



Republic of Mauritius

Annual Report

Employment Relations Tribunal

year 2013

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Note

from the President

It is with great pleasure that I forward the Annual Report for the year 2013, a year which has been fairly busy in the field of employment relations.

The Employment Relations (Amendment) Act 2013 (Act No.5 of 2013) has brought a series of changes to the Employment Relations Act mainly in relation to recognition of trade unions. The Employment Rights (Amendment) Act 2013 has on its part operated a major change with the setting up of a new division – the Employment Promotion and Protection Division (the “EPPD”) – within the Employment Relations Tribunal. The EPPD shall deal with all cases referred to the Tribunal under Part VIIIA of the Employment Rights Act (as amended), i.e. cases referred to the Tribunal where an employer intends to reduce the number of workers in his employment either temporarily or permanently or close down his enterprise. This new jurisdiction granted to the Tribunal for the first time under the Employment Rights Act is quite extensive. Indeed, the Tribunal (under this new division) is given the power in cases where the reduction of workforce is found to be unjustified to reinstate workers in their former employment with payment of remuneration from the date of the termination of the employment to the date of reinstatement. In cases of unjustified closing down of enterprises, the Tribunal may order the employer to pay to the worker severance allowance.

The new procedures in relation to recognition of trade unions will be critical in relation to how trade unionism will be organized in the main sectors of the economy, be it in the port sector, bus industry, or even in the public service. The 2013 Pay Research Bureau Report with its Errors, Omissions and Clarifications Report and the very recent Seebaluck Report (following the Errors, Omissions and Clarifications Report) are also expected to increase the workload before the Tribunal.

We have no doubt that greater challenges lie ahead with new issues following globalization and in the aftermath of serious economic crisis worldwide. Thus, the Tribunal was called upon in 2013 to deal directly with the issue of foreign workers. As per latest statistics available from the Ministry of Labour, Industrial Relations and Employment, there are 39,032 foreign workers working in Mauritius. The Tribunal concluded that our law does not prevent foreign workers from associating to trade union activities. The constitutional right of workers was thus given effect and that decision of the Tribunal is likely to have a big impact in sectors where there are a high percentage of foreign workers. Issues related to pension rights are also very much in the limelight as big changes are being brought to legislation worldwide to cater for the payment of pensions to future generations. Here again, much is at stake and the role of the Tribunal and of its decisions which constitute precedents cannot be minimized.

The Tribunal with its electronic system, digital hearing system, improved infrastructure and dedicated staff will no doubt raise to the challenge and deliver in its 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.

I seize this opportunity to invite our stakeholders, young barristers, trade union leaders, HR Managers and the public at large to consult our website where decisions of the Tribunal (including those delivered by the Permanent Arbitration Tribunal) since 1974 to date are available. I can ensure our stakeholders that we will spare no effort to deliver to our commitments so that the Employment Relations Tribunal is continued to be seen as the expert tribunal for the settling of industrial disputes.



Rashid Hossen

President

MISSION

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

VISION

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



COMPOSITION OF THE TRIBUNAL

President

Vice - Presidents

President

Rashid HOSSEN



Honourable Abdool Rashid Hossen, LLB (Hons) (University of Buckingham), Barrister (Middle Temple) was called to the Bar in 1981. He joined the Civil Service as Crown Counsel at the Attorney-General's Office in 1983. He was appointed District Magistrate in the Judicial Department in 1984 and promoted Senior State Counsel at the Attorney General's Office in 1991. He has been Chairman of the Prison Board of Visitors in 1990 and 1991 and was promoted Senior District Magistrate in 1993. He was the Returning Officer for the 1991 Legislative Assembly Elections. Mr. Hossen was a Magistrate of the Intermediate Court during the period 1991 to 2002. In 2002, he was appointed Vice - President of the Permanent Arbitration Tribunal. In 2003, he was appointed President of the Civil Service Arbitration Tribunal. He became a Member of the Commonwealth Magistrate and Judges Association in 2004 and was appointed President of the Permanent Arbitration Tribunal in 2008. He is since 2009 a Member of the Approved List of Arbitrators of the Mauritius Chamber of Commerce & Industry Arbitration Court. With the establishment of the Employment Relations Tribunal in 2009, Mr Hossen was appointed President. He is an Associate of the Chartered Institute of Arbitrators (UK) since 2010. In 2012, he was appointed Chairman of the Fact Finding Committee set up by the Government of Mauritius to inquire into and recommend on (Security

Access to Prisons). As from 2012, he is also a Member of the International Council for Commercial Arbitration.

