Republic of Mauritius

Annual Report

Employment Relations Tribunal

Year 2023

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Note from the Acting President

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During the calendar year 2023, 165 cases have been referred to and lodged before the Tribunal. This represents a substantial increase of 68% compared to the calendar year 2022. The Tribunal has managed to deal with this high influx of cases and to dispose of a total of 116 cases during the same year, which represents an increase of some 36% compared to the total number of cases disposed of during the calendar year 2022. The Tribunal has delivered 19 awards, 5 orders and 3 rulings in the year 2023.

I wish to thank the staff of the Employment Relations Tribunal for all their efforts, dedication and contribution to enable the Tribunal to achieve this performance. Besides the large number of cases being referred to and lodged before the Tribunal, I need to mention the amendments brought to the **Employment Relations Act** by **Act No. 12 of 2023.** Indeed, following such amendments, the Tribunal shall now give its determination in relation to cases of 'reinstatement' of workers within 60 days of the referral. This constitutes a major challenge for the Tribunal, its members and the staff, the more so that it would seem that this time frame may not be extended.

The Tribunal may hear and dispose of cases only when a division of the Tribunal has been duly constituted. Each division of the Employment Relations Tribunal consists of three members (apart from the presiding member) and these members are not posted full-time at the Tribunal. The Tribunal would not have been able to achieve such a performance without the collaboration, kind understanding and professionalism of the members of the Tribunal. During the calendar year 2023, new members of the Tribunal have in fact been appointed. I wish to thank them for getting to work immediately upon their appointment and for their appreciation of the importance of the work carried out by the Tribunal, and the responsibilities which they shoulder as members of this Tribunal.

Last but not least, I wish to thank the Vice-President, Mr S. Janhangeer for his continued support and collaboration without which the Tribunal would not have been able to achieve such a performance.

I hope that 2024 is yet another fruitful year for the Employment Relations Tribunal and that the Tribunal continues to meet its objectives so that peace, social stability and economic development are maintained in the country.

I. Sivaramen

Acting President

Employment Relations Tribunal

Mission

To provide an efficient, modern, reliable and rapid means of hearing and resolving 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. Greetanand BEELATOO
2. Mr Alain HARDY
3. Mr A. Parsooram RAMASAWMY
4. Mr Anundraj SEETHANNA

Representatives of Employers

1. Mr Kirsley E. BAGWAN
2. Dr. Sunita BALLAH-BHEEKA
3. Mr Awadhkoomarsing BALLUCK
4. Mr Chetanand K. BUNDHOO
5. Mrs Christelle Perrin D'AVRINCOURT

Independent Members

1. Mrs Venusha AUTAR HEMRAZSING
2. Mrs Divya Rani DEONANAN
3. Mr Ghianeswar GOKHOOL
4. Mr Kevin C. LUKEERAM
5. Mr Muhammad Nayid SIMRICK

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Summary of Cases

NOTE: This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for that decision. The full opinion of the Tribunal is the only authoritative document.

ERT/RN 40/21 – Miss Purnima Chiniah (Disputant) AND Development Bank of Mauritius Ltd (Respondent); ipo: Mr Devanand Gungaram & Ors. (Co-Respondents) – Award

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

1. *Whether the selection exercise conducted by Respondent in year 2018 leading to the appointment in February 2019 for the promotion from Senior Development Officer to Assistant Manager was fair, reasonable, just and non-arbitrary.*

2. *If the assessment in (1) above is in the negative whether the DBM Ltd should be directed to reconsider the selection exercise and the relevant appointment/promotion to allow Miss Purnima Chiniah a fair chance to be promoted.*

The Disputant was aggrieved at not having been promoted to the post of Assistant Manager at the Respondent bank following the selection exercise conducted in 2018 which led to the Co-Respondents being appointed to the aforesaid post. In its award, the Tribunal found the selection exercise to be unfair in that the Respondent directly appointed Co-Respondent Nos. 1 & 2 to units not advertised for in the vacancy notice dated 12 December 2017. As per the Terms of Reference of the dispute, the Tribunal therefore directed the Respondent to reconsider the selection exercise to give a fair chance to the Disputant (as well as to other unsuccessful applicants) to be appointed/promoted to the post of Assistant Manager.

ERT/ RN 190/20 - Mr Marie Edley Finiss (Disputant) AND Rodrigues Regional Assembly (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 Employment Relations Act (hereinafter referred to as "the Act"). The terms of reference of the point in dispute read as follows:

(1) *Whether in accordance with recommendation EOAC 164 at sub paragraph 23.13 B of the Errors, Omissions and Anomalies Committee Report of the PRB Report 2013 Volume 2/part 1 – Civil Service, the grade of Senior Technical Assistant was restyled as Senior Agricultural Support Officer.*

(2) *Whether in accordance with recommendation 7 paragraph 23(d) of PRB Report 2013 – Volume 2 part IV of Rodrigues Regional Assembly which read as follows:- we recommend that subject to the approval of the Ministry for Civil Service and Administrative Reforms, revised conditions in respect of the island of Mauritius would in principle be applicable to similar grades of the Rodrigues Regional Assembly my grade as Senior Technical Assistant should have been restyled as it had been the case for my counterparts in Mauritius since 2013.*

(3) *Whether as from the implementation of PRB Report 2016 my hours of work should have been 33¾ weekly instead of 40 hours weekly and the 6¼ extra hours put in per week should have been paid to me until 17 October 2018.*

(4) *Whether as from the implementation of PRB Report 2016 overtime performed by me as from January 2016 to December 2017 should have been calculated on a 33¾ hourly basis instead of 40 hourly basis as it has been the case as from 2018.*

(5) *Whether for period 21 January to 28 April 2019, I should have been paid overtime as per claim submitted for the work performed and certified by the Agricultural Superintendent and approved by the Manager Agricultural Research and Extension Services.*

Disputant deposed before the Tribunal, and he suggested that the 'hours of work' issue should have been addressed since 2016 with the PRB Report 2016 which took effect as from the year 2016. He averred that he had put in 40 hours of work weekly so that he had worked an excess of 6¼ hours weekly between 2016 and 2018. He stated that he was requested to put in 33¾ working hours weekly only after October 2018. The Disputant

suggested that the recommendations of the PRB Report 2016 were not implemented as they should have been.

The Tribunal referred to the averments made on behalf of Respondent at paragraph 5(b) of its Statement of Case and which read as follows: "*it is therefore clear that the PRB was alive to the different grades existing on the Mauritian and Rodriguan establishments and deemed it appropriate, instead of aligning them, to make separate and distinct recommendations for each establishment (Mauritian and Rodriguan) with different salary scales, which are as follows:* ….." The Respondent also averred the following at paragraph 5(c) of 'Respondent's Statement of Case':

c) owing to the specificity of Rodrigues island and its operational requirements for agricultural services, the duties performed by the Senior Agricultural Support Officer and Agricultural Support Officer on the establishment of Rodrigues are different from those performed by the Agricultural Support Officer/Senior Agricultural Support Officer on the Mauritian establishment. (…)

The representative of Respondent stressed on the specificity of the different work stations in Rodrigues and referred to the need for several consultations with stakeholders so that there would be no discontinuity in the provision of the relevant services.

