



Republic of Mauritius

Annual Report

Employment Relations Tribunal

year 2014

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Note from the President

It is with great pleasure that I forward the Annual Report for the year 2014. In line with the policy of the government to move towards a paperless working environment, the Annual Report will be available in soft copy on our website which can be accessed on the new address <http://ert.govmu.org>.

Our readers will notice that the Employment Relations Tribunal has during the year disposed of an exceptionally large number of cases/disputes (326 cases which do include 201 connected cases) and that we have managed to bring down the number of pending cases. At the same time, the number of cases being referred to the Tribunal is on the rise. We foresee the same trend even for the year 2015 and the Tribunal shall do its best to deal with cases as expeditiously as possible whilst ensuring fairness to all parties involved.

The Tribunal has had the opportunity in 2014 to deal with the delicate issue of a threatened strike. This was in relation to a bus company and the matter was treated with all the urgency and celerity that the situation required. The Tribunal considered the relevant provisions in relation to the right to strike and limitations on the said right. The Tribunal ordered the relevant trade union to make use of the procedures and remedies, if any, available under the Procedure Agreement or under the Employment Relations Act 2008 as amended should it envisage organizing a strike.

The Tribunal also had the opportunity to organize several balloting exercises in 2014 including in two cases where the required representativeness were hotly contested and which received much press coverage in view of the importance of the sectors involved, that is the port sector and a major player in the insurance sector where government has a major interest. The exercises were both enriching and very demanding on the Tribunal and its staff with the balloting exercise in the port extending over two days. I seize this opportunity to thank the staff for their efforts and commitment to enable the Tribunal to deal successfully with such demanding exercises.

We have had also a variety of decisions in interesting fields such as voluntary retirement schemes or alleged unfair labour practices and I will invite our stakeholders, barristers, trade union leaders, HR Managers and the public at large to consult our website where these decisions and other decisions of the Tribunal (including those delivered by the Permanent Arbitration Tribunal) since 1974 to date are available. I can assure our stakeholders that the Employment Relations Tribunal under my leadership will spare no effort to excel in our mission and to be continued to be seen as the expert tribunal for the settling of industrial disputes.

Rashid Hossen

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

Abdool Rashid HOSSEN, LLB (Hons) (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 Judge 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 Arbitrator (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. Member of the International Labour and Employment Relations Association (2014).

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 "Modernising Labour Law in 21st Century" (South Africa) (2014). Attended the Annual Labour Law Conference on "The Changing Face of Labour Law: Tensions and Challenges" (South Africa) (2014).

VICE-PRESIDENTS

Indiren SIVARAMEN, LLB (Hons), MBA (Finance) (University of Leicester), MCI Arb, 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, LLB (Hons) (London), MBA (Business Finance), Barrister (Lincoln's Inn) 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' and Judges' Association since 2013.



Members of the Tribunal

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 (On study leave)
2	Mrs BUXOO Farozia	Office Management Executive
3	Mrs TANG SAK YUK Francoise	Senior Shorthand Writer
4	Mrs JOOMUN-MAUDHOO Bibi Hafiza	Financial Officer/Senior Financial Officer
5	Mrs KHADAROO Diya	Office Management Assistant (Replacing Registrar)
6	Mrs SOHAWON Rassool Bibi	Shorthand Writer
7	Mrs WAN CHUN WAH Chong How	Shorthand Writer
8	Mrs TOOFANY Bibi Ansoo	Confidential Secretary
9	Mrs DOSIEAH Deeneshwaree	Confidential Secretary
10	Mrs MOSAHEB Ruksana	Confidential Secretary
11	Mrs LUCHMUN Dhanwantee	Management Support Officer
12	Mrs LABONNE Mary Joyce	Management Support Officer
13	Mrs PATANSINGH Jayshree	Management Support Officer
14	Mr HAIRSOO Amez	Management Support Officer
15	Mr KHODABUX Ally Moodin	Head Office Care Attendant
16	Mrs KETHA Naleenee	Office Care Attendant/Senior Office Care Attendant
17	Mr MOHUN Purmessursingh	Office Care Attendant/Senior Office Care Attendant

Summary of Cases

NOTE: This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for that decision. The full opinion of the Tribunal is the only authoritative document. Awards are public documents, and the awards delivered in 2014 are available at: <http://ert.govmu.org>

ERT/RN/110/14

In the matter of: Private Sector Employees Union (PSEU) (Applicant)
And
G.R.N.W Boat Yard Ltd (Employer)

The Private Sector Employees Union (PSEU) applied for an order for sole recognition under section 38(1) of the Employment Relations Act 2008. A preliminary objection in law to the application was raised to the effect that "the Tribunal does not have jurisdiction to entertain the present application inasmuch as the Applicant is not a trade union nor a group of trade unions and hence does not have locus standii to make the present application". In the light of the preliminary objection taken, Counsel for the Applicant moved to amend the application. Counsel for the Employer objected to same. Arguments were heard on whether the amendment should be allowed.

The Tribunal, after duly considering the application in its whole as well as supporting documents annexed thereto, found that it was clear that the applicant before the Tribunal was the Private Sector Employees Union (PSEU) as represented by its secretary. The Tribunal therefore ruled in favour of the amendment prayed for by the Applicant.

