Republic of Mauritius

Annual Report

Employment Relations Tribunal

Year 2018

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Note from the President

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143 cases disposed of and 24 Awards issued, amongst other decisions, show that the year 2018 has been a busy one. Industrial disputes emanating from both private and public sectors have not stopped increasing and they covered a wide range of economic and administrative fields. Balloting exercises in relation to union recognition have also followed suit.

I am very heartened to note that in terms of arbitration case management, we have managed to deal with a fair number of complex disputes during the course of the year. In cases where documents and authorities were received in a timely manner and no postponement sought, disputants had their cases dealt with expeditiously. This is indeed a tremendous achievement and represents real progress compared to what existed prior to the setting up of this electronic tribunal where waits of years were not uncommon.

Wrapping up, industrial relations stability across the economy remains the major concern of the Tribunal. Furthermore, despite having to face a complex and lengthy bureaucratic procedure in obtaining and retaining competent and talented staff, it daringly met the challenge of attaining its objective: the settlement of industrial disputes.

My heartfelt gratitude goes to the two Vice-Presidents, the Acting Registrar and all supporting staff for their continued and unflinching support and dedication to the Tribunal.

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 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 1995 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 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, 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 State 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 Tribunal (Italy) (1996). He attended UNDP's Seminars on the Australian Legal System (Australia)(2000). He attended a Conference organised by the Commission for Conciliation Mediation and Arbitration (CCMA) in collaboration with the International Labour Organisations (ILO) on regional Cooperation regarding Labour Dispute Resolution and Prevention (South Africa) (2005).He participated at the International Council for Commercial Arbitration Congress on "Arbitration & other forms of Dispute Resolution" (Brasil) (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 Bassel Swiss Arbitration Conference (Switzerland) (2013). Attended the International Conference on "Modernising Labour Law in 21st Century" (South Africa) (2014). Attended the Annual Labour Law: "The Changing Face of Labour Law: Tensions and Challenges" (South Africa) (2014). Attended the IBA Employment and Discrimination Law Conference (Italy) (2015). Attended the 17th ILERA World Congress on "The Changing World of work: "Implications for Labour and Employment Relations and Social Protection)". (Cape Town, South Africa) (2015). Attended the CIETT World Employment Conference (New Delhi, India) (2016). Part time Lecturer in Labour & Industrial Relations Law at the University of Mauritius (2017).

Attended the International Labour and Employment Relations Association, **(ILERA)** – Africa Regional Congress: "Challenges facing the future of work – African Perspectives and Experiences" **Mauritius 2018**

Participated at the International Labour and Employment Relations Association **(ILERA)** World Congress on the theme "Employment for a Sustainable Society: What Is To Be Done? **(South Korea) (2018)**

VICE-PRESIDENTS

Indiren SIVARAMEN, LLB (Hons), MBA (Finance)(University of Leicester), FCIArb, Barrister was called to the Bar in 1996. He practised at the Bar from 1996 to 1999. He was also acting as Legal Consultant for International Financial Services Ltd from 1998 to 1999. He joined the Civil Service in 1999 as Temporary District Magistrate and was appointed District Magistrate in 2000. In 2003, Mr Sivaramen was appointed Senior District Magistrate. He was also a part-time lecturer at the University of Mauritius from 2005 to 2007. He was the Returning Officer forConstituency No. 20 for the National Assembly Elections in 2005. After a brief span as Legal Counsel for Barclays Bank PLC, Mauritius Branch and Barclays Bank (Seychelles) Ltd in 2006, he occupied the post of Vice-Chairperson at the Assessment Review Committee from 2006 to 2010. In February 2010, he was appointed as Vice-President of the Employment Relations Tribunal.

Shameer JANHANGEER, LLB (Hons) (London), MBA (Business Finance), Barrister (Lincoln's Inn) FCIArb was called to the Bar in the U.K. in 1999. He also holds a LLM in Law and Economics from Queen Mary University of London. After shortly practicing at the Bar, he joined the service as State Counsel at the Attorney-General'sOfficein2002. In 2004, he joined the Judiciary as Acting District Magistrate and was later appointed as same. He was Deputy Returning Officer for Constituency No. 6 at the National Assembly Elections in 2005. He chaired a Board of Assessment in 2007 and upon returning to the Attorney-General's Office he was appointed Senior State Counsel in 2007. In 2009, he was appointed Temporary Principal State Counsel at the Attorney-General's Office/Office of the Director Of Public Prosecutions. In June 2011, Mr. S. Janhangeer joined and was appointed as Vice-President of the Employment Relations Tribunal. He is also a member of the Commonwealth Magistrates' Association and (CMJA) Judges' since 2013 and the International Council for Commercial Arbitration (ICCA) since 2015.