In relation to the point in dispute (1), and for the reasons given in its award, the Tribunal awarded that as per the 'Recommendation EOAC 164' at paragraph 23.13B of the EOAC Report following the 2013 PRB Report, under the Chapter dealing with the Ministry of Agro Industry and Food Security, the grade of Senior Technical Assistant was restyled as Senior Agricultural Support Officer.

As regards point in dispute (2), the Tribunal stated that paragraph 23(d) of the 2013 PRB Report (Volume 2, Part IV) had been drafted in clear terms and that there was no mention that revised conditions in respect of grades of the Island of Mauritius would be applicable to similar grades of the Rodrigues Regional Assembly. The Tribunal stressed that the PRB instead used words which made it clear that revised conditions of grades of the Island of Mauritius would not automatically apply to similar grades of the Rodrigues Regional Assembly. The PRB in this way recognized the specificity of each of the two islands. Not only was there use of words such as "would, in principle, be applicable", but there was also a requirement that this was subject to the approval of the Ministry of Civil Service and Administrative Reforms (now Ministry of Public Service, Administrative and Institutional Reforms). The Tribunal observed that there was no evidence before it that the approval of the said Ministry had been obtained since 2013 for the grade of Senior Technical Assistant under the Rodrigues Regional Assembly (under the Chief Commissioner's Office) to be restyled as Senior Agricultural Support Officer. The Tribunal added that the publication of the 2016 PRB Report confirmed that there was no restyling of the grade of Senior Technical Assistant under the Rodrigues Regional Assembly until then. The PRB in its 2016 report only then specifically provided for the restyling of the grade of Senior Technical Assistant under the Rodrigues Regional Assembly to Senior Agricultural Support Officer (Recommendation 5

paragraph 2.12.19(ii) in 2016 PRB Report (Volume 2, Part IV)). In the light of all the evidence before it and for the reasons given in its award, the Tribunal found that the Disputant had failed to show on a balance of probabilities that his grade should have been restyled since 2013, and the point in dispute (2) was set aside.

As regards point in dispute (3), the Tribunal found that there was undisputed evidence that the office of the Island Chief Executive had approved the implementation of the new hours of work in January 2018. Emphasis was laid by the representative of Respondent on the number of officers involved in the grades of Agricultural Support Officers and Senior Agricultural Support Officers at the Respondent and the need to ensure that the delivery of services was not affected. The Tribunal concluded that the new standard week for Senior Agricultural Support Officers (Rodrigues establishment) simply could not have been implemented before the year 2018 in Rodrigues. The standard week for these officers could only be specified by their Responsible Officer (as per the PRB Report 2016 – Recommendation 2, paragraph 18.5.8 Volume 1). The Tribunal however made one observation in that since the new hours of work had already been recommended by the Departmental Head and that the Island Chief Executive gave his approval for the implementation of the new hours of work in January 2018, the Respondent should have ensured that the new hours of work were from then on put in place within the shortest delay. Having said that, the Tribunal observed that it was bound by the terms of reference as laid down under that dispute. As from the date of implementation of the PRB Report 2016, the standard week of the Senior Agricultural Support Officer (Rodrigues establishment) was still 40 hours as it had been previously. The Tribunal concluded that the PRB Report 2016 did not in any manner provide for any automatic or mandatory change in the hours of work of the Disputant.

Also, the Tribunal agreed with the submission of Counsel for Disputant that the Disputant was not relying on alleged discrimination in the said case. Indeed, the Tribunal found that there was no discrimination averred by the Disputant nor any discrimination in the said case. Since the new standard working week was implemented only as from 29 October 2018 (from 40 hours to 33¾ hours), the Disputant had failed to prove on a balance of probabilities that his hours of work should have been 33¾ hours weekly instead of 40 hours weekly as from the implementation of the PRB Report 2016. For the reasons given in its award, the Tribunal set aside the point in dispute (3).

In the light of its award under the point in dispute (3) and for the reasons given in its award, the Tribunal held that the point in dispute (4) also could not stand, and it was set aside.

As regards point in dispute (5), the Disputant was no longer insisting on that issue. In the circumstances, the Tribunal did not proceed to enquire into point in dispute (5) and simply dismissed that dispute in accordance with section 6(2)(b) of the Second Schedule to the Act.

ERT/RN 06/22 – Mr Jeanloup Desire Beaubois (Disputant) AND Air Mauritius Ltd (Respondent); ipo: Mr Krishnan Gokhool & Ors. (Co-Respondents) – Award

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

(i) Whether the selection exercise conducted in April 2019 by the Respondent (Air Mauritius Ltd) for the promotion to the post of Administrative Specialist Cargo was fair, just, reasonable and non-arbitrary.

(ii) If the assessment in 1 above is in the negative whether the Respondent should be directed to reconsider the selection exercise to allow the Disputant the fair chance of being appointed/promoted or otherwise.

An Internal Vacancy Notice was launched on 19 December 2018 and interviews were conducted on 18 April 2019 resulting in the appointment of the Co-Respondents to the post of Administrative Specialist – Cargo (Level 5) with effect 1 August 2019. The Disputant had applied for the aforesaid post and was called for an interview but was not selected. Having examined the various issues put forward by the Disputant in challenging the fairness and reasonableness of the selection exercise for the post of Administrative Specialist Cargo, the Tribunal could not come to the conclusion that the selection exercise was unfair, unjust, unreasonable or arbitrary as per the first limb of the Terms of Reference of the dispute. Hence, the Tribunal found no need to consider the second limb of the Terms of Reference of the dispute. The matter was set aside.

ERT/RN 21/21 – Mr Denis Gerard Ashley Jola (Disputant) AND Air Mauritius Ltd (Respondent) – Award

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

After having accepted a salary decrease 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

Having duly heard the dispute and examined the issues put forward, the Tribunal notably found the first Terms of Reference to be more in the manner of a declaration implying that the employer should have applied to the Redundancy Board prior to sending the Disputant on leave without pay. Having considered the definition of a labour dispute, the Tribunal did not find this point in dispute to amount to same. Under the second Terms of Reference, the Tribunal found that it would be embarking on an academic exercise in determining whether the Disputant should have been granted leave with the issue no longer live. In view of the academic and declaratory nature of this particular limb of the Terms of Reference, the Tribunal did not enquire any further into same.

Regarding the third limb of the Terms of Reference, the Tribunal was being asked to look into non-respect of terms and conditions of Collective Agreements. The Tribunal notably found that the variation of the Collective Agreement of 2020 signed between the Mauritius Airline Pilot Association and the Respondent took precedence over the Collective Agreements signed in 2011 and 2018. The Disputant was not seeking to challenge the terms and conditions of the Collective Agreement of 2020. The Tribunal therefore found that the various items, as listed by the Disputant, which emanate from the previous Collective Agreements of 2011 and 2018 were therefore no longer in existence as per the new agreement of 2020. Moreover, the issue of leave without pay raised by the Disputant under this limb of the Terms of Reference was to be found in the Disputant's contract of employment and not in the Collective Agreements of 2011 and 2018. The issue therefore could not fall within the ambit of the third limb of the Terms of Reference relating to non-respect of terms and conditions of Collective Agreements.