ERT/RN/06/14

In the matter of: Mr Anand Kumar Jhurry (Disputant)
And
Mauritius Institute of Training and Development (Respondent)
In presence of:
The Ministry of Education and Human Resources (Co-Respondent No.1)
And
The Ministry of Civil Service and Administrative Reforms (Co-Respondent No.2)

The terms of reference of the dispute read as follows:

" Whether having regard to the contents of circular letter No.29 of 29.07.03, E/60/17/01VH, communicating government's decision in relation to the refund of the course and examination fees, coupled with paragraphs 14.14 and 14.15 of the PRB Report 2003, and PRB Report 2008, Disputant is entitled to the refund of the sum of Rs 112,981, being expenses incurred by the Applicant, as course and examination fees, incurred by Disputant for the pursue of the enhancement of Disputant's professional qualifications."

The Tribunal heard evidence from the various parties in the matter in relation to the dispute. After considering the contents of the Circular Letter, Paragraphs 14.14 and 14.15 of the PRB Report 2003 and provisions of the PRB Report 2008 as well as the scheme of service of the Disputant's post, the Tribunal did not find that the Disputant was entitled to the refund of the course and examination fees incurred by him for the pursue of the enhancement of his professional qualifications. The dispute was therefore set aside.

ERT/ RN 95/14

In the matter of:- Mr Anant Kumar Udhin (Disputant)
And
Private Secondary Schools Authority (Respondent)

The terms of reference read as follows:

“Whether I, Mr. Anant Kumar UDHIN, Senior Supervisor at the Private Secondary Schools Authority (PSSA), am entitled to the grant of an increment in my basic salary after having successfully completed my Master in Business Administration (MBA) degree in March 2012 as in the case of my colleague Supervisor Mr. D.Patpur for his Master’s degree, in line with the – recommendation of the Ministry of Education and Human Resources as regards Educators holding that certificate.”

Respondent moved that the dispute be set aside with costs inasmuch as-

“(1) This Tribunal has no jurisdiction to entertain the present matter-
(a) as the Disputant’s case is grounded on discrimination;
(b) in view of the prayers sought.

(2) The present matter is a disguised application for the review of a decision of the Equal Opportunities Commission in a complaint made to the Equal Opportunities Commission by the Disputant in relation to this same matter and the present Tribunal does not have the jurisdiction to entertain same.”

The Tribunal heard arguments on the points raised. Though reference had been made in the Statement of Case of the Disputant to the term “discrimination” on more than one occasion, the terms of reference of the dispute do not refer to discrimination. The Tribunal ruled that the dispute as referred to it was within the jurisdiction of the Tribunal as it was a labour dispute as defined in the Act.

Reference to the “prayers sought” would also not affect the jurisdiction of the Tribunal since the dispute had been properly referred to the Tribunal by the relevant body and the Tribunal was at this stage concerned primarily with the terms of reference. Whether to grant a particular “prayer” will be for the Tribunal to decide after hearing the matter and any submissions parties may wish to make.

As regards the preliminary objection under limb (2), there was no mention of terms like “discrimination” or “discriminatory treatment” in the terms of reference. Also, the Tribunal noted that there was no averment that the said dispute was res judicata. The Tribunal was in fact the appropriate body (provided appropriate procedures had been followed) to decide whether a disputant should be granted an increment following completion of a particular degree. The Tribunal should not, on the other hand, enquire whether there had been any discrimination towards Disputant and could not make any declaratory award in relation thereto.

The preliminary objections were set aside and the case was to proceed on its merits.

ERT/ RN 100/13

In the matter of:- Mrs Jennifer Kathryn Yon Hin (Disputant)
And
National Housing Development Company Limited (Respondent)

The terms of reference read as follows:

“Whether the National Housing Development Company Limited should grant me one increment as per Employee’s Conditions of Service following my obtention of an Advanced Diploma in Secretarial and Administration in February 2011.”

Disputant and the relatively short period of time for which Disputant worked at 'Le Morne Plage' and came to the conclusion that Disputant had not acquired a right to work only day duty (vide *Constance & La Gaiété S.E Co. Ltd v Bhungshee* 2000 SCJ 67).

In the light of the terms of the contract of employment (and absence of evidence of change in the number of hours of work ("durée du travail")), there was no change in the conditions of work of Disputant but in fact mere execution of the contract of employment. The Disputant had been given time to adapt before embarking anew on the day and night shifts and there was no evidence of bad faith or "intention de nuire" on the part of Respondent. For the reasons given in its award, the Tribunal found no reason why management should revert back the roster of Disputant to the day shift when other 'Chefs de Rang' at 'Harmonie' Restaurant were performing both day and night shifts. The dispute was thus set aside.

ERT/RN 90/13

In the matter of:- Miss Marie Karen Ladouceur (Disputant)

And

**The State of Mauritius as represented by
Ministry of Health & Quality of Life (Respondent)**

In presence of :

**Ministry of Civil Service & Administrative Reforms
(Co-Respondent)**

The terms of reference of the dispute read as follows:

"In spite of me having the required qualifications (as specified in the existing scheme of service) for appointment as Clinical Psychologist, I am not being appointed, but instead steps are being taken to amend the scheme of service. My request is that I be appointed Clinical Psychologist with effect from date of vacancy."

Counsel for Respondent and Co-Respondent took a preliminary point to the effect that the present case could not proceed as the Tribunal had no jurisdiction to grant the prayer sought. The Tribunal whilst referring to the powers of appointment of public officers under the Constitution held that the thrust of the terms of reference was that Disputant be appointed Clinical Psychologist with effect from the date of vacancy. This was not within the province of the Tribunal and the dispute was set aside. The Tribunal however added that it will continue to hear disputes involving public officers referred to it provided of course that these fall within its jurisdiction and that the Tribunal is not precluded by law from making an award thereon.

