aside.

ERT/RN 35/21 – Air Mauritius Cabin Crew Association (AMCCA) (Disputant) and Air Mauritius Limited (Respondent) – Ruling

The Respondent had moved to add an additional ground of objection in relation to the dispute further to its Preliminary Objections already raised ex facie its Amended Statement of Case. This additional ground read as follows:

> *The Tribunal has no jurisdiction to entertain the present labour dispute, which was reported, mediated upon and eventually referred to the Tribunal in respect and in the context of the administration of the Respondent under the Insolvency Act, inasmuch as the Respondent is no longer in administration.*

The Disputant objected to this course of action and the matter was argued on whether the Respondent should be allowed to introduce a fourth preliminary objection in the matter. In considering the arguments put forward by both parties, the Tribunal overruled the Disputant's objection to the raising of an additional ground of objection by the Respondent. The motion to amend the Respondent's Amended Statement of Case by adding the additional ground of objection was therefore allowed.

ERT/RN 36/21 & 37/21 – Mrs Roshni Appadoo-Needoo & Anor (Disputants) and Development Bank of Mauritius Ltd (Respondent) In the presence of:- Mrs Shameema Bibi Mohamudally & 6 Ors (Co-Respondents) – Award

The two consolidated disputes were referred to the Tribunal on the following identical Terms of Reference:

1. *Whether the selection exercise, conducted by the Respondent in 2018 leading to the appointment in March 2019 for the promotion to the post of Development Officer, through which the Disputant was not favoured, was fair, just, reasonable and non-arbitrary.*

2. *If the assessment in 1 above is in the negative whether the Respondent should be directed to reconsider the selection exercise and relevant appointment to allow the Disputant the fair chance of being appointed/promoted with effect from March 2019 or otherwise*.

The two Disputants were employed as Clerks at the Respondent and responded to an internal vacancy for the post of Development Officer dated 13 July 2018. The Co-Respondents were appointed to the post of Development Officer in March 2019 and the Disputants were aggrieved at not having been appointed to the aforesaid post.

The Tribunal notably found that the Respondent could not be faulted if the interview panel did not opt to have a report from the Supervising Officers of the Disputants in relation to the selection exercise for the post of Development Officer. Regarding the issue of qualifications, it was not disputed that the Disputants' higher qualifications were taken into account in the selection exercise for the post of Development Officer. The Respondent moreover confirmed that the Disputants were given additional marks for their years of experience in the selection exercise.

It was also noted that the Disputants agreed that all the Co-Respondents were eligible to apply for the aforesaid post, save for Mrs Elliah (Co-Respondent No. 6). The Tribunal, in considering the evidence adduced before it, notably the payslip of Mrs Elliah dated December 2010, could not find that she was not eligible to apply for the post of Development Officer. Moreover, although the Disputants claimed that they performed well in the interview and were more experienced and better qualified than the Co-Respondents, it was not shown how this had an adverse effect on the selection exercise to the extent that same may be considered to be unfair, unreasonable or arbitrary.

Having examined the issues raised by the Disputants in relation to the selection exercise for the post of Development Officer, the Tribunal could not come to the conclusion that the selection exercise was unfair, unjust, unreasonable or arbitrary as it was being asked to determine under the first limb of the Terms of Reference of the dispute. As the assessment under the first limb was not in the negative, the Tribunal had no need to consider the second limb of the Terms of Reference. The two disputes were therefore set aside.

ERT/ RN 46/21- 48/21 - Mrs Marie Francine Sarangue and others (Disputants) And Rodrigues Educational Development Company Ltd (Respondent) In the presence of:- Private Secondary Education Authority (Co-Respondent) - Ruling

The above cases were referred to the Tribunal by the Rodrigues Commission for Conciliation and Mediation under Section 69(9)(b) of the Act. The cases were consolidated as the terms of the disputes were similar in all three cases and they involved the same issues. The terms of reference of the disputes read as follows:

"*Whether on obtention of my Bachelor in Business Administration, I should have been promoted as a fully qualified Educator eligible to cross the Qualification Bar (QB).*"

A preliminary objection was taken on behalf of Respondent in all three cases and the objection read as follows:

"*The Respondent, whilst reserving its rights to file a Statement of Case in the above matter, states that there is no "labour dispute" between the Disputant and the Respondent as defined by the Employment Relations Act.*"

The Tribunal examined the arguments offered by counsel. The Tribunal concluded that the disputants were, in fact, seeking to challenge a decision of the Co-Respondent in relation to the Bachelor of Business Administration which was not or no longer being recognized by Co-Respondent for teaching purposes. The Tribunal noted that even before the Rodrigues Commission for Conciliation and Mediation, the disputes were reported directly against the Co-Respondent (as Respondent) whilst the Respondent (before the Tribunal) was then only put as a Co-Respondent.