Members of the Tribunal

Representative of Workers

1. Mr Raffick Hossenbaccus
2. Ms Marie Désirée Lily Lactive
3. Mr Abdool Kader Lotun
4. Mr Vijay Kumar Mohit
5. Mr Francis Supparayen

Representatives of Employers

1. Mr Abdool Feroze Acharauz
2. Mr Rabin Gungoo
3. Mrs Jeanique Paul-Gopal
4. Mr Bharuth Kumar Ramdany
5. Mrs Karen K. Veerapen

Independent Members

1. Mr Parmeshwar Burosee
2. Mr Yves Christian Fanchette
3. Mr Ghianeswar Gokhool
4. Miss Teenah Jutton
5. Mr Arassen Kallee
6. Mr Kevin C. Lukeeram

Staff List

Staff List

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Professional Level				
1	Hon. HOSSEN Rashid	President	rhossen@govmu.org	Thro' CS 211 6368
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3	Mr JANHANGEER Shameer	Vice-President	sjanhangeer@govmu.org	Thro' CS 210 0998
4	Mrs HORIL Luxmi	Acting Registrar	registrar-ert@govmu.org	2128286
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10	Mrs DOSIEAH Deeneshwaree	Confidential Secretary (Mr Sivaramen)	ddosieah@govmu.org	208 0091
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13	Mrs CHANDUL BOWOL Ashwani	Management Support Officer	ert@govmu.org	212 4636
14	Ms GARRIB Ambaree Pehnaz	Management Support Officer	ert@govmu.org	212 4636

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16	**Miss NEERUNJUN Binta Devi**	**Giving assistance at Management Support Officer level**	**ert@govmu.org**	**2080091**
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18	**Mrs RAMPHUL Nivedita**	**Office Auxiliary/ Senior Office Auxiliary**	ert@govmu.org	**208 0091**
19	**Mr MOHUN Purmessursingh**	**Office Auxiliary/ Senior Office Auxiliary**	ert@govmu.org	**208 0091**
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22	**Miss MAHOOMED Bibi Muzainah Farheen**	**Trainee Youth Employment Programme**	ert@govmu.org	**2080091**

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 2018 are available at: https://ert.govmu.org

ERT/RN 48/17 – Mr Sewsunkur Ramguttee AND Mauritius Institute of Training and Development, in presence of: The Union of Staff of the Mauritius Institute of Training and Development (Award)

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

> *Whether I, working as Teacher at the Mauritius Institute of Training and Development should be upgraded to the grade of Training Officer*.

The Disputant was working as a Teacher at the Mauritius Institute of Training and Development and wished to be upgraded to Training Officer. He contended that the duties he was performing were those of Training Officer.

Having considered the evidence on record including the schemes of service pertaining to the posts of Training Officer and Teacher, the Tribunal was not satisfied that the Disputant was undertaking all the duties pertaining to the post of Training Officer and even found that there are overlapping and similarities in the duties of the two respective grades. The Tribunal did not thus find that the Disputant should be upgraded to the grade of Training Officer. The dispute was therefore set aside.

ERT/RN 123/17 – Mr Vishwanath Soopal AND The State of Mauritius as represented by the Ministry of Health and Quality of Life (Award)

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

1. *Whether I should refund the amount of Rs 218,290.11 as mileage allowance for periods August 2008 to October 2010 and July 2014 to July 2015 to the Ministry of Health and Quality of Life.*

2. *Whether the Ministry of Health and Quality of Life should have refused to grant me mileage allowance for period November 2010 to June 2014 despite having been duly authorized to claim for same.*

Both parties reached an amicable settlement to the dispute. It was agreed that Mr V. Soopal will no longer insist on the claim for mileage allowance for the period November 2010 to June 2014 as per the second point in dispute of the Terms of Reference. On the other hand, it was agreed that the Respondent, without acknowledging or admitting any liability, will not proceed with the claim for refund of the amount of Rs 218,290.11 as mileage allowance from the Disputant as per the first point in dispute of the Terms of Reference. The Disputant further agreed to waive his right to any future claims regarding the mileage allowance not paid prior to the present agreement between the parties. The Tribunal awarded in terms of the settlement reached.