ERT/RN 111/14

In the matter of:- Triolet Bus Service Ltd (Applicant)

And

Union of Bus Industry Workers (UBIW) (Respondent)

This was an application made under Sections 76 and 86(3) of the Employment Relations Act 2008, as amended to declare a threatened strike scheduled on 11 October 2014 to be unlawful. There was also an application for an interim order to issue restraining and prohibiting the Respondent whether directly or indirectly through any company, officer, agent, préposé or otherwise from launching or participating in a strike, threatened strike or any matter preparatory to a strike in the Transport Industry in relation to the Applicant pending the final disposal of the present application.

After taking cognizance of the said application and attached documents and being satisfied that the matter was so urgent as to require the immediate intervention of the Tribunal and before notice of the application was served on the Respondent, the Tribunal granted the interim order. The said interim order was issued at Applicant's own risks and perils and upon its undertaking, through its Attorney to abide by an order which may be made thereafter as to damages to the Respondent by the granting of this interim order.

ERT/RN 111/14

In the matter of:- Triolet Bus Service Ltd (Applicant)
And
Union of Bus Industry Workers ("UBIW") (Respondent)

This was an application made under Sections 76 and 86(3) of the Employment Relations Act 2008, as amended to declare a threatened strike scheduled on 11 October 2014 to be unlawful.

After hearing the Applicant and considering the documents produced the Tribunal was satisfied that the Applicant had made its case, the more so as the evidence adduced had remained unchallenged given the absence of the Respondent. There being no labour dispute that had been reported to the Commission for Conciliation and Mediation and also no issue regarding health and safety of any worker as well as unpaid remuneration, it was clear that the procedures laid down in the Employment Relations Act 2008 as amended had not been followed. The Tribunal referred to Section 64(7) of the Employment Relations Act 2008 as amended which provides as follows:

"Where a labour dispute is reported to the Commission, a copy of the report of the dispute shall be served by or on behalf of the party making the report upon every other party to the dispute."

In addition there was a Collective Agreement which was still in force until 31 July 2016. The Respondent was ordered to make use of the procedures and remedies, if any, available under the Procedure Agreement or under the Employment Relations Act 2008 as amended should it envisage organizing a strike.

In the circumstances, the Tribunal made an order declaring the threatened strike at Triolet Bus Service Ltd to be unlawful and the interim order granted previously was lapsed.

ERT/RN/92/14

In the matter of: Syndicat des Travailleurs des Etablissements Privés (Applicant)
And
Compagnie Sucrière de Bel Ombre Ltd (Respondent)

The Syndicat des Travailleurs des Etablissements Privés applied to the Tribunal for an order under section 51(8) of the Employment Relations Act requiring the Compagnie Sucrière de Bel Ombre Ltd to comply with a provision of a procedure agreement. The application was in relation to time-off facilities for trade union representatives to attend a press conference. The Tribunal found that the attending of a press conference was not a trade union activity within the meaning of relevant provisions of the Employment Relations Act or which would fall under Article 5(iv) of the Procedure Agreement between the parties.

After analyzing in length the evidence adduced before it, the Tribunal observed that it is not within its province to authenticate documents relating to academic qualifications. This was precisely an exercise to be carried out by the relevant and proper authorities. The Tribunal added that this boils down to common sense and even the Pay Research Bureau cannot adjudicate on such issues. This is precisely why the Pay Research Bureau made a recommendation for the setting up of a Standing Committee under the Chairmanship of the Ministry of Civil Service and Administrative Reforms comprising of representatives of the Ministry of Finance, the Mauritius Qualifications Authority and a representative of the Pay Research Bureau to determine on the award of incremental credits with regard to additional qualifications.

The Tribunal considered that the best course to adopt in that particular case was to invite the Disputant to resubmit all relevant information and documents to the Ministry of Civil Service and Administrative Reforms via her employer for reconsideration. The Ministry of Civil Service and Administrative Reforms was however reminded that it would earn credit in acting diligently.

ERT/RN 60/14

In the matter of:- (1) Union of Artisans of the Sugar Industry

(2) Artisans and General Workers Union

(3) Organisation of Artisans Unity (Applicants)

And

Omnicanne Milling Operations Ltd (Respondent)
(Ex Savannah Sugar Milling Co. Ltd)

This was an application made by the Union of Artisans of the Sugar Industry (UASI), Artisans and General Workers Union (AGWU) and Organisation of Artisans Unity (OAU) under Section 75 of the Employment Relations Act 2008 as amended for an interpretation of the relevant part of an award of the then Permanent Arbitration Tribunal (PAT) delivered on 3rd May 2006 (RN 729, RN 730 and RN 732). Following a report of industrial dispute by the Applicants against the Respondent, after the then 3 x 8 x 6 days shift had lapsed and the introduction of a new formula, i.e. 4 x 12 shift at Omnicanne Milling Operations Ltd (formerly known as Savannah Sugar Milling Co. Ltd), the Permanent Arbitration Tribunal (PAT) awarded inter alia as follows:-

“We also invite Management to grant an incentive to those working on shift system during the crop season, equivalent to 6.5 hours at normal overtime rate.”

The Tribunal referred to page 20 of the said Award where it was provided that “The employees being more concerned with a compensation for hours of overtime, rather than the changing hours of work, and the Employer having the right to organize his business according to the exigencies of the service as long as he remains with the parameters of the labour law and remuneration orders, the Tribunal is of the considered view that the 4 days x 12 hours x 3 shift system be introduced”. The Tribunal laid stress on the term “employees” and awarded that the PAT was referring to the then employees. The Tribunal further highlighted the following in the said Award: “This Award therefore should not be invoked as a precedent in view of the fact that it stands on its own facts. Indeed, each case must be viewed on its own facts and the present award cannot be a principle of general application. This case is therefore “un cas d’espèce”.