The Tribunal observed that it only has jurisdiction as granted to it under the law. The Tribunal stressed that it had no powers to interfere with the execution of the powers of the Co-Respondent (which is not the employer) under the Private Secondary Education Authority (PSEA) Act. The Tribunal was not empowered to rule as to whether the Co-Respondent had exceeded its powers under the PSEA Act or on the reasonableness of rules, guidelines and directives made by Co-Respondent or standards and conditions set by the latter under the PSEA Act. There was no suggestion in the Statements of Case of the disputants that the Respondent (the employer) alone had the power to upgrade the teaching licences of the disputants. To that extent, the Tribunal had no power to award or order that the teaching licences of the disputants, as Educators, should be upgraded.

The Tribunal agreed with the submission that other avenues were available to the disputants if they were not satisfied with the decision or standards set by the Co-Respondent. The Tribunal also referred to section 21B and 21C of the PSEA Act.

For all the reasons given in its ruling, the Tribunal ruled that it had no jurisdiction to hear the said matter since each dispute, ex facie the Statements of Case filed, was not a dispute between a worker and an employer. Also, the Tribunal had no jurisdiction to enquire into whether the decision of the Co-Respondent (which is not the employer, but an authority set up under the PSEA Act with the responsibility, among others, to register and inspect secondary or pre-vocational schools, their managers, rectors and members of teaching and non-teaching staff) was proper, fair and reasonable. For all the reasons given in its ruling, the three cases were set aside.

ERT/ RN 60/21 - Mr Nidishwar Ramphul (Disputant) And Airports of Mauritius Co Ltd (Respondent) - Award

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

"*Whether Mr Nidishwar Ramphul should be reinstated in his position of Airport Security Officer having been dismissed on 18 March 2020 without reference to any disciplinary committee, on the charge of gross misconduct*."

Evidence was adduced to the effect that Disputant was doing his job as Airport Security Officer and stopped a passenger from carrying a liquid container which was larger than what was permissible as per relevant regulations. This was in no way denied by the Respondent. However, evidence was adduced on behalf of the Respondent that during the incident, Disputant had made use of abusive language towards the passenger. This was what, according to the representative of the Respondent, led the Respondent to suspend and eventually terminate the contract of employment of Disputant for gross misconduct.

The Disputant was relying on section 64(1A)(f) (which has now been repealed) of the Act to suggest that the dispute was within the jurisdiction of the Tribunal. The Tribunal observed that the then subsection (f) of section 64(1A) did not refer to breach of any of the rights provided for in this Act or other enactment, or in such agreement, or collective agreement or award. Instead, it referred to a worker's exercise of any of the rights mentioned above. If for instance procedures, as per the Workers' Rights Act, for terminating a contract of employment had not been complied with, then the Tribunal did not have jurisdiction (also by virtue of section 71 of the Act) and the matter was to be dealt with before the Industrial Court which would have exclusive jurisdiction in the matter. Section 64(1A)(f) catered only for cases where the termination of employment was by reason of the worker's exercise of any of the rights provided under that sub-section.

The Tribunal had no hesitation in finding that the termination of employment in that case was not by reason or because Disputant was exercising any of the rights provided for under section 64(1A)(f) of the Act. The Tribunal held that it had no jurisdiction to hear the matter since the dispute was not a labour dispute. The Tribunal also observed that it could not enquire into the dispute which, as per section 71 of the Act, related to an issue which was within the exclusive jurisdiction of the Industrial Court. For all the reasons given in its award, the dispute was set aside.

ERT/ RN 16/22 - Mauritius Institute of Training and Development Employees Union (Applicant) And Mauritius Institute of Training and Development (Respondent) - Order

This was an application made by the Applicant union under section 51(8) of the Act, for an order requiring the employer, that is, the Respondent to comply with Articles 7, 18 and 19 of the procedure agreement set out in the Seventh Schedule to the Act.

The President of the Applicant union stated that since the issue was about transfer of staff, management should have started negotiations with the union through a staff negotiation committee.