Mr Hossen has read Private International Law (Hague Academy of International Law) (Holland) (1980). He followed a Course on American Legal System in New York and Washington D.C. Sponsored by United States Information Service (USA) (1987). He attended an Advanced Course on Technical Aspects of Legal Drafting at the International School of Bordeaux (France) (1992). He did a study tour on Judicial Administrative Tribunals (Italy) (1996). He attended UNDP's Seminar on the Australian Legal System (Australia) (2000). He attended a Conference organized by the Commission for Conciliation, Mediation and Arbitration (CCMA) in collaboration with the International Labour Organization (ILO) on Regional Cooperation regarding Labour Dispute Resolution and Prevention (South Africa) (2005). He attended a seminar on Arbitration chaired by Ben Beaumont Arbitrator from Hong Kong organized by the Mauritius Chamber of Commerce (Mauritius) (2010). He participated at the International Council for Commercial Arbitration Congress on "Arbitration & Other forms of Dispute Resolution" (Brazil) (2010). He attended the International Council for Commercial Arbitration Conference on "Arbitration and the next 50 years" (Switzerland) (2011). He participated at the International Conference of the Chartered Institute of Arbitrators (UK), European Branch on "Arbitration in Europe" (Spain) (2012). He also participated at the Basel, Swiss Arbitration Conference (Switzerland) (2013). Attended the International conference on Constitution Law and Dispute Resolution (Mauritius) 2013.

Vice-Presidents

Indiren SIVARAMEN



Indiren SIVARAMEN, LLB (Hons), MBA (Finance) (University of Leicester), 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 part-time lecturer at the University of Mauritius from 2005 to 2007. He was the Returning Officer in 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 of the Assessment Review Committee from 2006 to 2010. In February 2010, he was appointed as Vice-President of the Employment Relations Tribunal.

Shameer JANHANGEER



Shameer JANHANGEER, LLB (Hons) (London), MBA (Business Finance), Barrister (Lincoln's Inn) was called to the Bar in the U.K. in 1999. 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.



MEMBERS **OF THE TRIBUNAL**

(as from 22 December 2012)

Representatives of Workers
Representatives of Employers
Independent Members
Employment Promotion and
Protection Division Members

Representatives of Workers

1. Mr Sounarain Ramana
2. Mr Ramprakash Ramkissen
3. Mr Raffick Hossenbaccus
4. Mrs Esther Hanoomanjee
5. Mr Vijay Kumar Mohit

Representatives of Employers

1. Mr Rabin Gungoo
2. Mr Denis Labat
3. Mr Desire Yves Albert Luckey
4. Mrs Rajesvari Narasingam Ramdoo
5. Mr Jay Komarduth Hurry

Independent Members

1. Mr Triboohun Raj Gunnoo
2. Mr Khalad Oochotoya
3. Mr Georges Karl Louis
4. Mr Renganaden Veeramootoo

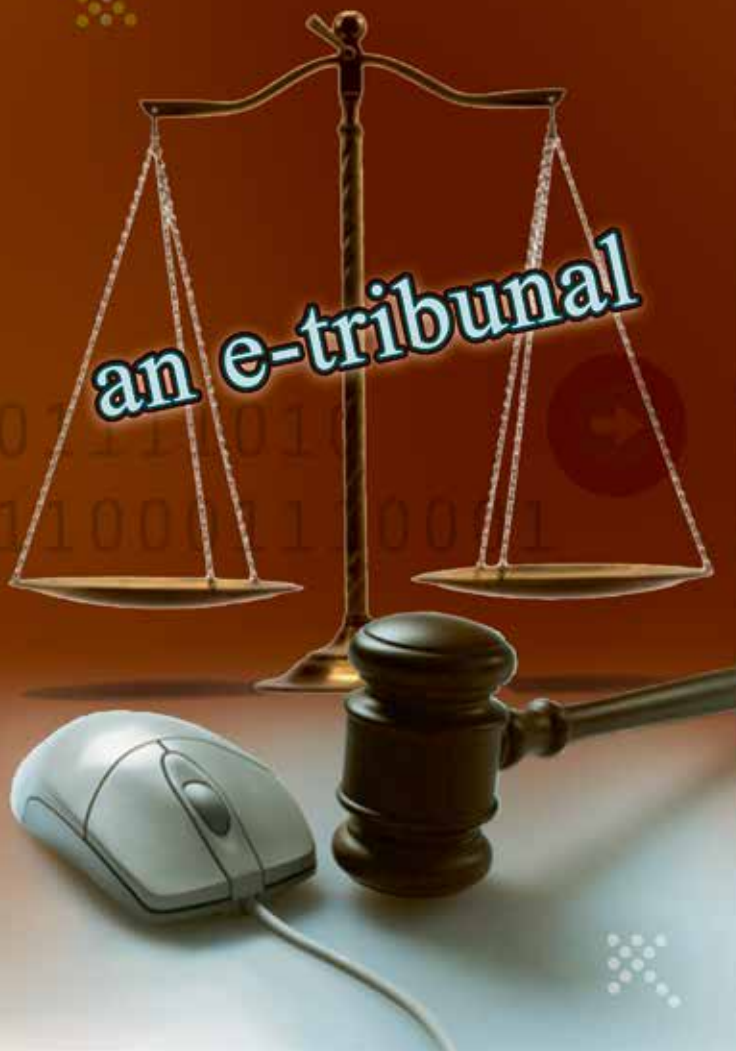
Employment Promotion and Protection Division Members