The Tribunal awarded that the interpretation to be given is that the Award was applicable to those workers affected by the change in shift system and who were already in employment when the Award was delivered.

ERT/RN 53/14

In the matter of:- Mr Awadhkoomarsing Balluck (Disputant)
And
The State of Mauritius
represented by
Ministry of Labour, Industrial Relations & Employment
(Respondent)

In presence of:
Ministry of Civil Service & Administrative Reforms
(Co-Respondent)

The dispute was in relation to Recommendation 12A in paragraph 10.55C of the PRB Errors, Omissions and Clarifications Report 2008 and whether the Disputant should be paid an amount of Rs 11,250 (Rs1,250 per month for period July 2009 to March 2010).

The Assistant Parliamentary Counsel appeared for the Respondent and Co-Respondent. He informed the Tribunal that the matter had been resolved and that the Co-Respondent had already informed the Ministry of Labour, Industrial Relations and Employment that the employer i.e. the Government of Mauritius had approved the grant of an increment beyond top salary to Disputant in accordance with paragraph 10.55C of Errors, Omissions and Clarifications Report 2009, as from 1st July 2009 instead of 1st April 2010 notwithstanding the fact that Disputant had not effectively drawn the top salary of Rs 47500 for a year. The Disputant ratified same and moved for an Award in terms of the agreement. The Tribunal thus awarded accordingly.

ERT/RN 52/14

In the matter of:- Mr Dhan Khednee (Disputant)
And
National Transport Corporation (Respondent)

The terms of reference read as follows:

1. "Whether I, Mr Dhan Khednee, Senior Technical and Mechanical Officer of the National Transport Corporation should have [been] assigned actingship duties of Depot Manager of Remy Ollier Depot as from September 2013 for one month as per section 18.10(4) of the PRB Report 2013."
2. "Whether I should be assigned actingship duties of Depot Manager henceforth as and when required when the Depot Manager of Remy Ollier Depot is on leave."

As regards the first point in dispute, the Tribunal stated that it does not deliver declaratory awards the moreso when the period for the assignment of actingship duties is well over. The Tribunal here referred to previous awards delivered and to a Supreme Court judgment.

The Tribunal reminded parties that it endeavours to be as practical as possible in its approach and will deliver awards which are practical and resolve disputes referred to it. That dispute was set aside.

In relation to the second dispute, the Tribunal observed that though it is within the province of the employer to decide who is to be appointed to act in a higher office, the Tribunal will certainly intervene if an employer has acted unfairly or failed to make a judicious use of his powers.

The Tribunal also stated that it will deliberately abstain from granting any award of a blanket nature in relation to assignment of acting duties. The Tribunal however trusted that the Respondent when appointing an officer in an acting capacity in a higher office will act fairly. In the public transport sector, efficiency is paramount and the Tribunal was not in presence of any evidence in relation to the qualifications, experience, merit or suitability of the officer (or officers) who had until now been appointed to act instead. The Tribunal understood from the evidence that someone from the traffic side well versed in traffic matters had been appointed to act as Depot Manager at Remy Ollier Depot in the interests of departmental efficiency. For the reasons given in the award, the Tribunal did not intervene and the second dispute was also set aside.

ERT/RN 24/14 to ERT/RN 47/14

CONSOLIDATED CASES

Mr Hassen Soodhoo & 23 others

And

Sugar Insurance Fund Board

The above twenty-four cases were individually referred to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008. The cases were consolidated and the terms of reference which were the same in all the cases read as follows:

“Whether based on the BCA Consulting Report on the Review of the Organisation Structure and Human Resource Requirements at the Sugar Insurance Fund Board May 2013, I should have been granted the Voluntary Retirements Scheme (VRS) in harmony with that of the MCIA, but this has not been the case. REF 4.1.3 and 4.2.2.”

Counsel for Respondent took a preliminary point to the effect that the Tribunal had no jurisdiction to entertain the said matter.

The Tribunal concluded that though it might have jurisdiction to hear a case which relates to a VRS (in an appropriate case), it did not have jurisdiction in the present matter where the disputes did not constitute labour disputes as defined. The workers, by opting for the VRS and cashing the benefits of the VRS, had brought an end to their contracts of employment. The terms of the VRS were no longer terms and condition of employment which they could benefit in the future but already terms and conditions of the termination of their contracts of employment. Also, the Tribunal had no jurisdiction to cancel or vary the agreements entered into for the purposes of the VRS and whereby the contracts of employment of the disputants had come to an end. The disputes were thus purely and simply set aside.

ERT/RN 22/14

In the matter of:- Eastern Mix Ltd

(Applicant)

And

Syndicat des Travailleurs des Établissements Privés

(Respondent)

This application was made to the Tribunal for the revocation of the recognition of a trade union by virtue of Section 39 (1) (b) of the Employment Relations Act 2008, as amended.

The Tribunal referred to Section 39 of the Employment Relations Act 2008 and was not satisfied even on a balance of probabilities that there were false and misleading representations made by Respondent (as averred by Applicant in its application). Indeed, the evidence adduced by the Applicant itself showed that some employees had allegedly withdrawn their membership from the Union and in the light of the Confirmation Union Membership Forms produced, the Tribunal added that it would appear that the issue was more one in relation to representativeness. The Tribunal was of the view that the proper course to adopt was to go for a secret balloting exercise and that this could only be considered should a fresh application be lodged. The legal time constraint did not favour this course with regard to the present application.