He averred that conditions of work, transfer of staff and organisation structure are very pertinent issues and are work related issues and that there should have been negotiation by the Respondent with the Applicant. He added that the Respondent was duty bound, to at least, inform the union of any business projects that were likely to affect the conditions of employment of its employees. He stated that there were no negotiations with the union and that there was thus, in the circumstances, a breach of the procedure agreement.

The Tribunal found that since there had already been negotiations between Respondent and the recognised (prior to 2017) trade unions (some already representing members in the bargaining unit of Applicant) over a long period of time before the organisation structure was adopted by the Board of Respondent in 2017, there was no need for the Respondent to start negotiations anew in relation to the same organisation structure with the Applicant (which was not recognised in 2017). The Tribunal found that there was evidence that there were meetings between the parties and that the views of the Applicant were being sought, for instance, in relation to the errors/omissions following the PRB Report 2021. There was no evidence of a breach of Article 7 of the procedure agreement and for the reasons given in the award, the application under this limb was set aside.

The Tribunal found that Article 18(1) of the procedure agreement did not find its application in the said matter since there was no averment of refusal to provide copies of documents as mentioned in that provision.

The Tribunal also noted that Article 18(2) of the procedure agreement referred to a right to be informed. In that case, the Tribunal noted that there was no suggestion that Applicant was not informed of the transfer of services. Also, the Tribunal referred to the setting up of the Respondent to take over the activities or part of the activities of the ex-TSMTF and the activities of the ex-IVTB which was done by an Act of Parliament (the MITD Act). The Tribunal found that there was no evidence on record of any breach of Article 18 of the procedure agreement.

Article 19 of the procedure agreement referred to 'Appointment and promotion'. The Tribunal referred to subsection (2) of Article 19 which provided an indication of what was contemplated when reference was made to policies, including policies prohibiting discrimination on the grounds specified in the employment legislation and the Equal Opportunities Act. The Tribunal found that there was no suggestion of any of the above in the present case and no suggestion that the real issue between the parties was in relation to the appointment and promotion of certain employees. The issue had more to do with options which by law were given to employees following the setting up of Respondent and which options, the employees were free to exercise as they wanted. The Tribunal found that the Applicant had not proved on a balance of probabilities that the Respondent had failed to comply with Article 19 of the procedure agreement.

For all the reasons given in its order, the application was set aside.

ERT/ RN 21/22 - Organisation of Hotel, Private Club and Catering Workers Unity (Applicant) And Spa On the Shores Ltd (Respondent) - Order

The above matter was an application made by the Applicant union under section 36(5) of the Act, for an order directing the Respondent to recognise the Applicant as the bargaining agent of employees in a particular bargaining unit, as described in the application. employed by the Respondent at Shanti Maurice Resort & Spa, Saint Felix Village.

The Respondent resisted the application before the Tribunal but at the same time averred "that it has no issues pertaining to the recognition provided that the Applicant supports its contention that it has the required percentage as provided under Section 37(1) of the Employment Relations Act 2008." In that case, the Tribunal was satisfied that a secret ballot should be held in the interest of good industrial relations and in the interest of justice.

The secret ballot was organised and supervised by the Tribunal on the premises of the Respondent at Royal Road, Saint Felix, Chemin Grenier on Wednesday 13 July 2022. After the conduct of the secret ballot and the counting of votes, the Tribunal found that the Applicant had secured the support of 51.4 per cent of the workers in the bargaining unit. At another sitting of the Tribunal, the representative of the Respondent then informed the Tribunal that the Respondent was willing to grant recognition to the Applicant.

In the light of the results of the secret ballot, the statement made by the representative of Respondent before the Tribunal and as there was no other issue/dispute between the parties, the Tribunal ordered that the Respondent was to recognise the Applicant as sole bargaining agent, with sole bargaining rights in the said bargaining unit. The Tribunal further 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. By virtue of section 38(15)(b) of the Act, as amended, the Tribunal also ordered that a copy of the said order should also be submitted to the supervising officer of the Ministry of Labour, Human Resource Development and Training.

ERT/RN 22/21 – Mauritius Airline Pilot Association (MALPA) (Disputant) and Air Mauritius Limited (Respondent) – Ruling

The matter was referred to the Tribunal on the following Terms of Reference:

The Union contests the unilateral changes in conditions of employment and non-respect of contractual obligations which has impacted our members by: -

(i) Reducing emoluments (salary and allowances);

(ii) Imposing Leave Without Pay;

(iii) Change the conditions applicable to promotions, grading and Union affiliation for certain categories of employees.