1. Mr Moonsamy Ramasamy
2. Mr Ali Osman Ramdin

STAFF LIST

1	Mr DABYCHARUN Taij Avinash	- Registrar
2	Mrs BUXOO Farozia	- Office Management Executive
3	Mrs JALIM Rookhsana Bibi	- Financial Officer / Senior Financial Officer
4	Mrs TANG SAK YUK Francoise	- Senior Shorthand Writer
5	Mrs SOHAWON Rassool Bibi	- Shorthand Writer
6	Mrs WAN CHUN WAH Chong How	- Shorthand Writer
7	Mrs TOOFANY Bibi Ansoo	- Confidential Secretary to President
8	Mrs DOSIEAH Deeneshwaree	- Confidential Secretary to Vice - President
9	Mrs LUCHMUN Dhanwantee	- Management Support Officer
10	Mrs LABONNE Mary Joyce	- Management Support Officer
11	Mrs PATANSINGH Jayshree	- Management Support Officer
12	Mr HAIRSOO Amez	- Management Support Officer
13	Miss DUSOYE Ashvina Kaminee	- Management Support Officer
14	Mr TOYLOCCO Sunilduth	- Senior Office Care Attendant / Office Care Attendant
15	Mrs KHETHA Naleenee	- Office Care Attendant
16	Mr MOHUN Purmessursingh	- Office Care Attendant

Employment Relations Tribunal



WHAT IS AN E-TRIBUNAL?

- An e-tribunal is a modern Tribunal where electronic means of communication is allowed between parties to a case and the Tribunal.
- Parties can exchange pleadings by e-mail and the physical attendance of parties is not required until a matter is fully in shape for hearing.
- Counsel can e-mail copies of relevant case law that they intend to use or written submissions. Requests for minutes of proceedings, summoning of witnesses or postponements can also be made by e-mail.
- Awards of the Tribunal are available online on the website of the Tribunal (<http://ert.gov.mu>)



WHO CAN HAVE ACCESS?

- The service is free, and open to anyone who is a party to a labour dispute which has been or is being referred to the Tribunal.
- A user will be able to use the system once he/she has provided relevant information and registered with the Tribunal.



THE ADVANTAGES OF ELECTRONIC SYSTEM

- Workers, Trade Unions, and representatives of Employers do not have to leave work to attend the Tribunal for formal and pre-hearing matters.

- The formal process takes lesser time and exchange of documents can be done any time.
- Pleadings are greatly facilitated and the scope to narrow down issues right from the start is greater.
- Communication of minutes of proceedings is facilitated (paperless) thus enabling the fixing of continuation cases within short periods.
- The Tribunal can meet strict deadline imparted to it by law to deliver Awards and Orders.

Judge: Remember all your answers must be oral.
Where do you work?

Witness: Oral

Judge: Who is your employer?

Witness: Oral





HOW TO GET INTO THE E-TRIBUNAL SYSTEM?

- The system has been devised with the main objective that it must be user friendly.
- At the same time, strict parameters in relation to security of information exchanged by e-mail have to be respected.
- The pre-registration system has been adopted to ensure that the identity of any particular user can be ascertained.
- Once a registration form (available on <http://ert.gov.mu>) has been submitted, the user will receive notification that his/her application has been received and he/she will be able to make use of the system.
- A detailed user guide for the e-tribunal is available on the website of the Tribunal.