The Tribunal issued no order for revocation of recognition of the trade union and the application was set aside.

ERT/ RN 108/13

In the matter of:- Mrs Bibi Zaheboon Nessa Joomun (Disputant)
And
Sugar Industry Labour Welfare Fund (Respondent)

The terms of reference read as follows:

“Whether I, Mrs Bibi Zaheboon Nessa Joomun, should be paid one additional increment with effect from 1st July 2003 as I reckon 25 years service in the same post continuously without promotion with the Committee of Social Welfare Centre / Sugar Industry Labour Welfare Fund.”

The Disputant was employed by the Social Welfare Committee and in 1987 the Social Welfare Staff was integrated on the establishment of the Respondent. The Tribunal considered paragraph 1.33(v) of the PRB Report 2003 (Volume 1) which provides as follows:

“ Officers reckoning 25 years’ service in a single grade, and who have been drawing the top salary of their scale prior to this Report, should be granted the converted salary corresponding to an additional increment to be read from their scale or the master salary scale with effect from 1 July 2003.”

The Tribunal referred to an earlier award of the Tribunal in the case of Social Welfare and Community Centres Employees Union v Sugar Industry Labour Welfare Fund, ERT/RN 18/12 where the Tribunal had analysed the same paragraph and had stated the following:

“ The aforementioned recommendation from the PRB Report 2003 clearly does not confer an automatic right to an additional increment in as much the person claiming to be entitled to same must satisfy the conditions stated therein. In particular, the officer, prior to the Report, should have been in the service for 25 years in a single grade and must have been drawing the top salary of his salary scale.

Although the issue of the posts does not form part of the present dispute, this cannot be left unnoticed in view of the requirement for the person to be in a single grade in the aforementioned recommendation of the PRB Report 2003.”

The Tribunal observed that as per a document produced, workers employed by the Social Welfare Committee were not considered as having equal status to those employed by the Respondent which is a parastatal body. Indeed, the decision to have the workers employed by the Respondent in 1987 was to provide more security and status to workers who were then employed by the Social Welfare Committees.

The Tribunal observed that the Disputant had failed to prove essential elements specifically hinted to (Conditions of eligibility set out in paragraph 1.33(v) of the PRB Report 2013) in the earlier award of the Tribunal (ERT/RN/18/12) and left open the issue of whether the requirement of “single grade” was met by performance of the same work by Disputant. The dispute was thus set aside.

ERT/RN 21/14

In the matter of:- Mr Hemandar Kumar Madhow (Appellant)
And
The President of the Commission for Conciliation and Mediation (Respondent)

This was an appeal against the decision of the President of the Commission for Conciliation and Mediation for rejecting a labour dispute reported to it by the Appellant. The labour dispute was in relation to Appellant's reinstatement following interdiction from the Mauritius Institute of Training and Development (MITD) and for a declaration that the warning inflicted on Appellant was null and void. The Disputant further sought that the MITD implements a pledge made before the Commission for Conciliation and Mediation for his immediate reinstatement in a conciliation report dated 24 December 2013.

The representative of the State Law Office did not support the decision of the President of the Commission for Conciliation and Mediation and informed the Tribunal that without admitting any merit in the said dispute, the President of the Commission had no objection that his decision to reject the dispute be set aside

The Tribunal concluded that the President of the Commission for Conciliation and Mediation was plainly wrong in mixing and mingling the parties to the dispute with the "aggrieved person". By virtue of Section 66(1) of the Employment Relations Act 2008, as amended, the Tribunal revoked the decision of the President of the Commission for Conciliation and Mediation and remitted the matter back to him to reconsider the dispute in lite in the light of the decision of the Tribunal.

The President of the Commission for Conciliation and Mediation in his concluding remarks had stated that this new dispute had already been reported on the same issue and that though the parties reporting the dispute might not be the same as in the fresh dispute, yet the "aggrieved person" and the Respondent were the same as in the first dispute. He thus concluded that the dispute in lite did not comply with the provision of Section 67 of the Employment Relations Act 2008.

The Tribunal observed that the Appellant was not a party (as opposed to the Federation of Civil Service and other Unions) – not even an intervening party – to the dispute before the Commission prior to the one in lite and held that the ground of appeal should succeed. The Tribunal added that proper compliance with Section 67(b) of the Employment Relations Act 2008 as amended is a prerequisite to a dispute being reported to the President of the Commission for Conciliation and Mediation. It was not a technical matter or a matter of procedure. It was a matter of substance. All in all the reporting of the dispute is the initiating process that gives access to the Commission for Conciliation and Mediation. (SS Chadien v The Commissioner of Police and the State of Mauritius [2013 SCJ 351]).

As regards the alleged pledge made before the Commission for Conciliation and Mediation, the Tribunal found no reference to any agreement reached save and except that the Commission had been negotiating with the parties for the signing of such an agreement. The Tribunal was kept in the dark with regard to the fate of that agreement, if any and thus declined to give further consideration to this ground of appeal.

ERT/RN 100/14

In the matter of:- Organisation of Hotel, Private Club & Catering Workers Unity (Applicant)
And
Beau-Port Industries Ltd/Le Prince Maurice Hotel (Respondent)

The Applicant lodged an application for an Order of recognition as bargaining agent in relation to employees of Respondent.