The Respondent raised certain preliminary objections in law as follows:

1. The present matter has been entered without leave of the Court in breach of section 244 (and/or sections 263 and/or 267, as applicable) of the Insolvency Act.

2. The present matter has been entered purportedly in the name of the Disputant without a valid mandate and/or without valid authorisation under the law.

3. The Tribunal does not have jurisdiction, pursuant to section 71 of the Employment Relations Act to enquire into issues which are already the subject matter of pending proceedings before the Supreme Court of Mauritius SCR No. 121043 (5A/316/20). Alternatively, the present matter should be stayed and/or set aside in whole or in part in light of principles of connexité and/or litis pendans.

4. The present matter has been referred to the Tribunal in breach of section 64 (2) of the Employment Relations Act.

5. The Tribunal has no jurisdiction to entertain the present labour dispute, which was reported, mediated upon and eventually referred to the Tribunal in respect and in the context of the administration of the Respondent under the Insolvency Act, inasmuch as the Respondent is no longer in administration.

The Tribunal proceeded to consider the grounds of objection put forward in light of arguments offered by the parties. Under the fifth ground, the Tribunal notably considered the powers of an Administrator under the Insolvency Act ("IA") and found that the Administrators, when in control, acted as the company's agent and their acts and doings in salvaging the company have remained regardless that the company is no longer under their control. The fact that the Respondent is no longer in administration has not altered the Disputant's dispute before the Tribunal and as far as the Disputant is concerned, the dispute is still ongoing. The Tribunal could not therefore find that it lacked jurisdiction to entertain the present dispute and the ground of objection was set aside.

Regarding the first ground of the preliminary objections, the Tribunal notably found that, pursuant to decisions of the Supreme Court, that leave of the Court as required under section 244 of the IA only applies to proceedings before the Bankruptcy Division or the Commercial Division of the Supreme Court. It therefore followed to reason that no leave was required from the Court under section 244 of the IA for the present proceedings before the Tribunal. This particular ground was thus set aside.

In relation to the second ground of the preliminary objections, the Tribunal notably found that that the dispute had been reported in the name of the recognised trade union and not in the personal

name of the person signing the Statement of Case '*for and on behalf of MALPA*'; that would not be correct to say that the person representing the Disputant would require a mandate; and such a requirement has not been provided for in the Employment Relations Act. The Tribunal found no merit in this ground of objection.

The Respondent, under the third limb of its preliminary objection, was challenging the jurisdiction of the Tribunal under section 71 of the Employment Relations Act, notably in relation to a case SCR 121043 (5A/316/20) before the Supreme Court. The Tribunal noted that the above dispute relates to a labour dispute regarding terms and conditions of employment of the Disputant Union's members and is between the latter and the employer. Whereas, the Supreme Court proceedings seek to challenge the decision of the Supervising Officer on judicial review to allow the Respondent to require its workers to work temporarily for a shorter time at a reduced remuneration. The dispute thus did not relate to the Supreme Court application and section 71 of the Employment Relations Act did not therefore apply.

Furthermore, the Tribunal could not reasonably come to the conclusion that there was *connexité* between the application for leave to apply for judicial review matter before the Supreme Court and the above labour dispute. Moreover, in relation to *litispendance*, when comparing the two matters in question, it was clear that the Supreme Court matter and the dispute before the Tribunal did not involve identical claims based on the same cause of action and that the parties were not entirely the same. The third preliminary objection was also set aside. The Respondent did not insist with the fourth ground of the preliminary objections.

ERT/RN 21/21 – Mr Denis Gerard Ashley Jola (Disputant) and Air Mauritius Limited (Respondent) – Ruling

The matter was referred to the Tribunal on the following Terms of Reference:

After having accepted a salary decease of more than 50%. My employer want to send me on LWP … without going through the redundancy board.

Employer is refusing me Paid Leave without any reasonable cause

Non-respect of terms and conditions of collective agreements

Non Payment of salary due.

The Respondent raised certain preliminary objections in law, as follows:

1. The present matter has been entered without leave of the Court in breach of section 244 (and/or sections 263 and/or 267, as applicable) of the Insolvency Act.