Under the fourth limb of the Terms of Reference regarding non-payment of salary due, the Disputant listed his gratuity payment, of which only 50 % was paid; Subsistence and Travelling Allowance; Meal Allowance; Education Allowance; Flight Duty Allowance; Retention Allowance; backpay from the Collective Agreement of 2019; and advance payment of the Overseas Allowance as mentioned in the Benefits Policy. The Tribunal notably found that whatever allowances which may have existed in the 2011 and 2018 Collective Agreement have been superseded and replaced by the terms and conditions of the variation of 2020, which only mentions Flight Duty Allowance, Instructor's Pilot Allowance, Responsibility Allowance, Transport Allowance, Meal Allowances – ATR, Common Contract Allowance and End of Yearly Entitlement Contract Gratuity. The items listed by the Disputant are therefore no longer in existence as per the terms of the variation signed in July 2020. The Tribunal could not therefore find that the Disputant should be favourably awarded as per the Terms of Reference of the dispute of the matter.

ERT/ RN 196/20 - Mr Anwar Hussain Fatehmamode (Disputant) AND Rodrigues Regional Assembly (Respondent), in presence of: (1) Ministry of Public Service, Administrative and Institutional Reforms (Co-Respondent No 1) (2) Pay Research Bureau (Co-Respondent No 2)

The above case was referred to the Tribunal by the Rodrigues 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 following a motion made to that effect on behalf of Co-Respondent No 1 and to which there was no objection on the part of the other parties. The terms of reference of the point in dispute read as follows:

> "*Whether in accordance with specific condition of recommendation 7 paragraph 23(d) of volume 2 part IV of PRB report 2013 Rodrigues Regional Assembly my grade as Patrol Officer (Rodrigues) should have been restyled as Aviation Security Officer and carried the salary scale of Rs 12,425 to Rs 27,425 as has been the case for my colleagues in Mauritius and given that the duties in the prescribed of service* (sic) *are the same*."

The Disputant deposed before the Tribunal, and he stated that he has been a Patrolman (now Patrol Officer (Rodrigues)) since 1988. He suggested that there was no difference in the scheme of service of Patrolman in Rodrigues and that of Aviation Security Officer. He did not agree that the actual duties performed by a Patrolman in Rodrigues are different from duties performed by an Aviation Security Officer in the island of Mauritius. He however conceded that he had signed the option form for the 2013 PRB Report but then suggested that this was 'under protest'. He had also signed the option form for the 2016 PRB Report. The Disputant stated that as from 2013 his grade is Patrol Officer and as from that year, he noticed a difference in salary between the grade of Patrol Officer (Rodrigues) and Aviation Security Officer. However, he did not agree when it was put to him that this was because of a salary 'upgrade' in Mauritius with the development of the airport and civil aviation department in the island of Mauritius.

The Tribunal observed that any attempt to go beyond or not strictly in accordance with the terms of reference might result in an award of the Tribunal to be *ultra petita* and thus liable to be quashed. The Disputant was, as per the terms of reference, basing himself on Recommendation 7, paragraph 23(d) of Volume 2, Part IV of the 2013 PRB Report to support his claim.

The Tribunal examined the duties performed by Patrol Officer (Rodrigues). The Tribunal also compared the schemes of service for Aviation Security Officers and Patrol Officers (Rodrigues). The Tribunal referred to a "Note" (mentioned in both schemes of service) that Patrol Officers (Rodrigues) (and Aviation Security Officers in the corresponding scheme) will be required to work on shift covering a 24-hour service including Saturdays, Sundays and Public Holidays, officially declared cyclone days and during emergencies. The Tribunal referred to a letter emanating from the then Island Chief Executive bearing the

heading “Labour dispute in the case of Mr Anwar Hussain Fathemamode, Patrol Officer v/s Rodrigues Regional Assembly” dated 16 November 2020. The Island Chief Executive mentioned that duties stated at SN 5 and 6 (on the scheme of service for Patrol Officers (Rodrigues)) were not being performed then by the relevant officers in Rodrigues as the devices were not available at Plaine Corail Airport, he added that “Since the Plaine Corail Airport is not operational on a 24-hour basis, there is no established full shift system for Patrol Officers (Rodrigues). Hence the two officers in post work on a roster basis on alternate days to cover daily operations…”.

The Tribunal also observed that Note 2 in the scheme of service for Aviation Security Officers (which did not exist in the scheme of service for Patrol Officer (Rodrigues)) provided that Aviation Security Officers may be sent on assignment to Rodrigues or any Outer Islands of the Republic of Mauritius.

The representative of Co-Respondent No 2 has maintained before the Tribunal that the grades of Aviation Security Officer (on the establishment of the island of Mauritius) and Patrol Officer (Rodrigues) were two different grades. The Tribunal found this averment to be correct. The Tribunal found that in the absence of any evidence in relation to a proper job evaluation exercise, it could not make any assumptions and find that the grade of Patrol Officer (Rodrigues) should have been restyled as Aviation Security Officer (which was a different grade) and thus carry the same salary scale as Aviation Security Officer. For all the reasons given in its award, the Tribunal could not find on a balance of probabilities that the work of the Patrol Officer (Rodrigues) was of equal value to that of Aviation Security Officer.

On a final note, the Tribunal left open the question (which was not raised before the Tribunal) as to whether the said dispute was within the jurisdiction of the Tribunal given that the essence of the dispute appeared to be the different salary scales pertaining to Patrol Officer (Rodrigues) and Aviation Security Officer whereas Disputant conceded that he had opted for both the 2013 PRB Report and the 2016 PRB Report. For all the reasons given in its award, the Tribunal found that the Disputant had failed to prove his case on a balance of probabilities and the dispute was purely and simply set aside.

ERT/RN 09/23 – Development Bank of Mauritius Ltd (Applicant) AND Miss Purnima Chiniah (Respondent); ipo: Mr Devanand Gungaram & Ors. (Co-Respondents) – Interpretation of Award

The Development Bank of Mauritius Ltd (“DBM”) was seeking an interpretation of an award delivered by the Tribunal in the matter of *Mrs P. Chiniah and DBM* (*ERT/RN 40/21*) pursuant to *section 75* of the *Employment Relations Act*. The Applicant was seeking guidance on the interpretation of the word ‘*reconsider*’ in relation to the award of the Tribunal.

The Tribunal, in its interpretation, notably found the selection exercise for the various posts of Assistant Manager should be reconsidered in relation to the units advertised for as per the vacancy notice dated 12 December 2017 and it is for the DBM to see whether the Co-Respondents have to be reconsidered in the selection exercise given that their appointments have not been quashed. The Tribunal therefore declared that the DBM must reconsider the selection exercise for the posts of Assistant Manager of the units advertised for in the vacancy notice dated 12 December 2017 based on the performance and marks scored during the exercise held in 2018.