Launching of the Employment Promotion and Protection Division







SUMMARY
OF CASES

ERT/RN 81/12 - Mr Heymant Kumar Beekee and Mauritius Ports Authority

The case was referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act and the terms of reference read as *“Whether, following the upgrading of the post of Port Fire Officer to that of Superintendent, Port Emergency Services I should be granted 3 increments for change in the conditions of employment, change in job guidelines, loss of opportunity and defavourable financial conditions?”*

The Tribunal considered all the evidence on record including the broadband and alleged less favourable financial condition. There was nothing to indicate that following the whole exercise, whereby Disputant had been given an increased basic salary with improved terms and conditions of work such as a car grant or day duty, Disputant should in addition be granted three increments. The Disputant failed to show even on a mere balance of probabilities that he ought to be given the three increments sought. The dispute was set aside. (GN No. 33 of 2013)

ERT/RN 82/12 - Mr Ramesh Koonjoo and Cargo Handling Corporation Ltd

The terms of reference read:-*“Whether I, HR Officer, posted at the Mauritius Container Terminal should be paid the Incentive Bonus restyled as Supplementary Allowance and should benefit the same terms and conditions of employment applicable prior to 1st January 2009, or otherwise.”*

The Tribunal found that the gist and kernel of the matter was the implementation of the Salary Restructuring Exercise Report that was implemented as from July 2003 and that corporate employees were entitled to the Incentive Bonus up to 1st July 2003 whereas the Disputant only joined in 2008.

The Tribunal found no reason to intervene and the dispute was set aside. (GN No. 429 of 2013)

NOTE

This summary is provided to assist in understanding the Tribunal’s decision. It does not form part of the reasons for that decision. The full opinion of the Tribunal is the only authoritative document. Awards are public documents and the awards delivered in 2013 are available at: <http://ert.gov.mu/English/Awards/Pages/PAT%20Awards/Awards-2013.aspx>

**ERT/RN 72/12 - Mr R. C. K Rajcoomar and Central Water Authority,
i.p.o Mr J. Munbauhal**

The terms of reference as referred by the Commission for Conciliation and Mediation was “*Whether I should have been allowed to act as Deputy General Manager (Tech) as from January 2012.*”

Bearing in mind the terms of reference of the dispute and the relief sought, the Tribunal commented on the manner in which the acting appointment had been made and in its appreciation noted that same had not been done with due regularity. The Tribunal strongly recommended the Respondent to review and reconsider its decision in assigning the duties and responsibilities of the post of Deputy General Manager (Technical) in January 2012 to Mr J. Munbauhal and to properly carry out a new exercise in assigning the duties of the aforesaid post in light of the conclusions reached by the Tribunal. The dispute was set aside. (GN No. 430 of 2013)

**ERT/RN 110/12 - Organisation of Hotel, Private Club & Catering
Workers Unity and One & Only Le St Geran Ltd,
i.p.o Le St Geran Hotel Workers Union**

The Applicant Union made an application pursuant to section 39 of the Employment Relations Act for variation of recognition of Le St Geran Hotel Workers Union, which was the sole recognized union at One & Only Le St Geran Ltd.

After having considered all the evidence available before it, the Tribunal was not satisfied that there had been a change in the representativeness of Le St Geran Hotel Workers Union at One & Only Le St Geran Ltd and therefore did not grant the order prayed for. The application was set aside.

**ERT/RN 96/12 - Mrs Marie Chantal Gilberte Francis
and Air Mauritius Ltd**

ERT/RN 97/12 - Mr Jean Pierre Eric Elix and Air Mauritius Ltd

**ERT/RN 98/12 - Mrs Linda Finette - Dawotal
and Air Mauritius Ltd**

**ERT/RN 99/12 - Mrs Rajshree Bhaugerothee
and Air Mauritius Ltd**

ERT/RN 100/12 - Mrs Shirley Gladis Gully and Air Mauritius Ltd

**ERT/RN 101/12 - Mr Heera Ravishankar Singh Hardowar
and Air Mauritius Ltd**

- ERT/RN 102/12 - Mrs Marie Martine Kathy Lambert
and Air Mauritius Ltd**
- ERT/RN 103/12 - Mrs Marie Cynthia Pamela Ah-Why Pretorius
and Air Mauritius Ltd**
- ERT/RN 104/12 - Mrs Veronique Guylaine Pazot
and Air Mauritius Ltd**
- ERT/RN 105/12 - Mrs Girivani Damaraging Curpanen
and Air Mauritius Ltd**
- ERT/RN 106/12 - Mrs Marie Sheila Genevieve Maugueret
and Air Mauritius Ltd**
- ERT/RN 107/12 - Mrs Sabine Valadon and Air Mauritius Ltd**
- ERT/RN 108/12 - Mrs Marie Kathleen Paul and Air Mauritius Ltd**

The terms of reference for all 13 cases were the same and read as follows: “*Whether, I, [name of the relevant disputant], should be entitled to be promoted from Flight Purser to Senior Flight Purser with immediate effect.*” All 13 cases were consolidated.