2. The Tribunal does not have jurisdiction, pursuant to section 71 of the Employment Relations Act to enquire into issues which are already subject to pending proceedings before the Supreme Court of Mauritius [SCR No. 121043 (5A/316/20)]. Alternatively, the present matter should be stayed and/or set aside in light of principles of connexité and/or litis pendans.

3. The Disputant is not entitled to pursue the present labour dispute before the Tribunal independently of the Mauritius Airline Pilot Association ('MALPA'). He is not a party to the Collective Agreement in place with MALPA.

4. MALPA, of which the Disputant is a member, is already a party (disputant) to the matter bearing cause number ERT/RN/22/21 before the Tribunal, which covers the issues raised by the Disputant in his statement of case. The present matter should be stayed and/or set aside in light of the principles of connexité and/or litis pendans.

5. The present matter has been referred to the Tribunal in breach of section 64 (2) of the Employment Relations Act.

6. The Disputant is acting in breach of the terms of his contract of employment dated 5 August 2020, which terms have been accepted by him.

The matter was argued and the Respondent did not insist on the second ground of the preliminary objections. Under the first ground, the Tribunal found that leave of the Court, as required under section 244 of the Insolvency Act, only applied to proceedings before the Bankruptcy Division or the Commercial Division of the Supreme Court. No leave was therefore required from the Court for the proceedings before the Tribunal. It was also noted that the Disputant had reported the above dispute as an employee of the Respondent company and was not before the Tribunal as a creditor. This particular ground of objection was thus set aside.

Under the third preliminary objection, it was being contended that the Disputant was not entitled to pursue the above labour dispute independently of MALPA as he is not a party to the Collective Agreement in place with MALPA. The Tribunal notably found that it could not be said that, as the Collective Agreement is between the Union and the employer, an individual worker cannot report a dispute of his own motion. The Act clearly allows a worker to report a labour dispute against his employer. The Tribunal did not therefore see any merit in this objection raised by the Respondent and same was set aside.

Regarding the fourth ground, the Respondent was contending, pursuant to principles of *connexité* and *litispendance*, that the issues raised by the Disputant had already been placed before the Tribunal in the MALPA case (ERT/RN/22/21). The Tribunal examined what was being asked for as per the respective Terms of Reference of the two disputes and concluded that it could not see how *connexité* would apply to the disputes. The Tribunal also found that the conditions for *litispendance* to exist had not been fully satisfied and did not find same to apply in the above matter. The fourth preliminary objection was therefore set aside.

Under the fifth ground of the preliminary objections, the Tribunal noted that the power to reject the reporting of a labour dispute has been conferred upon the President of the Commission for Conciliation and Mediation and not the Tribunal. The Tribunal cannot be said to have the power to reject a labour dispute for failure, as was being alleged, to comply with the dispute procedures of the Procedure Agreement. The Tribunal therefore found that this particular ground could not be validly raised before it and same was set aside.

In relation to the sixth preliminary objection, the Tribunal ruled that it would not be appropriate to determine at this stage whether the Respondent was within its rights to impose leave without pay upon the Disputant for the reason of the latter having accepted same in his contract of employment. The Tribunal found that it would have to fully canvass the issue in evidence and this could only be done on the merits of the dispute. The Tribunal therefore deemed this ground of the preliminary objections to be premature at that particular stage of the proceedings.

ERT/RN 23/22 - Export and Other Enterprises Employees Union (Applicant) and World Knits Ltd (Respondent) – Order

The Applicant applied for an Order for recognition as a bargaining agent in relation to a bargaining unit of workers employed at World Knits Ltd. A secret balloting exercise was held, which showed that the Applicant had the support of 64.9% of the workers in the bargaining unit. Despite the results of the secret balloting exercise, the Respondent maintained its objections to the application.

The Respondent contended that the Applicant was not sufficiently representative of the employees of the Respondent. The Tribunal did not however find this ground to be valid in view of the level of support enjoyed by the Applicant in the bargaining unit. The Respondent also contended that recognition would not be conducive to good industrial relations such that it would cause friction or even disorder or put workers in a more perilous position than they would otherwise be. The Tribunal, in considering *inter alia* the Code of Practice, found that this could not constitute a valid ground to oppose an order for the recognition of a trade union.