The Tribunal held that it was incumbent on Applicant to adduce sufficient evidence in support of its application. The representative of the Applicant chose not to be in the box to sustain the application and be subjected to cross-examination. The only witness who deponed was the representative of the Ministry of Labour and Industrial Relations and his evidence was restricted only to the bargaining unit list that was submitted to him by the union and, which list was hotly contested by Respondent's representative. The putting in of 'Confirmation Forms' cannot be considered to be sufficient evidence when representativeness is in issue. A party has to offer sufficient evidence. The representative of the union had simply made a request to the Tribunal to organize and supervise a secret ballot. Reference was made to what the Tribunal stated in the matter of the Union of Bus Industry Workers and UBS Transport Ltd [ERT/RN 94/13]:-

"The application to the Tribunal to organize and supervise a secret ballot to determine which trade union workers wish to be their bargaining agent cannot be granted by the mere asking. The applicant must pass the threshold of satisfying the Tribunal that there is sufficient evidence that would justify such course. The applicant chose to withhold information regarding representativeness of his trade union membership and which issue is hotly contested by the respondent. We are aware of the legal provision that protects the interest of members of union who do not wish to reveal their identity. That should in no way be interpreted as an obligation on the Tribunal to proceed for secret balloting by the mere asking."

The Tribunal added that a trade union also has to make clear as to who it wishes to be included in a bargaining unit.

For the reasons given in the Order the application was set aside.

ERT/RN 49/14

In the matter of:- The SICOM Employees Union (SICOMEU) (Applicant)

And

The State Insurance Company of Mauritius Ltd (SICOM)

(Respondent No. 1)

The SICOM General Insurance Ltd (SGIN)

(Respondent No. 2)

This was an application made by the SICOM Employees Union (SICOMEU) for an order for recognition of the trade union pursuant to Section 38 of the Employment Relations Act 2008 (as amended).

A secret ballot exercise was organized and supervised by the Tribunal at the seat of the State Insurance Company of Mauritius Ltd (SICOM). Out of a total number of 219 employees in the relevant bargaining unit as agreed by parties, 210 employees participated in the balloting exercise. On the total number of employees in the bargaining unit (i.e. irrespective of abstention) the SICOM Employees Union (SICOMEU) received support of 76.3% of the employees.

The Tribunal therefore ordered that the SICOM Employees Union (SICOMEU) be recognized as the bargaining agent to represent the workers in the bargaining unit comprising of employees of non-managerial cadre at the SICOM and the SGIN. The Tribunal further ordered that the Applicant and the Respondents meet at such time and on such occasions, as the circumstances may reasonably require, for the purposes of collective bargaining.

ERT/ RN 106/13

In the matter of:- Mr Suraj Reedoo (Disputant)
And
Irrigation Authority (Respondent)

The terms of reference read as follows:

“Payment of increment for additional qualification, as per section 18.9.25 of the Pay Research Bureau Report 2008.”

The issue was whether 50% of the modules completed by Disputant for his additional qualification were relevant to the performance of the duties of the grade he was in.

After careful analysis of all the evidence before it, the Tribunal did not find conclusively that 50% of the modules completed were so relevant. The Tribunal however observed that a module on the foundations of management (such as module “Management Practice”) should not be restricted or considered to be only relevant to management. The Tribunal found such a module to be relevant even for the performance of the duties of a Field Officer. Similar considerations may apply to modules such as ‘Managing Change’ and ‘Managing Performance’ which again may be relevant for the performance of non-managerial duties. The Tribunal observed that anyone can be and should be encouraged to be a ‘change champion’ within an organization. The dispute was set aside.

ERT/ RN 104/13

In the matter of:- Mr Lindsay Wilson (Disputant)
And
Municipal Council of Quatre Bornes (Respondent)

In presence of:

- 1. Local Government Service Commission (Co-Respondent No. 1)**
- 2. Pay Research Bureau (Co-Respondent No. 2)**

The terms of reference of the dispute read as follows: “Whether I, Lindsay Wilson, should be reverted back to my previous post of Attendant (Vocational Training Centre) and be granted one increment every two years on completing 24 years of service in a single grade as per PRB Report 2008.”

Counsel for Co-Respondent No.1 raised two preliminary points which read as follows:

- (1) The case does not fall within the definition of a labour dispute as defined under the Employment Relations Act; and
- (2) The Tribunal does not have jurisdiction to grant the prayer sought.

The Tribunal referred to an earlier Award in the case of N. Needhoo & Ors and Grand Port/Savanne District Council, in presence of 1. Local Government Service Commission 2. Ministry of Labour RN 746, where the Tribunal stated the following:

“Section 4(1) of the Local Government Service Commission Act clearly and explicitly states that the said powers of the Local Government Service Commission “shall in relation to local government officers vest exclusively in the Commission” (the underlining is ours). The terms of reference in the present case go clearly against the exclusive powers given by the Local Government Service Commission Act.”

The Tribunal examined relevant legislation in relation to the jurisdiction of the Tribunal and drew a distinction between powers of the Public Bodies Appeal Tribunal and those of the Tribunal.

The Tribunal held that it did not have jurisdiction or power “to quash the decision” of Co-Respondent No. 1 and “revert the Disputant back to his previous post of Attendant (Vocational Training Centre)” or to control or in any manner direct Co-Respondent No. 1 in relation to Disputant’s appointment. The present dispute was misconceived and the dispute was set aside.