The Tribunal had no hesitation in finding that it could not award that the thirteen Disputants ought to be promoted with immediate effect, that is, without even going through a selection process. This would go against the principles of natural justice and principles and best practices of good employment relations. The Tribunal further recommended that a selection exercise for Senior Flight Pursers be held as soon as possible and that the Respondent sees to it that the Disputants be eligible this time to participate in the said exercise whereby the best candidates may be promoted to the rank of Senior Flight Pursers. The disputes were otherwise set aside. (GN No. 648 of 2013)

- ERT/RN 10/13 - Miss Mahentee Boolakee
and Central Electricity Board**

The case was referred to the Tribunal by the Commission for Conciliation and Mediation pursuant to Section 69(7) of the Employment Relations Act. The terms of reference read as follows: “*Whether, I, Miss Mahentee Boolakee should be reinstated in my post of Engineer at the Central Electricity Board with effect as from 16 November 2011.*”

The Tribunal, in accordance with the exclusion of jurisdiction clause provided for under section 71 of the Employment Relations Act 2008 and

by virtue of the exclusive jurisdiction of the Industrial Court (vide section 3 of the Industrial Court Act), had no jurisdiction to enquire and make an award in relation to the said dispute. The matter was set aside.
(GN No. 1820 of 2013)

ERT/RN 20/13 - Catering Industry Workers Union and Sugar Beach Hotel (Sun Resorts Ltd)

The Catering Industry Workers Union made an application before the Tribunal for an order under Section 44 of the Employment Relations Act following the refusal of Sugar Beach Hotel to enter into a check-off agreement.

The Tribunal reminded parties, more particularly the Applicant Union that the right to freedom of association of an individual as enshrined in Section 13 of the Constitution is meant for the protection of the individual's interests.

Having considered the interests of the persons immediately concerned in the application (members of the Applicant Union who are employed by the Respondent), the Tribunal declined to make an order for a check-off agreement to have effect between the Catering Industry Workers Union and Sugar Beach Hotel (Sun Resorts Ltd).

ERT/RN 11/13 - Energy Services Division Workers Union and Registrar of Associations, i.p.o Energy Services Division Electrician and Other Workers Union

The case was an appeal against the decision of the Registrar of Associations to register the Co-Respondent, the Energy Services Division Electrician and Other Workers Union as a trade union. The Appellant has put forward seven grounds of appeal against the decision of the Registrar of Associations.

None of the grounds of appeal relied upon by the Appellant fell within the purview of the legal requirements for a trade union to be registered. The Appellant also failed to show in what way the registration of the trade union failed to comply with the Employment Relations Act and the Constitution of Mauritius. The appeal was devoid of merit and was accordingly set aside.

ERT/RN 93/12 - Mr Abdool Rashid Johar and Cargo Handling Corporation Ltd

The dispute was referred by the Commission for Conciliation and Mediation pursuant to Section 69(7) of the Employment Relations Act and the terms of reference read as follows: *“Whether I should have been promoted to Foreman at the last promotion exercise at the Cargo Handling Corporation Limited (CHCL), having regard to: (a) seniority; (b) being first-in-post; (c) my personal terms and conditions of employment as Technician Portique; (d) representations and/or promises made to me by the Management of the CHCL.”*

The Tribunal considered each of the grounds raised and on the issue of seniority stated that each case must be decided on its merits and that the case of **Mr Louis Christian D’Avoine And Cargo Handling Corporation Ltd, RN 85 of 2010** which was annexed to the Statement of Case of the Disputant in no way sets a general principle that promotion is to be based on seniority. The Tribunal added that the Respondent was perfectly entitled to decide on the criteria to be used for promotion subject to there being no abuse of powers on its part. In the present case, the Tribunal was not satisfied that there was an abuse of powers in the appointment of Foreman and the dispute was set aside. (GN No. 1259 of 2013)

ERT/RN 83/12 - Mr Bissoondyal Ramrukheea and Mauritius Ports Authority

The dispute was referred by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act. The terms of reference was *“Whether I should be entitled to three increments following my promotion from Port Fire Officer to Superintendent, PES upon the implementation of the Human Resource Development Plan HRD 2010.”*

The Tribunal could not see how the Disputant understood that he will be awarded three increments as per clause 8.1 of the HRD Report 2010 in opting for the new post of Superintendent (PES) or that he had been promoted to the new post after having considered the recommendations of the JEAC Report 2006, the HRD Report 2010 as well as the irrevocable option form signed by the Disputant. The dispute was accordingly set aside. (GN No. 1413 of 2013)

**ERT/RN 25/13 - Private Enterprises Employees Union and Hotel
Le Flamboyant (Gitanjali Co Ltd)**

The Private Enterprises Employees Union made an application under Section 38(1) of the Employment Relations Act for an order for recognition.