ERT/RN 04/23 - Mr Sewkumarsing Dinassing (Disputant) AND Central Water Authority (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 I should perform the duties as Chief Engineer based on an acting allowance of 100% or otherwise."*

The Respondent took a preliminary objection in law which read as follows:

Preliminary Objection

A. The Respondent avers that the nature of the present case, namely the issue of payment of the alleged correct amount of the responsibility allowance and hence remuneration of the Disputant/Claimant, is such that the Industrial Court has exclusive Jurisdiction thereof.

B. The Respondent moves that the present case be set aside as the issue of payment of responsibility allowance and hence remuneration is within the exclusive Jurisdiction of the Industrial Court.

In his arguments, Counsel for Respondent relied on section 27(6) of the Workers' Rights Act.

The Tribunal ruled that the said dispute was not a claim for non-payment of wages or short payment of wages. The dispute was a "revendication salariale" which related to a claim for an increase in allowance which might or might not be granted. The Tribunal observed that the dispute was very different from a claim of nonpayment or short payment of wages which would be in the nature of a debt. The Tribunal referred to the definition of "labour dispute" in section 2 of the Act. The Tribunal concluded that the dispute was between a worker and an employer and related wholly or mainly to wages. Thus, unless the dispute was excluded from the jurisdiction of the Tribunal under section 71 of the Act, the Tribunal had to enquire into the dispute and make an award thereon (section 70(1) of the Act).

Section 27(6) of the Workers' Rights Act referred to a claim for non-payment or short payment of wages and was different from a "revendication salariale". The Tribunal found that there was no suggestion made on behalf of Respondent of any other sections under the Workers' Rights Act which could have been applicable in relation to the said matter. The Tribunal thus had no difficulty in finding that the dispute as per the terms of reference was not a matter which would fall within the exclusive jurisdiction of the Industrial Court. There was no evidence that section 71 of the Act (Exclusion of jurisdiction of Tribunal) would apply in the said matter.

For all the reasons given in its ruling, the Tribunal was not satisfied that the nature of the case was such that the Industrial Court would have exclusive jurisdiction to deal with the matter. The Tribunal ruled that it would proceed with the hearing of the matter on the merits.

ERT/RN 03/23 – Organisation of Hotel, Private Club and Catering Workers Unity (Applicant) AND Ravenala Attitude/Rivière Citron Ltée (Respondent) – Order

The Applicant was seeking an Order for recognition as a bargaining agent in relation to the Respondent's employees pursuant to *section 36* of the *Employment Relations Act* (the "*Act*"). The Applicant Union claimed to have the support of 68 workers in the bargaining unit consisting of 32 categories of workers.

In having considered the evidence on record, the Tribunal notably found that the bargaining unit to which the Applicant Union would be entitled for recognition as a bargaining agent related to 18 categories whereby it has 49 members. Considering the total number of workers in these 18 categories to be 121, the Applicant Union would have about 40% support in the bargaining unit. The Tribunal therefore ordered that the Organisation of Hotel, Private Club and Catering Workers Unity be recognised by Ravenala Attitude/Rivière Citron Ltée as a bargaining agent in respect of the bargaining unit consisting of the 18 categories.

ERT/RN 16/23 – Mr Ramchurn Chatoo (Disputant) AND Information & Communication Technologies Authority (Respondent) – Ruling

The matter concerned a claim for reinstatement referred to the Tribunal for determination by the Supervising Officer of the Ministry of Labour, Human Resource Development and Training. The Respondent raised a preliminary objection in law regarding the jurisdiction of the Tribunal to hear the dispute contending that the Tribunal cannot enquire into any dispute where the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court, more specifically it cannot determine whether the dismissal was justified.

The Tribunal notably found that the Disputant is seeking reinstatement, which is consistent with the provisions of *section 69A* of the *Workers' Rights Act*. Moreover, the fact that he has qualified his dismissal as being unfair does not put him outside of the ambit of *section 69A* as the section clearly provides that '*Where an employer terminates the employment of a worker for any reason,*' the worker may register a complaint to claim reinstatement. This section is excluded from the exclusive jurisdiction of the Industrial Court. The Tribunal did not find any merit in the preliminary objection raised by the Respondent as to its jurisdiction to hear and determine the present matter. The preliminary objection was therefore set aside.

ERT/ RN 69/22 to ERT/RN 81/22 - Mr Ashwin Seeruttun & others (Disputants) AND Central Electricity Board (Respondent)

The above cases were referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Act. All the cases were consolidated with the agreement of all parties and the main bone of contention in all the cases was the same. The terms of reference were similar in all the cases and read as follows:

1. *"I was enlisted by the CEB as Cadet Engineer in 2016 (2016-2018) and following the implementation of the Collective Agreement 2017-2021 which was signed between the CEB and CEBSA on 28th June 2019, I did not perceive any increase in salary."*

2. *"I was discriminated in salary as compared to my fellow colleagues, Cadet Engineers of batch 2020, who were offered increase in salary by the Board of the CEB under the same Collective Agreement."*

The Tribunal observed that there was no document indicating that the salary of Cadet Engineers was an issue on which there was no agreement or a dispute between management and the relevant union which signed the collective agreement. Reference was made to Report 2 of the consultant (BCA Consulting) which contained a provision for the salary of Cadet Engineer which was similar to paragraph 1.12.1 of The Review of Pay Structure and Terms and Conditions of Employment (constituting the 'Collective Agreement' 2017-2021). The Tribunal took note that the relevant report of the consultant had not been imposed on the union but that there had been collective bargaining between the parties after that a copy of the report had been submitted to the union. Also, there was no suggestion that there had been no agreement in relation to paragraph 1.12.2 of the same Review of Pay Structure and Terms and Conditions of Employment whereby the monthly stipend payable to Trainees in Engineering was maintained at Rs 25,700.

The Tribunal found that as per the evidence before it, all the disputants had been appointed as Engineers with effective date at latest by 8 December 2018. Though the Tribunal was aware that the Collective Agreement 2017-2021 applied for the period 1 July

2017 to 30 June 2021, the Tribunal noted that when the Collective Agreement was signed in June 2019, none of the disputants were in post as Cadet Engineers but were all Engineers as from a period ranging from 2 August 2018 up to 8 December 2018. Whilst the disputants might not have perceived any increase in salary when compared to the salary as per their contracts as Cadet Engineers, there was nothing on record which suggested that as Engineers eventually, they did not obtain revised salaries as per the Collective Agreement 2017-2021. Paragraph 13 of the written submissions filed on behalf of the disputants was in fact in line with them having been pitched at revised salaries for Engineers on their appointment as Engineers. The Tribunal found that the first dispute as worded was in the form of a mere statement, and that the disputants did benefit as Engineers from the revised salary scale for Engineers under the Collective Agreement 2017-2021. The Tribunal thus could not make any award as per the first point in dispute as drafted, and the first point in dispute was simply set aside.