The Respondent also opposed the application on the ground that the bargaining unit as defined would cause fragmentation and/or proliferation, inasmuch as there were other categories involved in the production process not included in the bargaining unit. The Tribunal could not accept this argument as the bargaining unit was well defined; the workers excluded from the bargaining unit always have the choice of joining a trade union of their own choosing; it would be unfair for the workers who are in favour of recognition of the Applicant Union to see the present application fail by reason of the workers in categories not included in the bargaining unit; and the concept of fragmentation is not part of our statutory provisions governing recognition nor is it to be found in the Code of Practice.

The Tribunal therefore proceeded to order that the Export and Other Enterprises Employees Union be recognised as sole bargaining agent, in view of its support in the bargaining unit, by World Knits Ltd with respect to the workers in the various categories of the bargaining unit.

ERT/ RN 42/22 - Union of Bus Industry Workers (Applicant) And UBS Transport Ltd (Respondent) - Order

This was an application made by the Applicant union under section 53(5) of the Act, for an order requiring the employer, that is, the Respondent to start negotiations with the Applicant "to review and update the existing terms and conditions of service of workers of the bargaining unit represented by the union." The Applicant had served a notice under section 53 of the Act on the Respondent. The Respondent resisted the application and it was agreed that the only dispute between the parties was in relation to the objection raised by Respondent in his statement of case and that save for same there was no other objection to the said application.

The main thrust of this objection was that the Applicant allegedly failed to comply with an order of the **Honourable Judge sitting in Chambers** delivered in the case of **The Union of Bus Industry Workers v Iqbal Eydatoula in presence of The Registrar of Associations, Serial No. 852/2017**. The Tribunal stated that even if it was assumed that the Tribunal had indeed the power or jurisdiction to find that Applicant had committed a contempt, it was obvious that (1) anything short of a contempt will not be sufficient for the Tribunal to exercise any discretion not to entertain the present application; and (2) it is not for the Applicant to show first that he complied with the order before he can be heard by the Tribunal. The Tribunal added that if such a defence was available to a respondent before the Tribunal, it would still be for the respondent on whose behalf the objection had been taken to show that the applicant committed a contempt or that the application before the Tribunal was a contempt.

The Tribunal stated that the issue raised the pertinent question as to whether the Tribunal which deals with employment relations matters could, if at all, find or conclude that Applicant committed a contempt of an order of the Supreme Court or that the matter before the Tribunal was a contempt. The Tribunal added that the Respondent, if convinced that Applicant had committed a contempt of an order of the Supreme Court and that the said application was a contempt, could have sought an order from the Supreme Court to stay proceedings before the Tribunal. There was no evidence of any such action taken and, on the other hand, the Tribunal was being requested to find positively that Applicant committed a

contempt of an order of the Honourable Judge in Chambers in a matter where the Respondent was not even a party, and where the concerned party (the respondent in the case before the Honourable Judge in Chambers) had not even been called to depone before the Tribunal. The Tribunal found that the objection taken by the Respondent could not stand because the Tribunal could not find or conclude that Applicant committed a contempt of an order of the Supreme Court.

For all the reasons given in its order, the Tribunal was satisfied on a balance of probabilities that the Respondent had up to now refused and failed to start negotiations with the Applicant. The Tribunal thus ordered the Respondent to start negotiations with the Applicant within 14 days of the date of the said order, in relation to the notice served on the Respondent.

ERT/RN 22/21 – Mauritius Airline Pilot Association (MALPA) (Disputant) and Air Mauritius Limited (Respondent) – Ruling

The Respondent had raised further preliminary objections to the hearing of the dispute. In relation to the first limb of the objections, it was being contended that the Tribunal as constituted could not hear the present matter in having also heard the case of Jola v Air Mauritius Limited (ERT/RN 21/21) with the Vice-President as the presiding member in both cases. The Tribunal went on to consider decisions on the test to be applied, which is one of real danger rather than real likelihood of bias.

The Tribunal notably found that it was not acting on the basis of the same Terms of Reference in either case. The Tribunal would have to approach the issues raised in accordance with the Terms of Reference of the respective dispute and must at all times maintain its objectivity. Moreover, the impartiality of the Vice-President, nor of the Tribunal, was not being questioned. The Tribunal could not therefore come to the reasonable conclusion that there was a real danger of bias as would be perceived by the fair-minded independent observer of the Vice-President, having heard the case of Jola, now hearing the present matter.

The Respondent also raised issues of *connexité* and *litispendance* between the present matter and the case of Jola under the second limb of its objections. Regarding the existence of *connexité*, the Tribunal noted that although the two cases may have similar issues, it has been noted that the Terms of Reference and the remedies sought thereof are not identical. Each case is to be decided on its own merits and evidence from one case cannot be imported to the other. The Tribunal added that it could not therefore be said that one case would have a bearing on the other.