The Tribunal was satisfied that the Applicant Union had produced evidence that it was representative in accordance with Section 37 of the Act and issued an order that the Applicant be granted recognition to undertake collective bargaining with the Respondent for a bargaining unit comprising of all workers at the hotel except for those workers with executive managerial powers and with less than a year's service.

**ERT/RN 27/13 - Union of Bus Industry Workers and Luna
Transport Co Ltd**

This was an application under Section 37 of the Employment Relations Act (ERA) for an order for sole recognition.

The law provides that where it appears that a trade union is not representative as per the requirement of Section 37 of the ERA i.e. it must have the support of more than 50% of the workers in a bargaining unit for it to have sole recognition; the Tribunal shall organize and supervise a secret ballot in the bargaining unit.

Due to a constraint of time limit, the Applicant was invited to consider the withdrawal of his application and the lodging of a fresh one whereby the Tribunal could order the holding of a secret ballot instantly but such consideration was turned down by the Applicant. The Tribunal was unable to issue an order for recognition as sole bargaining agent.

**ERT/RN 19/13 - Dr Krishna Kumar Jha and Mahatma Gandhi
Institute**

The terms of reference as referred by the Commission for Conciliation and Mediation was couched as "*Whether, I, Dr Krishna Kumar Jha, who previously held the post of Educator at Prof. B. Bissoondoyal College (P.S.S.A) be allowed to retain the salary of Educator upon my appointment as Lecturer at the Mahatma Gandhi Institute, as is the case for Educators from State Secondary Schools and Parastatal Bodies joining the MGI as Lecturer.*"

After analysing the evidence before it and the law in relation to discrimination in employment and occupation and the principle of equal remuneration for work of equal value, the Tribunal found nothing wrong for the Respondent to treat the Disputant as a new entrant. His salary was, according to Respondent's Statement of Case, adjusted for incremental credits for qualifications higher than those prescribed in the scheme of service. Reference was also made to the 2008 PRB Report (Volume 1 at Chapter 18.9) and the PRB Report 2013. The dispute was set aside. (GN No. 1464 of 2013)

ERT/RN 32/13 - Organisation of Hotel, Private Club & Catering Workers Unity and Black Rock Co Ltd

This was an application under Section 38(1) of the Employment Relations Act for an order for recognition.

The Tribunal was satisfied that the Applicant Union had produced evidence that it was representative in accordance with Section 37 of the Act and issued an order that the trade union be granted sole recognition to undertake collective bargaining with Black Rock Co Ltd for a bargaining unit made up of the grades of skipper; skipper in charge; dive master; office clerk; and diving instructor.

ERT/RN 39/13 - Plaisance Catering Ltd and Union of Employees of the Catering Industry

This was an application for the interpretation of an award delivered on 19th of December 2007 (**RN 608 of 2007**) with regard to one disputed item, namely the implementation of overtime rate.

The Tribunal interpreted that the rate of overtime payment recommended by the Catering and Tourism Industries Remuneration Order was maintained. Thus, overtime to be calculated on a daily basis. Whenever an employee has completed his 8 hours or lesser hours as per his roster and is required to continue duty, the number of additional hours should be paid as overtime. (GN No. 1891 of 2013)

ERT/RN 95/12 - Mr Jean Claude Eugene Madelon and Mauritius Revenue Authority (MRA)

The terms of reference of the labour dispute as referred by the Commission for Conciliation and Mediation was: *"Whether the pension payable to me, after my retirement from the post of Technical Officer, in May 2008 from the Mauritius Revenue Authority, should have been revised after each*

salary revision at the Mauritius Revenue Authority, namely the salary revisions of July 2008 and December 2011 and any subsequent salary revision thereafter.”

Despite his claim that his pension would have been more had he opted to remain in the civil service where he would have benefited from two salary revisions (in 2008 and 2013), the Disputant did not put forward any evidence in support of same. On the other hand, the representative of the Respondent stated that in money terms the Disputant still received a better pension than what he would have received in the public sector.

The Tribunal could not conclude and award that the pension of the Disputant should have been revised in accordance with the salary revisions at the MRA in July 2008 and December 2011 on the ground that it was supposedly less favourable than his terms and conditions of employment, which included accrued pension rights, before his transfer to the MRA.

The Tribunal however apprised the Respondent Authority, in having regard to good and harmonious employment relations, to see to it that the pension of the worker concerned does not become less favourable than what he would have received before his transfer so as to protect and uphold the undertaking given to a civil servant of about 30 years' experience as a Customs and Excise Officer who had opted to join the ranks of the MRA on the understanding that he would be on more favourable terms and conditions of employment. The dispute was set aside. (GN No. 2023 of 2013)

ERT/RN 50/13 - Syndicat des Travailleurs des Etablissements Privés and Tea Blenders Ltd

This was an application under Section 38(1) of the Employment Relations Act for an order for recognition.