As regards the second point in dispute, the Tribunal noted the manner in which the terms of reference had been drafted, more particularly, the reference to an alleged discrimination in salary as compared to fellow colleagues, Cadet Engineers of batch 2020, who were offered increase in salary by the Board of the CEB under the same Collective Agreement. The Tribunal added that despite how unpalatable it might be (given the circumstances where there were existing Cadet Engineers during the relevant time period and more particularly on 1 July 2017), the Collective Agreement 2017-2021 including section 1.12.1 of The Review of Pay structure and Terms and Conditions of Employment was clear. The Tribunal found that the only reasonable interpretation of that section was that the salary scale for Cadet Engineers was being maintained. The Tribunal highlighted that the said provision was no longer a mere recommendation of the consultant (BCA Consulting) but was a clear provision in a Collective Agreement arrived at, presumably after several rounds of collective bargaining (as per the Memorandum of Understanding dated 14 March 2018 (constituting also the Collective Agreement)). The Tribunal found that the Collective Agreement was a binding document signed between the CEB Staff Association (the relevant trade union) and the Respondent.

The Tribunal stated that a collective agreement signed between an employer and a recognised trade union must be given effect. The Tribunal added that there would have been nothing wrong with section 1.12.1 of The Review of Pay structure and Terms and Conditions of Employment if there were no Cadet Engineers at the Respondent at the relevant time. However, since there were existing Cadet Engineers (that is the disputants), the situation was more complex.

Also, the Tribunal observed that from the evidence it would appear that even for the batch of 2020, the Cadet Engineers did not benefit from the revised salary at the beginning of their enlistment as Cadet Engineers. The Tribunal found that the suggestion that there was some sort of breach of the principle of equal pay for work of equal value or that there was some sort of discrimination in the salary drawn by the two batches of Cadet Engineers could not hold. The Tribunal stated that as at 28 October 2020, that is, the cut-off date as

from when the new salary came into play, none of the disputants were still Cadet Engineers. For the reasons given in its award, the Tribunal found that the disputants had not shown that because of the board decision of 28 October 2020 they too should benefit from an increase in salary when it was decided that the increase in salary was to apply only as from 28 October 2020.

The Tribunal also stressed that it would be very cautious to intervene in a matter involving a collective agreement entered into by a recognised trade union behind the back of the said trade union and following a dispute reported by an individual worker or a group of individual workers. For all the reasons given in its award, the second point in dispute was also set aside.

ERT/RN 34/23 – Mr Dhanrajsing Ramlugun (Disputant) AND Air Mauritius Ltd (Respondent) – Ruling

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

> *Whether Air Mauritius should maintain my yearly pension contribution as it was previously at the rate of 3 to 5% as per Air Mauritius Ltd Pension Scheme (AMLPS) and also maintain my monthly Medical Scheme Contribution at the rate of 50% as per Air Mauritius Provident Fund Association (AMPA).*

The Respondent raised several preliminary objections in law among being that the dispute does not come within the definition of a labour dispute. The Tribunal notably found that pension does not amount to emoluments being paid to the Disputant under a contract of employment and that pension is not remuneration despite it being described as deferred remuneration. The dispute regarding the yearly increase in the Disputant's pension could not therefore be deemed to be a labour dispute pursuant to *section 2* of the *Employment Relations Act* (the "*Act*") under wages nor could it fall under the other items of the definition of a labour dispute under the *Act*.

Moreover, the Tribunal could not conclude that the dispute relating to whether the Respondent should maintain the Disputant's monthly medical scheme contribution is a labour dispute as defined under the *Act* and found that the Respondent's third preliminary objection to be well taken. Having also considered that the second objection raised by the Respondent to the effect that there is no cause of action against the Respondent inasmuch as the impugned decisions being challenged by the Disputant have not been taken by the Respondent, the Tribunal proceeded to set aside the dispute on the third limb of the preliminary objections raised.

ERT/ RN 35/23 - Mr Rookam Jadoo (Disputant) AND Private Secondary Education Authority (Respondent)

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 I should be paid a monthly travel grant of Rs 7250 for period 15.12.17 to 14.06.19 and end-of-year bonus for period 01.01.19 to 14.06.19."*

The Tribunal referred to paragraph 18.1.2(viii) of the PRB Report 2016 and concluded that it was clear that for the period 1 January 2019 to 14 June 2019, the Disputant had not "served for at least six months" so that the end-of-year bonus mentioned under the said paragraph of the PRB Report 2016 could not apply in the case of Disputant. For the reasons given in its award, the Tribunal could not award that an end-of-year bonus for the period 1 January 2019 to 14 June 2019 should be paid to the Disputant and the case under this limb was set aside.

With regard to the dispute concerning the travel grant, since the Disputant was again relying on the PRB Report 2016, the Tribunal referred to several recommendations in the said PRB report. The Tribunal stated that the Disputant had the burden to show that a monthly travel grant of Rs 7250 should have been paid to him. The Tribunal found that in the light of all the evidence before it, the Disputant had failed to show even on a balance of probabilities, the more so in the light of his letter of offer of employment (and letter of renewal), that he was drawing a monthly basic salary of Rs 42325 and up to Rs 56450 during the relevant period. In the absence of satisfactory evidence, the Tribunal could not make any assumptions as to what could have been the basic salary of Disputant. For all the reasons given in its award, the Tribunal concluded that the Disputant had failed to prove his case under the second limb of the dispute and this part of the dispute was also set aside.

ERT/RN 17/23 – Mrs Ajasavanee Soopramanien (Disputant) AND Development Bank of Mauritius Ltd (Respondent); ipo: Mrs Deviani Ganowry & Ors. (Co-Respondents) – Award

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

> *Whether I should have been selected for appointment in the post of Senior Development Officer given that I have requisite qualifications, experience, ability and knowledge for the said post and the more so, I am performing the duties of Senior Development Officer since January 2014.*

The Disputant was performing the higher duties of Senior Development Officer ("SDO") and the Respondent failed to appoint her to the aforesaid post of SDO following an

invitation of internal applications. The Disputant was aggrieved by the Respondent's decision not to promote her to the post of SDO whilst she has been successfully performing the duties of SDO from January 2014 to date.

The Tribunal noted that the Disputant had not relied upon any unfairness or irregularity in the selection process for the post of SDO nor is it part of her dispute as per the Terms of Reference. Having considered the grounds upon which the Disputant contended that she should have been appointed to the post of SDO as well as the whole of the evidence adduced, the Tribunal could not find that the Disputant should have been selected for appointment to the post of SDO as per the Terms of Reference of the dispute. The matter was therefore set aside.

ERT/RN 20/22 – Air Mauritius Technical Services Staff Union (AMTSSU) (Disputant) AND Air Mauritius Ltd (Respondent) – Award

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

> *Whether the back pay between 2015 and 2018 is part of the Agreement signed in September 2018 in front of the Commission for Conciliation and Mediation and is due*.

A Collective Agreement was signed before the CCM between the Disputant and the Respondent on 27 September 2018 which notably provided for the payment of a salary increase agreed upon for the period 1 April 2015 to 31 March 2018 constituting a backpay. It was not disputed that the backpay for the period 1 April 2015 to 31 March 2018 did form part of the Collective Agreement signed in September 2018.

Regarding whether the backpay was due, the Tribunal found that there is nothing to show that the periodicity of the Collective Agreement 2018 had been extended. The AMTSSU and Air Mauritius Ltd have recognised that they are now bound by a new Collective Agreement signed on 9 July 2020.