Regarding the issue of *litispendance*, the Tribunal concluded that this would not apply as it was not dealing with the same parties before two different courts equally competent to hear the claims. The two matters were before the same jurisdiction with the Respondent being the common party in the two cases. The Tribunal could not therefore find any merit in any of the Respondent's preliminary objections.

ERT/ RN 26/22 - Rodrigues Government Employees Association (Disputant) And Rodrigues Regional Assembly (Respondent) In the presence of: (1) Ministry of Public Service, Administrative and Institutional Reforms (Co-Respondent) - Award

The above case was referred to the Tribunal by the Rodrigues Commission for Conciliation and Mediation under Section 69(9)(b) of the Act. The terms of reference of the points in dispute read as follows: *(i) Whether protective equipment should have been provided to Fisheries Cadre since 2018. (ii) Whether officers of the Fisheries Cadre should have been provided with uniforms or uniform allowances should have been paid to them since 2018. (iii) Whether a responsibility allowance should have been paid to Tradesman Assistant as from the date of performing higher duties at the level of Tradesman. (iv) Whether a responsibility allowance should have been paid to General Workers performing higher duties at the level of Office Auxiliary/Senior Office Auxiliary as from the date of performing higher duties*.

Points in dispute (iii) and (iv) above had been settled between the parties and were therefore dropped so that the Tribunal did not have to deal with them.

As regards the point in dispute (i), it was agreed between parties that protective equipment had not been issued during the years 2020 and 2021. The Respondent in his Statement of Reply averred as follows: *The supply of Protective Equipment for year 2020/21 and 2021/2022 are being attended to*. The Tribunal reminded parties of the statutory duty (on an employer) to provide suitable and appropriate personal protective equipment and clothing to relevant employees under section 82 of the Occupational Safety and Health Act. The Tribunal added that the thrust of a provision such as the said section 82 is to protect an employee from the risk of injury. The Tribunal added that the duty is not only to provide the protective equipment and clothing but also to ensure, *inter alia*, that the equipment is capable to fit the wearer correctly, and to maintain or replace the equipment when required. The Tribunal stated that the duty is not and cannot be assimilated with an allowance simply. Protective equipment has to be provided to eligible employees and the Tribunal trusted that the needful as undertaken on behalf of Respondent would be done without further delay for the benefit of one and all. In the light of the reasons given in its award and subject to what the Tribunal stated therein, the point in dispute (i) was set aside.

As regards point in dispute (ii), it was agreed by the parties that uniforms had not been issued for 2020 to the eligible officers concerned. However, for that year 2020, there was no longer any dispute since a cash allowance would 'on an exceptional basis' be paid to the relevant officers.

Also, the Tribunal understood from the proceedings that for the year 2022 provision had been made (or was being made) in relation to the issue of uniforms.

The Tribunal was left with the year 2019 (since uniforms were issued in 2019 but which the Disputant averred was for the year 2018) and after analyzing all the evidence, the Tribunal found that there was insufficient evidence on record to show on a balance of probabilities that uniforms had not been provided for the year 2019. The Tribunal also referred to the manner in which the terms of reference under point in dispute (ii) had been drafted, and concluded that it could not award that uniforms or uniform allowances should be granted to officers of the Fisheries Cadre for the year 2019 for the simple reason that there was no evidence on record that officers apart from the Fisheries Protection Service were also eligible for uniforms or uniforms allowances.

For all the reasons given in its award but subject to any undertaking given or made in relation to any allowances or issue of uniform/protective equipment which was going to be paid or made and since only point in dispute (ii) in relation to the year 2019 was pressed before the Tribunal, the point in dispute (ii) of the terms of reference was 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 2022:

- The number of disputes lodged before the Tribunal was 98 out of which 61 cases were referred to the Tribunal by the Commission for Conciliation and Mediation, 1 by the Rodrigues Commission for Conciliation and Mediation and 36 cases were applications made by trade unions/employers.

The number of cases disposed of summarily (through conciliation and agreements between parties) was 62.

- There were 8 Awards and 6 Orders issued and the Tribunal delivered 7 Rulings.

- The Tribunal has disposed of a total of 85 cases during the period January to December 2022. As at 31st December 2022, there were 64 cases/disputes pending before the Tribunal.