ERT/RN 131/17 - Mr Madhosing Thecka (Disputant) And Mauritius Revenue Authority (Respondent)

The case was referred to the Tribunal for arbitration under section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The terms of reference of the dispute read as follows: "Whether the MRA should waive the sanction taken against me, namely stoppage of annual increment for a period of one year as from 1st January 2018 to 31 December 2018." The Tribunal examined all the evidence on record and the terms of reference of the dispute.

The Tribunal dealt with the jurisdiction of the Tribunal to enquire into a labour dispute as opposed to the extensive powers of supervision and control of Courts of law over disciplinary measures imposed by employers. The Tribunal observed that it was not going to venture to find that the disciplinary committee, based on the evidence which was before it, came to the right or wrong decision. The Tribunal went on to say that such an approach might be *ultra petita* the terms of reference which refer exclusively to waiving of the sanction taken against Disputant.

The Tribunal held that there was insufficient evidence on record to justify its intervention as per the terms of reference. However, at the same time, the Tribunal observed that the Respondent could have ensured that the inquiry in that case and notification of the charge to the Disputant be carried out in a more commendable manner. For all the reasons given in its award, the case was set aside.

ERT/RN 122/17 – Landscope (Mauritius) Ltd Employees Union (Appellant) And Registrar of Associations (Respondent) i.p.o Landscope Mauritius Ltd Staff and Workers Union (Co-Respondent)

This was an appeal against a decision of the Registrar of Associations to register a change of name of a Trade Union by virtue of Section 12 (8) of the Employment Relations Act 2008, as amended. The Respondent and Co-Respondent are resisting the application.

The Tribunal referred lengthily to relevant case law on this issue. The Tribunal then held that it did not find sufficient evidence of the two names being "phonetically similar". The names Landscope (Mauritius) Ltd Employees Union and Landscope Mauritius Ltd Staff and Workers Union were found to have different acronymic forms. The appeal was thus dismissed.

ERT/RN 153/17 - Mr Abdool Reshad Lalloo (Disputant) And Mauritius Ports Authority (Respondent)

The present matter was referred to the Tribunal for arbitration under Section 69(7) of the Act. The terms of reference of the dispute read as follows: "Whether the Mauritius Ports Authority could unilaterally discontinue the allowance of 10% of basic salary payable to the workers of the Operational & Marine Department and the Workshop Department for loss of overtime, which allowance had been paid to me previously on a personal basis."

Respondent raised a preliminary objection which reads as follows: "The point in dispute does not tantamount to a labour dispute as defined in Section 2 of the Employment Relations Act since it arose as far back as in December 2010." The Tribunal heard arguments from counsel for both parties on the preliminary point raised. The Tribunal has examined lengthily relevant case law on the matter. For all the reasons given, the Tribunal found that the said dispute was not a labour dispute since the dispute had been reported more than three years after the act or omission that gave rise to the dispute. Thus, the dispute was not within the jurisdiction of the Tribunal and the case was set aside.

ERT/RN/ 126/17 to 130/17 - Mr Veejaye Callychurn & others (Disputants) And National Transport Corporation (Respondent)

The present disputes were referred to the Tribunal for arbitration under Section 69(7) of the Act. The common point in dispute in all the cases is as follows:- "Whether my salary as Changehand be reviewed and aligned as to the salary scale of Workshop Supervisor taking into consideration all the duties and responsibilities attached to the post of Changehand at the National Transport Corporation or otherwise". The Tribunal observed that the President of the Commission for Conciliation and Mediation must have meant "Chargehand" instead of "Changehand". Given the common dispute referred with a common employer, the cases were consolidated.

After examining the evidence, the Tribunal noted that there was always a difference between the Chargehand's salary and that of a Workshop Supervisor and that the Chargehand has always been earning some Rs 2,000 to Rs 3,000 less than a Workshop Supervisor. The Tribunal held that the basis upon which the Disputants were trying to ground their case was erroneous. The Tribunal was not satisfied that the Disputants were doing similar type of work to that of the Workshop Supervisor. The five consolidated disputes were accordingly set aside.