The Tribunal proceeded to find that the Collective Agreement 2020 is binding on the parties and has replaced and superseded the Collective Agreement 2018. As the Collective Agreement 2020 does not make any mention of the backpay relating to the period 1 April 2015 to 31 March 2018, it could not be said that same is due under the current agreement in force nor could it be said to be currently due under the previous Collective Agreement 2018 which has expired since 31 March 2019.

The Tribunal did notably find that the backpay for the period 1 April 2015 to 31 March 2018 was part of the Collective Agreement signed on 27 September 2018 before the CCM. However, the Tribunal did not find the backpay to be due.

ERT/ RN 67/22 - Université des Mascareignes Academic Staff Union (Disputant) AND Université des Mascareignes (Respondent)

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 points in dispute read as follows:

1) "*Whether the decision to launch a new promotional exercise in November 2018 for the post of Senior Lecturer was in accordance with Section 12 of the Memorandum of Understanding (MoU) signed between the Université des Mascareignes Academic Staff Union (UdMASU), previously the Technical School Management Trust Fund Lecturers Union (TSMTFLU), and the Université des Mascareignes (UdM).*"

2) *"If the answer in 1 above is in the negative, whether all the decisions in connection with the promotion exercise of November 2018 should be reconsidered, or otherwise*."

The Tribunal observed that the crux of the dispute before it, as per the terms of reference, was Section 12 of the MoU which provided as follows: "*A Special Committee will be set up to analyse the criteria for statutes and promotion for both academic and general staff. The Chairperson presiding the committee will be an external person and all staff members of the UdM* [that is Respondent] *will be consulted accordingly*." That section referred to the setting up of a Special Committee to analyse the criteria for statutes and promotion for both academic and general staff. The Chairperson presiding the Committee would be an external person and all staff members of the Respondent would be consulted accordingly. The Tribunal found that there was unchallenged evidence on record that the Special Committee was indeed set up and was headed as provided for under section 12 of the MoU by an external person. The Special Committee came up with a report referred to as Dr H Li Kam Wah's Report.

The Tribunal thus agreed with the submission of Counsel for Respondent that section 12 of the MoU (as mentioned in the terms of reference) related to the setting up of that Special Committee and to who can preside such a committee. The Tribunal added that it was not a substantive clause which a promotional exercise had to be in line with. The report of Dr H Li Kam Wah could contain substantive provisions which may have a bearing on the criteria for statutes and promotion but the terms of reference of the dispute before the Tribunal did not extend to particular provisions or sections of the Report of Dr H Li Kam Wah (as opposed to the MoU). The Tribunal stated that it could not interpret or extend the terms of reference so as to include other provisions in other documents for the purposes of

delivering an award which would then certainly be *ultra petita*. The Tribunal referred to the Supreme Court case of **S. Baccus & Ors vs. The Permanent Arbitration Tribunal, 1986 MR 272**.

For all the reasons given in its award, the Tribunal could not find that the decision to launch a new promotional exercise in November 2018, which was a decision within the province of the employer, was in breach or not in accordance with Section 12 of the MoU. The first dispute was thus purely set aside and in the light of the award of the Tribunal in relation to the first dispute, the second dispute was also set aside.

ERT/ RN 91/22 Mr Dharmarajen Pillay Valoo (Disputant) AND Mauritius Shipping Corporation Ltd (Respondent) - Award

This 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 Respondent's unfair, unjustified and discriminatory refusal to allow the Disputant to retire under a Voluntary Retirement Scheme. Instead the Respondent approved a normal retirement for the Disputant when such a request was never made by the Disputant. The Disputant's entitlement to be refunded all his leaves*."

The Tribunal observed that the Disputant had the burden to show on a balance of probabilities that the refusal to allow him to retire under the VRS was unfair, unjustified and discriminatory. The Tribunal added that to be discriminatory, the refusal must be based on one of the 'prohibited' grounds like caste, colour, creed and so on, and in that case there was no averment as to the ground on which Disputant would allegedly have been discriminated against. The mere fact that Disputant had not been granted VRS in 2022 when three other officers had been granted VRS in 2017, 2018 and 2020 is not enough to constitute discrimination. The Tribunal found that each application must be considered on its merits and that a substantial decrease in profitability, for example, might be a plausible factor for an employer to consider when deciding whether to accept or reject an application for VRS or more radically whether to bring an end altogether to the VRS itself.

For all the reasons given in its award, the Tribunal was not satisfied on a balance of probabilities that the decision of Respondent to refuse to allow Disputant to retire under the VRS was unfair, unjustified or discriminatory in nature.

The Tribunal also observed that the application to retire and take the VRS was made in a letter dated 10 January 2022. The Tribunal left open the question whether the application or option was still valid and had not lapsed by the time Disputant reported the dispute to the Commission for Conciliation and Mediation. Indeed, sub-paragraph (iii) of paragraph 5.38 of the 'Review of Pay and Organisation Structures and Conditions of Service' of the Respondent provided the following: *(iii) the option would take effect three months as from the date it has been exercised or otherwise would lapse.* The Tribunal added that the

terms of reference as drafted did not contain any 'prayer' (at least for the VRS) which might be awarded by the Tribunal and be binding on the parties and which would be an implied term of the contract of employment between Disputant and Respondent (section 72 of the Act). For all the reasons given in its award, the Tribunal has set aside the first part of the terms of reference.

As regards the refund of leaves, the Disputant had raised two issues which were as follows: (1) Respondent has prorated the number of sick leaves and annual leaves of Disputant for the year 2022; and (2) whether leaves allegedly taken at the request of the then Managing Director should be refunded to the Disputant.

For the reasons given in its award, the Tribunal found nothing wrong with the calculation of the leaves of the Disputant. The second and last part of the dispute was thus also set aside.

ERT/RN 16/23 – Mr Ramchurn Chatoo (Disputant) AND Information & Communication Technologies Authority (Respondent) – Determination

The matter concerned a claim for reinstatement referred to the Tribunal for determination by the Supervising Officer of the Ministry of Labour, Human Resource Development and Training. The Disputant was Manager of Costing and Administration at the Respondent and was dismissed following a disciplinary committee whereby charges of leakage of information were found to be proved against him. Having fallen sick since his suspension from work, the Disputant did not attend the disciplinary committee despite having been examined by a medical panel of four specialists certifying that he was fit for work.

The Tribunal, having considered the events that led to the sitting and conclusion of the disciplinary committee in the absence of the Disputant, was satisfied that the Disputant was afforded every opportunity to present his case before the disciplinary committee, as required under the law, to answer to the two charges laid against him and could not therefore impute any wrongdoing on the Respondent in this regard. It was also found that it was incorrect for the Disputant to assert that the disciplinary committee found him guilty in the absence of any evidence.

The Tribunal could only conclude that the Disputant's termination of employment was justified. Having found the termination of employment to be justified, the Tribunal could not therefore find the Disputant's claim for reinstatement to be justified. The dispute was therefore set aside.