The Respondent moved that the application be set aside inasmuch as it had not been preceded by an application in writing to the employer under Section 36(1) prior to the matter being referred to the Employment Relations Tribunal.

The Tribunal concluded that the application was wrongly entered and an application should instead have been made to the employer first as provided for under Section 36 of the Employment Relations Act coupled with Section 38(1) of the Act. The application was set aside.

ERT/RN 40/13 - Mr Sheryad Hosany and Cargo Handling Corporation Ltd

The present matter was jointly referred by both parties for voluntary arbitration under Section 63 of the Employment Relations Act and the terms of dispute was “*Whether, Mr Sheryad Hosany, should be reinstated in his employment at the Cargo Handling Corporation Ltd or otherwise re-employed.*”

The matter was set aside in as much as it was not a labour dispute as defined in the Employment Relations Act and the Tribunal had no jurisdiction to order the reinstatement or re-employment of the Disputant in his former employment as per Section 71 of the Employment Relations Act. Reference was also made to the Employment Rights Act and the Industrial Court Act. The worker had other alternatives available to him if he wanted to challenge the termination of his employment. (GN No. 2067 of 2013)

ERT/RN/41/13 - Mr Jugdis Bundhoo and Mauritius Cane Industry Authority

The case was referred to the Tribunal for arbitration in terms of section 69(7) of the Employment Relations Act and the terms of reference read as follows: - “(i) *Whether for the period September 2006 until 31 May 2009, I should be drawing an allowance for shouldering all the responsibilities of Deputy Executive Director as per the conditions of service at the Mauritius Cane Industry Authority, (ex-Mauritius Sugar Authority); (ii) Whether my salary as Deputy Executive/Human Resource Manager should have been computed on the same index as the previous Deputy Director, index of 083.*”

The Tribunal awarded that the Disputant be paid acting allowance for the period September 2006 to 31 May 2010 in accordance with paragraph 40.2.1 (b) of the Doomun Report. As to the second dispute, the Tribunal referred parties to what was stated by the then Permanent Arbitration Tribunal in its award in **The Central Electricity Board Staff Association and The Central Electricity Board [RN 333 of 1997]**

“The parties concerned should not overlook the fact that there is a wide difference between an Arbitration Tribunal and a Salaries Commission and that a Tribunal should not as a rule substitute itself for a Salaries Commission which has entirely different functions.”

After analysing the facts of the case and the relevant law, the second dispute was set aside. (GN No. 2134 of 2013)

ERT/RN 70/13 - Mr Suraj Dewkurun and Gamma Materials Ltd

The case was referred to the Tribunal pursuant to section 69(7) of the Employment Relations Act and the terms of reference of the dispute read as follows: *“Whether I, Mr Suraj Dewkurun should be reinstated at Gamma Materials Ltd as from 11 January 2012.”*

In the present dispute, the Disputant had submitted his resignation. However, his averment was that he had been constructively dismissed and that the termination of his contract of employment was effected as a result of duress. It was also argued that Disputant was deprived of his rights under Sections 36, 37 and 38 of the Employment Rights Act. The Tribunal found that it had no jurisdiction to enquire into the present dispute and make an award thereon as per Section 71 of the Employment Relations Act. The Disputant should have gone before the competent jurisdiction. The dispute was set aside. (GN No. 2491 of 2013)

**ERT/RN 53/13 - Mr Louis Juan James Charlotte
and Air Mauritius Ltd**

ERT/RN 54/13 - Mr Shafeuddin Ponoor and Air Mauritius Ltd

**ERT/RN 55/13 - Mr Lyndon Lyngess Coopamah and Air
Mauritius Ltd**

ERT/RN 56/13 - Mr Seepersadjee Bholah and Air Mauritius Ltd

**ERT/RN 57/13 - Mr Balmoocond Indr Kumar Lall
Bhaugeerothee and Air Mauritius Ltd**

**ERT/RN 58/13 - Mr Mohummud Imtayaize Beeharry
and Air Mauritius Ltd**

ERT/RN 59/13 - Mr Thierry Edmund Pierre and Air Mauritius Ltd

**ERT/RN 60/13 - Mr Jowaheer Coonjbeeharry
and Air Mauritius Ltd**

ERT/RN 61/13 - Mr Gajanand Dev Essoo and Air Mauritius Ltd

**ERT/RN 62/13 - Mr Sheik Mohammed S. Feizal I. Peerally
and Air Mauritius Ltd**

The terms of reference were the same in all the ten cases as referred by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act and were consolidated and read *“Whether Air Mauritius was wrong to have unilaterally retracted from and to have recalled its prior unequivocal decision to pitch the undersigned on the LS5 salary scale from the LS4 salary scale, and whether Air Mauritius should be recommended to reconsider its position and to reinstate the undersigned on the LS5 salary scale forthwith with the corresponding two increments.”*