ERT/RN13/17 - Mr Iswarduth Guness (Disputant) And Central Water Authority (Respondent) i.p.o: 1. Ministry of Energy and Public Utilities 2. Ministry of Civil Service and Administrative Reforms (Co-Respondents)

The present matter was referred to the Tribunal for arbitration under Section 69(7) of the Act. The "amended" terms of reference of the dispute read as follows: "Whether the date of implementation of the post of Office Management Assistant, as per Recommendation EOAC 3 (15A) of Errors, Omissions and Anomalies Committee Report 2013 should be 01.07.2013."

The Tribunal observed that recommendation EOAC 3 (15A) (above) does not refer to "the date of implementation of the post of Office Management Assistant" but applies only and restrictively to specific grades of "qualified" employees. The dispute which the Disputant tried to canvass before the Tribunal did not tally with the terms of reference. The Tribunal referred to the often quoted case of **S. Baccus & Ors vs. The Permanent Arbitration 1986 MR 272** in relation to the jurisdiction of the then Permanent Arbitration Tribunal.

The Tribunal will not proceed to determine the "date of implementation of the post of Office Management Assistant" when Disputant all along referred to the date the option under Recommendation EOAC 3 (15A) of the EOAC Report 2013 had to be given.

The Tribunal merely highlighted that the option under Recommendation EOAC 3 (15A) of the EOAC Report 2013 had to be given to the qualified officers on 1 July 2013. In the case of Disputant, this was not done. The date on which the scheme of service for the post of Office Management Assistant had been approved at the Respondent was 27 August 2015. Evidence was adduced to try to explain the delay in the prescription of the relevant scheme of service. The Tribunal observed that, at the same time, the Disputant, no doubt, could legitimately rely on the recommendations of the EOAC Report 2013. The Tribunal drew the attention of all parties to the recommendations of the PRB Report 2013 in relation to the need to reduce the time taken for the prescription of schemes of service. The Tribunal was thus confident that with effective communication and consultation among all relevant parties including trade unions, just solutions which were acceptable to all parties could still be found in a spirit to maintain and reinforce good employment relations. The dispute was otherwise set aside.

ERT/RN 142/17 – Mrs Sonia Chowreemootoo AND Mauritius Mental Health Association (Award)

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

Whether the job title of Sonia Chowreemootoo be renamed as Daycare Supervisor.

The Disputant has been working at the Mauritius Mental Health Association (the "MMHA") since 1996 having joined as a Leather Craft Teacher. In 2014, she was promoted to Supervisor in the Daycare Centre and her duties changed accordingly. However, her title of Supervisor was changed to that of Carer in 2016, although her work remained the same as Supervisor. The Disputant was therefore asking for her job title to be renamed as Daycare Supervisor.

The Tribunal, having duly considered the evidence on record, found that the Disputant was called upon to become the Supervisor of the Daycare Centre in 2014 and that the title was removed from her in 2016. The Disputant has worked and is still

working as Daycare Supervisor at the MMHA as per her evidence as well as that of her witnesses. The Tribunal therefore found that the job title of the Disputant should be renamed as Daycare Supervisor in accordance with the Terms of Reference of the dispute and awarded accordingly.

ERT/RN 124/17 – Mr Chitanand Luchman (Disputant) And Mauritius Post Ltd (Respondent)

The present matter was referred to the Tribunal for arbitration under Section 69(7) of the Act. The point in dispute read as follows: "Whether the Mauritius Post Ltd should grant me my annual increment that was due to me as from January 2017."

Following a survey carried out on 20th December 2016, a shortage was found in the cash holding of Disputant and which the latter made good soon after. His explanation was sought and a Disciplinary Committee was instituted although not proceeded with. He made a request on 2nd January 2017 to retire as Senior Postal Executive and same was approved on 11th March 2017. He was granted his retiring benefits. Since he was deemed to be in service till 11th March 2017, he claims that he should have been paid his annual increment due to him as from January 2017.

The Tribunal was not in presence of any evidence purporting to establish that the performance of Disputant was deemed to be unsatisfactory. There was no hearing that concluded that Disputant was guilty of any act of gross misconduct. Management did not go ahead with the Disciplinary Committee initially set up. Disputant was never informed that his increment was to be withheld.