ERT/ RN 1066

In the matter of:- Union of Primary School Teachers (UPST) (Applicant)

And

**Roman Catholic Education Authority (Respondent)
(RCEA)**

In presence of:

**(1) Ministry of Education, Culture & Human Resources
(Co-Respondent No. 1)**

(2) Pay Research Bureau (Co-Respondent No. 2)

The points in dispute were:-

1. Whether employees of the Roman Catholic Education Authority, having signed the Option form after the publication of Pay Research Bureau report, are governed for the purposes Pay, Grading structures and conditions of service by the said report.
2. Whether the post of Deputy Head Teacher restyled Deputy Head Master should be filled ‘by promotion on the basis of work experience and merit of Teacher/Senior Teachers, restyled Educators’, as recommended by the Pay Research Bureau Report 2 May 2008, instead of ‘by selection’.
3. Whether the post of Head Teacher/Senior Head Teacher, restyled Head Master should in future be filled by selection from among Deputy Head Teachers, restyled Deputy Head Masters, Mentors and Health and Physical Education Instructors possessing a Diploma in Education Management as well as Educators (Primary), and Teacher/Senior Teachers possessing the Diploma and reckoning at least 18 years’ teaching experience or possessing a Degree and reckoning at least 12 years’ teaching experience as recommended by the Pay Research Bureau Report May 2008.”

After prolonged negotiations and the Tribunal using its best endeavours to assist parties to reach a consensus, the Tribunal was pleased to note that an agreement was finally reached between the parties concerned. It read:

Promotion to the grade of Deputy Head Master

Promotion to the grade of Deputy Head Master will be made in accordance with the existing mode of appointment which has served the interests of the Roman Catholic Aided Schools well over the years.

However, the RCEA undertakes:

- 1 (a) For the next exercise to promote all present serving officers who have attained 400 months (33 1/3 years) of service to the grade of Deputy Head Master.

Note: The applicant should be holder of the Advanced Certificate of Education (MIE) with no adverse report for misconduct.

- (b) For all future exercises, to promote to the grade of Deputy Head Master all serving officers who have attained 400 months (33 1/3 years) of service.

The applicant should be holder of the Advanced Certificate of Education (MIE) with no adverse report for misconduct and/or recurrent underperformance.

2. Promotion to the Grade of Head Master

Promotion to the grade of Head Master will be made in accordance with the new prescribed scheme of duty (in attachment).

3. To set up as and when the need arises, a Panel of Moderators, appointed by the Bishop of Port Louis, to listen to the grievances of unsuccessful candidates and report to him. This is not an appeal procedure. Consequently, lawyers will not be heard.

In the light of the above, the UPST:

1. Withdraws the present case before the Tribunal.
2. Undertakes to withdraw all cases and disputes entered against the RCEA before all Courts and all extra-judicial institutions.”

The Tribunal awarded as per the terms of the above agreement and the dispute was otherwise set aside.

ERT/RN 94/13

In the matter of:- Union of Bus Industry Workers (Applicant)

And

UBS Transport Ltd (Respondent)

In presence of:

(1)United Bus Service Employees Union

**(2)Association Travailleurs Transport Autobus
(Co- Respondents)**

This application was made to the Tribunal for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent by virtue of Section 37 (Savings and transitional provisions) (4) (a) (ii) of the Employment Relations (Amendment) Act 2013.

The Tribunal held that it would not grant request to organize and supervise a secret ballot to determine which trade union workers wish to be their bargaining agent by the mere asking. The Applicant must pass the threshold of satisfying the Tribunal that there was sufficient evidence that would justify such course. The Applicant chose to withhold information regarding representativeness of his trade union membership and which issue was hotly contested by the Respondent. The Tribunal was aware of the legal provision that protects the interest of members of union who do not wish their identity to be revealed. However the Tribunal added that this should in no way be interpreted as an obligation on the Tribunal to proceed for secret balloting by the mere asking. The application was set aside.

ERT/RN 08/14

In the matter of:- Port Louis Maritime Employees Association (Applicant)

And

Cargo Handling Corporation Limited (Respondent)

In presence of:

(1)Port Louis Harbour and Docks Workers Union

(2)The Maritime Transport and Port Employees Union

(3)Docks and Wharves Staff Employees Association

(4)Stevedoring and Marine Staff Employees' Association

(Co- Respondents)

This application was made by the Applicant pursuant to Section 38 of the Employment Relations Act (as amended). The application was for an Order for sole recognition.

A secret ballot exercise was organised and supervised by the Tribunal on the 5th and 6th of March 2014 at the seat of the Respondent. On the total number of employees in the bargaining unit (i.e irrespective of abstention) the Groupe Syndicale (comprising of Co-Respondents) received the support of 39.6% of the employees and the Applicant received the support of 54.9% of the workers.

The Tribunal therefore ordered that the Applicant be recognized as the sole bargaining agent to represent the workers in the bargaining unit comprising of manual employees and staff employees excluding top management at the Cargo Handling Corporation Limited.

ERT/ RN 30/13

In the matter of:- Mr David Delore (Disputant)

And

Central Electricity Board (Respondent)

In presence of:

Mr Mahadev Bheeca (Co-Respondent)

The terms of reference read as follows:

“Whether following the selection exercise carried out on 15 July 2011, the Central Electricity Board should have appointed me as Senior Audit Officer (Technical) as from 13 March 2012 in lieu and instead of Mr Bheeca on the basis of my qualifications, experience, merit and seniority.”