ERT/RN 13/23 – Mr Leeladhanjiv Jhuboo (Disputant) AND Mauritius Cane Industry Authority (Respondent) – Determination

The matter concerned a claim for reinstatement referred to the Tribunal for determination by the Supervising Officer of the Ministry of Labour, Human Resource Development and Training. The Disputant was an Internal Auditor/Senior Internal Auditor at the Respondent and was charged with poor performance regarding his work. The Respondent was not satisfied with the written explanations given by the Disputant and could not in good faith take any course of action other than terminate his employment with immediate effect.

The Tribunal, in considering the procedure adopted to terminate the Disputant's employment, found that the time limit he was afforded to provide explanations was clearly in breach of the notice of at least 7 days provided under the law to allow the worker to answer to the charge. It was also found that the Respondent had notified the Disputant of his dismissal more than 7 days after he last provided his explanations.

The Tribunal had no other alternative than to find that the Disputant's termination of employment by the Respondent was unjustified and that his reinstatement was justified. The Tribunal proceeded to find that the relationship between the Disputant and the Respondent had irretrievably been broken and that it could not make an order for reinstatement. The Tribunal therefore ordered that the Disputant be paid severance allowance at the rate specified in *section 70 (1)* of the *Workers' Rights Act*.

ERT/ RN 98/23 Mr Dewananda Chellen (Complainant) AND Airports of Mauritius Co Limited (Respondent) - Determination

The above case was referred to the Tribunal under the direction of the Supervising Officer of the Ministry of Labour, Human Resource Development and Training acting under Section 69A(2) of the Workers' Rights Act, as amended. The point in dispute in the terms of reference read as follows:

> "*Whether the termination of employment of Disputant is justified or not in the circumstances and whether Disputant should be reinstated or not*."

The Complainant deposed before the Tribunal and he stated that he made an application for reinstatement following the termination of his employment as Deputy Chief Executive Officer at Respondent.

For all the reasons given in its determination, the Tribunal found that the termination of employment of Complainant was effected more than 7 days after that the Complainant

had answered the charge made against him in an oral hearing. The Tribunal thus found that the termination of employment of the Complainant was unjustified. In the circumstances, the Tribunal found that the claim of the Complainant for reinstatement was justified. However, the Tribunal bore in mind the post which Complainant was occupying and his reporting line with the CEO and necessary interactions with the Company Secretary and the Board of directors. The Tribunal had reason to believe, in the light of all the evidence adduced before it, that the relationship between the Respondent and the Complainant had irretrievably been broken. The Tribunal thus ordered that the Complainant be paid severance allowance at the rate specified in section 70(1) of the Workers' Rights Act.

ERT/ RN 100/23 Mr Arvinduth Tilloo (Complainant) AND Cargo Handling Corporation Limited (Respondent) – Determination

This case was referred to the Tribunal under the direction of the Supervising Officer of the Ministry of Labour, Human Resource Development and Training, acting under Section 69A(2) of the Workers' Rights Act, as amended. The point in dispute in the terms of reference read as follows:

> *"Whether the termination of employment of Disputant is justified or not in the circumstances and whether Disputant should be reinstated or not."*

The Tribunal noted that as per the Employee Manual of the Respondent referred to in the letter of termination, the probationary period of a worker may be extended for a maximum of 2 extensions of six months. The Respondent made use of both the two extensions of six months as per the Employee Manual and yet it allowed Complainant to work much beyond the maximum probationary period during the period from 15 January 2021 up to 26 May 2021. The Tribunal also noted that though this final 'extension' of the probationary period ended on 26 May 2022, the Complainant was allowed to work up to the end of September 2022 when he was finally informed by way of the letter of 30 September 2022 that his employment had been terminated forthwith.

The Tribunal found that the Complainant could not be considered, because of this period running from 15 January 2021 to 26 May 2021 where Complainant was not on probation at the Respondent, to have been on probation at the Respondent from 15 January 2021 onwards despite any letters which may have been issued to Complainant thereafter. The Tribunal concluded that the Respondent, when terminating the employment of the Complainant, had wrongly proceeded on the basis that the termination was based on the recurring unsatisfactory services of Complainant during his final probationary period. The Tribunal found that the Respondent should have proceeded by way of section 64 of the Workers' Rights Act as it stood at the material time and should have followed scrupulously all the steps and the strict time frames provided in that section. The Tribunal added that no opportunity to answer any charges made against the Complainant, as contemplated under section 64 of the Workers' Rights Act (as it was at the relevant time), had been granted to the Complainant. Since the procedure provided by law had clearly not been followed in the

said case, the Tribunal had no hesitation in finding that the termination of the employment was unjustified and could not stand.

However, in the light of all the evidence on record, the Tribunal had reason to believe that the relationship between the Respondent and the Complainant had irretrievably been broken. In the light of the above, the Tribunal found that the Complainant could not be reinstated in his former position before the termination of his employment. For all the reasons given in its determination, the Tribunal ordered that the Complainant be paid severance allowance at the rate specified in section 70(1) of the Workers' Rights Act.

ERT/RN 104/23 – Mr Vikash Cahoolessur (Disputant) AND Seafarers' Welfare Fund (Respondent) – Determination

The matter concerned a claim for reinstatement referred to the Tribunal for determination by the Supervising Officer of the Ministry of Labour, Human Resource Development and Training. The Disputant was the Secretary of the Seafarers' Welfare Fund and eleven charges of malpractice were laid against him. Following written explanations, a disciplinary committee was set up and scheduled for 22 February 2022. The committee eventually submitted its findings on 16 February 2023. The Disputant was thereby informed that nine of the eleven charges had been proved against him and that the Respondent's Board had decided to terminate his employment with immediate effect.

The Tribunal notably found that the Respondent could not in law be precluded from setting up a disciplinary committee and that the Respondent was merely conforming with the law in giving the Disputant a further opportunity to answer to the charges by way of an oral hearing in not having been satisfied with his written explanations. It cannot therefore be said that the Disputant's employment was terminated later than the 7 days provided under *section 64 (2) (a)(v)* of the *Workers' Rights Act* (as it was prior to July 2022) following the completion of the oral hearing.

Regarding the issue of the time taken by the disciplinary committee to conclude its proceedings, it was not disputed that the hearing before the disciplinary committee went beyond 60 days. It was also found that the disciplinary committee has exceeded its mandate in concluding its proceedings well beyond the statutory time limit set in *section 64 (11)* of the *Workers' Rights Act*. The Respondent relied on the findings of the disciplinary committee in terminating the Disputant's employment and having noted that the disciplinary committee acted outside its mandate in exceeding the statutory time limit, it was unreasonable for the Respondent to have relied on the committee's findings to terminate the Disputant's employment.

The Tribunal could only therefore find that the Disputant's termination of employment was unjustified and that his reinstatement is justified. The Tribunal then proceeded to determine whether it can order that the Disputant be reinstated to his former position. The Tribunal could only find that the relationship between the Disputant and the Respondent had irretrievably been broken and thus, it could not make an order for reinstatement in favour of the Disputant. The Tribunal therefore ordered that the Disputant be paid severance allowance at the rate specified in *section 70 (1)* of the *Workers' Rights Act*.