The Tribunal awarded that the Respondent was wrong to have unilaterally recalled the firm unconditional offer made to Disputants to pitch them on the LS5 salary scale and should reinstate Disputants on the LS5 salary scale forthwith. Since the Disputants were not pressing with the “two increments” issue, that part of the terms of reference was set aside. (GN No. 2664 of 2013)

**ERT/RN 67/13 - Mr Poorohitum Gopee
and Mauritius Telecom Ltd**

The terms of the dispute referred to the Tribunal pursuant to section 69(7) of the Employment Relations Act read as follows: “*Whether I, Poorohitum Gopee should be paid salary increment of Rs 1700 yearly every 1st July as from 1 July 2000 up to 30 June 2003 instead of 1 July 2002 only.*”

A plea in *limine litis* was taken by Counsel for the Respondent. The Tribunal concluded that the plea in *limine litis* with respect to *res judicata* and *autorité de la chose jugée* was well taken. The Tribunal ruled that the Disputant was not entitled for arbitration again on an issue which had already been canvassed before and decided by the Tribunal and which demand had been rejected (**RN959**). The dispute was set aside. (GN No. 2743 of 2013)

**ERT/RN 49/13 - Mr Rama Valaydon and Cargo Handling
Corporation Ltd**

The matter was referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act and the terms of reference read as follows “*Whether the Personal Pensionable Allowance (PPA) paid to me should be 20% of my basic salary.*”

The Tribunal considered lengthily the case law in relation to acquired rights. The Tribunal analysed the facts of the case including the fact that a single new master scale was to apply to both Corporate Services and Operations as per the 2008 SRC Exercise. The Tribunal concluded that the explanations given in the 2008 SRC Report were reasonable and found no reason to intervene in relation to the recommendations in the report which had to be analysed as a package. Though Disputant could claim that he had an acquired right to have his PPA, he could not claim that he had an acquired right to have his PPA calculated at the rate of 20% irrespective of any increase in basic salary eventually granted to him or changes which the Respondent might decide in line with remuneration management best practices. The dispute was set aside. (GN No. 2918 of 2013)

**ERT/RN 85/13 - Private Enterprises Employees Union and
Tropic Knits Ltd**

This was an application under Section 38(1) of the Employment Relations Act for an order for recognition of the Private Enterprises Employees Union as bargaining agent of employees of Tropic Knits Ltd.

One interesting objection to the application by the Respondent was that the Union's claim for recognition was based on discrimination as the bargaining unit excludes foreign employees as well as employees with less than 12 months service.

The Tribunal considered inter alia, Section 13 of the Employment Relations Act which provides for the right of workers to join a trade union. This right is also enshrined in Section 13(1) of our Constitution. After examining relevant case law and other relevant statutory provisions the Tribunal came to the conclusion that our law does not prevent foreign workers from associating to trade union activities. However, the joining of a trade union is a voluntary exercise and it remains a matter of "general wishes of the workers concerned".

The Tribunal found nothing wrong for the union not to include foreign workers and temporary workers in the bargaining unit. On the facts however, the Tribunal was not favoured with the exact number of workers in the bargaining unit, excluding foreign and temporary workers. There was also a disparity with regard to the location of the bargaining unit as averred in the application and evidence ushered before the Tribunal. The Tribunal found that the application was not in order so that the need to organize and supervise a secret ballot did not arise. The application was accordingly set aside.

STATISTICS

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

During the year 2013:

- The number of disputes lodged before the Tribunal was 113 out of which 37 cases were referred to the Tribunal by the Commission for Conciliation and Mediation.
- The number of cases disposed of summarily (through conciliation and agreements between parties) was 80.
- There were 13 Awards and 8 Orders delivered and the Tribunal had to deliver 8 Rulings.
- The Tribunal has disposed of a total of 123 cases/disputes during the period January to December 2013.

As at 31st December 2013, there were 221 cases/disputes pending before the Tribunal. These included 201 'connected' cases involving customs officers and the Mauritius Revenue Authority. One test case (Mr Vicky Damree and Mauritius Revenue Authority) has already been heard and disposed of by the Tribunal (GN No. 1835 of 2011) but the disputant has sought a judicial review of the Award before the Supreme Court. The parties in the other cases are thus waiting for the outcome of the Supreme Court case before taking a stand in the pending cases.