The Tribunal was very critical of the absence of assessment forms following the interview exercise carried out for the post of Senior Audit Officer (Technical). The Tribunal expressed its astonishment to such a practice and found this clearly unacceptable. The Tribunal observed that the Staff Committee conducting the interview was under a duty to keep a record of the assessment of the various candidates who were interviewed. Beyond any contractual obligations of the Respondent, this duty forms part of the basic procedural safeguards which ensure the attainment of fairness in the whole decision-making process. Opacity leads to suspicion and breeds all kinds of allegations. Using and keeping record of the assessment notes/sheets would have shed light on the whole selection exercise.

In this case, the Tribunal was left with the evidence of the General Manager that the answers given by Disputant to the technical question raised were not to the expected level against that of Disputant that he answered well to questions put to him. The Tribunal could not read into the mind of the members of the panel and could not find that shortcomings, if any, on the part of Disputant especially on a technical question were not material. In any event, the Tribunal held that it could not award that Disputant was to be appointed in lieu and instead of Co-Respondent when there were other candidates in the race and where there was no indication whatsoever of the ranking of Disputant following the whole exercise. The Tribunal however added that the Respondent has to see to it that henceforth assessment of candidates for selection is properly carried out and recorded. For the reasons given in its award the dispute was set aside.

ERT/RN 93/13

In the matter of:- Mr Purussram Greedharee (Disputant)

And

Mauritius Ports Authority (Respondent)

In presence of

Cargo Handling Corporation Limited (Co-Respondent)

The terms of reference were as follows: “I, Purussram Greedharee contends whether the Mauritius Ports Authority should have calculated my retirement pensions and benefits on the hypothetical salary of a Workshop Supervisor – restyled into that of Superintendent equivalent to the grade of Plant Supervisor at the Cargo Handling Corporation or otherwise.”

The Tribunal highlighted the various issues raised and confirmed that it may, in an appropriate case and where a grade no longer exists, have recourse to a hypothetical salary based on the nearest equivalent grade. However, the nearest equivalent grade is something which has to be determined and the Tribunal stated that it could not make assumptions that the grade of Workshop Supervisor at Respondent was the nearest equivalent grade to Plant Supervisor at the Co-Respondent. The Tribunal also referred to Section 8 of the Statutory Bodies Pension Funds Act (both as it was at the time Disputant retired and as subsequently amended). The Tribunal then observed that irrespective of whether Disputant was transferred on loan to the Co-Respondent or that Respondent was not ‘officially’ informed of the promotion granted to Disputant, the pension benefit to which Disputant is eligible had to be computed by reference to the annual pensionable emoluments drawn by him at the date of his retirement. There was however no evidence of such emoluments on record.

For the reasons given in its award, the Tribunal could not award that the Respondent should have calculated the retirement pensions and benefits of Disputant on the hypothetical salary of a Workshop Supervisor. The Tribunal however was confident that the said award had shed light on the various issues raised and would guide parties accordingly.

Statistics

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

During the year 2014:

- The number of disputes lodged before the Tribunal was 155 out of which 74 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 278.
- There were 13 Awards and 11 Orders delivered and the Tribunal had to deliver 7 Rulings.
- The Tribunal has disposed of an exceptionally high number of cases amounting to 326 during the period January to December 2014. This includes the disposal of 201 connected cases involving customs officers and the Mauritius Revenue Authority.

As at 31st December 2014, there were 50 cases/disputes pending before the Tribunal.

Events



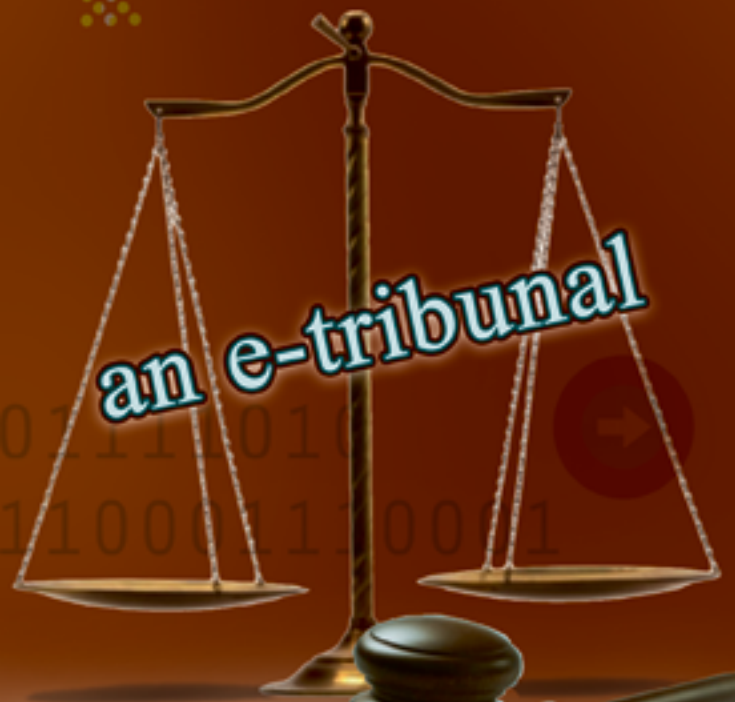


What is an
e-tribunal?



101110001

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

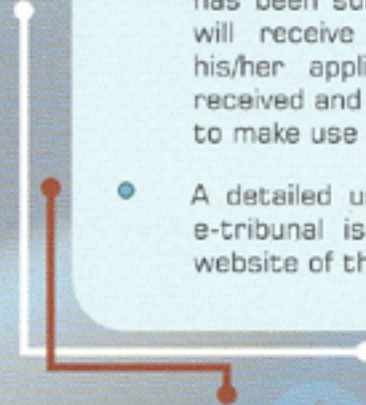
Judge: Who is your employer?

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.
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