ERT/RN 107/23 Mr Shyam Teeluck (Appellant) AND The President of the Commission for Conciliation and Mediation (Respondent) i.p.o Ministry of Labour, Human Resource Development and Training (Co-Respondent) - Order

This was an appeal lodged by the Appellant under section 66 of the Act against the decision of the President of the Commission for Conciliation and Mediation to reject a dispute reported by him on the 18th July 2023 and which dispute was received by the Commission on the 24th July 2023. The Co-Respondent, against whom the dispute had been reported, was joined as a party in the present matter in the interests of justice.

The Tribunal proceeded to hear the appeal. The only ground for appeal against the rejection of the dispute in the said matter was that the decision of the Respondent had been notified to the Appellant after the statutory delay of 14 days provided by section 65(3) of the Employment Relations Act which reads as follows: "*The President of the Commission shall give written notice of any rejection within 14 days of receipt of the report of the dispute to all the parties to the dispute*."

The Tribunal was satisfied that the written notice for the purposes of section 65(3) of the Employment Relations Act had been given on 9 August 2023, that is, after the delay prescribed in section 65(3) of the said Act. The Tribunal then addressed the issue whether this would be fatal to the rejection of the dispute by the President of the Commission for Conciliation and Mediation so that the Tribunal would have no alternative than to revoke the decision of the President of the Commission for Conciliation and Mediation.

The Tribunal was of the considered opinion that this could not be the case. Reference was made to section 105(3) of the Act which provides as follows:

> *105(3) No order, award, recommendation or other decision made by the Tribunal, Commission or the Board, outside the delays provided for in this Act, may be challenged or declared invalid for such reason.*

The Tribunal found that, notwithstanding certain time frames which may be provided for in the Employment Relations Act, a decision of the Commission for Conciliation and Mediation may not be challenged or declared invalid based solely on the reason that it was made outside the delay provided by the said Act.

The Tribunal observed that the Appellant should have appealed against the rejection of the dispute he reported, that is, bearing in mind the grounds/reasons given by the President of the Commission for Conciliation and Mediation for rejecting his dispute. In the absence of any challenge to the rejection of the dispute reported *stricto sensu*, the Tribunal could not intervene under section 66 of the Act, the more so in the light of section 105(3) of the said Act. For all the reasons given in its order, the Tribunal was not satisfied that the President of the Commission for Conciliation and Mediation wrongly rejected the dispute, and the appeal was set aside.

ERT/ RN 110/23 - Private Sector Employees Union (Applicant) AND Wecycle Limited (Respondent)

This 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 sole bargaining agent in a bargaining unit consisting of manual employees in employment at the Respondent.

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 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 workplace of the Respondent at Rue Desbouchers, Mer Rouge on Friday 20 October 2023. The Applicant secured the support of 75.9 per cent of the workers in the bargaining unit.

In the light of all the evidence before it including the results of the secret ballot, the Tribunal ordered that the Respondent is to recognise the Applicant as sole bargaining agent with sole bargaining rights in the bargaining unit consisting of manual employees in employment at the Respondent.

ERT/RN 109/23 – Private Sector Employees Union (PSEU) (Applicant) AND Freeport Operations (Mauritius) Ltd (Respondent); ipo: The Private Enterprises Employees Union (PEEU) (Co-Respondent) – Order

The Applicant was seeking an Order for recognition as a sole bargaining agent in relation to the Respondent's employees pursuant to *section 36* of the *Employment Relations Act*. The Applicant Union claimed to have the support of 42 workers in the bargaining unit. Following a secret ballot exercise, it was revealed that the PSEU had a significant majority support of the workers in the relevant bargaining unit.

In light of the result of the secret ballot exercise, the Respondent and the Co-Respondent stated that they had no objection that the PSEU be recognised as sole bargaining agent. The Tribunal therefore ordered that the PSEU be recognised as sole bargaining agent by Freeport Operations (Mauritius) Ltd with regard to the bargaining unit applied for.

ERT/ RN 9/21 - Mr Vikash Beeharry (Disputant) AND Multi Carrier (Mauritius) Ltd (Respondent) I.P.O: Mr Visand Guness (Co-Respondent)

This case was referred to the Tribunal by the CCM under Section 69(9)(b) of the Act. The Co-Respondent was joined as a party in the interests of justice. The terms of reference of the dispute read as follows:

> "*Having been performing the duties for the post of Transmission Officer since July 2011, I Vikash Beeharry, should have been promoted to the post of Transmission Officer at the same time as Mr Visand Guness, who was promoted to the post of Transmission Officer on 1st April 2019 although he does not possess the qualifications required for the post*."

The Tribunal examined all the evidence adduced and noted that Co-Respondent was a Technical Assistant and that his next promotion was Transmission Officer. The post of Technical Assistant was phased out and the Tribunal found nothing wrong that the promotion prospects of the Co-Respondent who was in post as Technical Assistant were preserved. There was evidence that the Co-Respondent would, with the relevant experience, have been qualified for the post of Transmission Officer in the light of the qualifications required for the post of Transmission Officer prior to the restructure. There was also evidence that only officers from the grade of Technical Assistant were eligible and could aspire to become Transmission Officers. The Tribunal thus found nothing odd or evil with the first intake note as per the profile summary for the post of Transmission Officer following the restructuring exercise at the Respondent. The Tribunal was not satisfied that there was such an abuse on the part of the employer which would warrant the intervention of the Tribunal in that case.

For all the reasons given in its award, the Tribunal thus concluded that it could not award that the Disputant should have been promoted to the post of Transmission Officer at the same time as Co-Respondent, and the dispute was set aside.

ERT/ RN 140/23 - Registrar of Associations (Applicant) AND The Health Care Assistant Union (Respondent)

This was an application made by the Applicant under section 7(3) of the Act, for an order directing the cancellation of the registration of the Respondent union. There was no objection for the cancellation of the registration of the trade union. After having heard the evidence adduced, the Tribunal directed the Applicant to cancel the registration of the Respondent. The order of the Tribunal also provided for the disposal of the assets of the trade union.

ERT/ RN 131/23 - Registrar of Associations (Applicant) AND Association of Professional Mentors (Respondent)

This was an application made by the Applicant under section 7(3) of the Act, for an order directing the cancellation of the registration of the Respondent union. There was no objection for the cancellation of the registration of the trade union. After having heard the evidence adduced, the Tribunal directed the Applicant to cancel the registration of the Respondent. The order of the Tribunal also provided for the disposal of the assets of the trade union.

Statistics

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

During the year 2023:

- The number of disputes lodged before the Tribunal was 165 out of which 110 cases were referred to the Tribunal by the Commission for Conciliation and Mediation, 1 by the Rodrigues Commission for Conciliation and Mediation, 11 cases by the Supervising Officer of the Ministry of Labour, Human Resource Development and Training, 17 cases by the Registrar of Associations, 21 cases were applications made by trade unions and 5 cases were other cases lodged or referred to the Tribunal.

The number of cases disposed of summarily (through conciliation and agreements between parties) was 80.

- There were 19 Awards and 5 Orders issued and the Tribunal delivered 3 Rulings.

- The Tribunal has disposed of a total of 116 cases during the period January to December 2023. As at 31st December 2023, there were 113 cases/disputes pending before the Tribunal.