The Tribunal concluded that the provisions of the Terms and Conditions Manual at the Respondent had not been complied with. The letter referring to his salary while on interdiction made no reference to withholding of the increment. Disputant could not by extrapolation be expected to infer that his increment would be withheld. The Tribunal observed that the failure to inform the Disputant in writing showed that the withholding of the increment was tainted with procedural impropriety. The Tribunal thus awarded in accordance with the Terms of Reference.

ERT/RN 156/17 – Clency Bibi and 83 others (Disputants) And The Central Electricity Board (Respondent)

This was a joint application for a declaration under section 75 (1) of the Act, as amended. On 15th April 2008 the then Permanent Arbitration Tribunal delivered its award in Cause Number RN 816 in the matter of Clency Bibi & 13 others and the Central Electricity Board ('CEB') and the date of implementation was retrospective as from 1 July 2001 with regard to the first three disputes which were before the then Permanent Arbitration Tribunal ('PAT').

On the one hand, the plaintiffs were of the view that their respective basic salaries should, for the purpose of implementing the aforesaid 2008 award, be calculated, worked out and determined in accordance with the point to point conversion method which has been agreed upon between CEB Staff Association ('CEBSA') and the CEB pursuant to a JNC Agreement dated 8 August 1991.

On the other hand, the CEB disagreed with same and had, sometime in or about February 2009, implemented the aforesaid award of the PAT, under the aforesaid first three disputes, with retrospective effect as from 1 July 2001, by applying the Salary Commission's Master Salary Conversion Table on "hypothetical basis" with effect from 1 July 1999 as contained in the Memorandum of Understanding between CEB and CEB Staff Association signed on 26 December 2000.

For the proper and continuing satisfactory implementation of the Award, the Tribunal, after considering the intervention of both parties, declared that the interpretation to be given to it is the following:- The conversion of the July 2001 salary to the corresponding salary in one higher scale, as awarded by the then PAT, shall be made at the nearest higher point plus one increment. The Tribunal however noted with concern the inordinate delay in the said application.

ERT/RN 132/17 – Mr Kevin Jugroo AND Orange Business Services Mauritius Ltd (Award)

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

> *Whether Orange Business Services – Mauritius should classify me in the job band 'Middle Management – Lead Professional (MLP)' instead of*

'Professional (PRO)' following my promotion since July 1, 2015 from Level 2 Messaging & MS Exchange specialist to Team Leader and pay me 15% bonus incentive instead of 10% annually.

Mr Kevin Jugroo joined Orange Business Services ("OBS") Mauritius in 2009 as Level 2 Messaging & MS Exchange Specialist entitled to a 15% bonus of his annual basic salary in the Middle Management – Lead Professional ("MLP") job band. Mr Jugroo applied and was selected for the post of SCS Service Desk Team Leader. However, the bonus attached to his new post was at 10% and he was now classified in the Professional ("PRO") job band. He therefore wished to be reclassified in the MLP job band in his new position at OBS Mauritius Ltd and draw an annual bonus of 15%.

The Tribunal, in considering the evidence on record, did not find that Mr Jugroo's move to his new position was a promotion but that it was an internal mobility within OBS. The Tribunal went on to find that there is no basis for Mr Jugroo to be classified in the MLP job band instead of PRO in the post of Team Leader at OBS Mauritius.

With regard to the second aspect of the dispute, the Tribunal, having notably considered the nature of the bonus incentive, that Mr Jugroo has been compensated for the 5% loss in his bonus on assuming his new role of Team Leader in the 24% increase of salary he received in his new position and whether the bonus is an acquired right, did not find that OBS Mauritius should pay him a 15% bonus incentive instead of 10% annually.

The Tribunal could not therefore award that OBS Mauritius should classify Mr Jugroo in the MLP job band instead of PRO following his move to the post of Team Leader and pay him 15% bonus incentive instead of 10% annually. The dispute was accordingly set aside.

ERT/RN 11/18 - Mr Sydney Wong Tong Chung (Appellant) And Commission for Conciliation and Mediation (Respondent)

The Appellant has by way of a letter dated 22 January 2018 appealed against the rejection of a dispute by the Commission for Conciliation and Mediation (the "CCM"). The Appellant did not file grounds of appeal as such but filed a Statement of Case. The

Respondent filed a Statement of Reply and maintained the decision to reject the points in dispute as per section 65(1)(f) of the Act. The Tribunal proceeded to hear the appeal.

The disputes before the CCM were as follows: 1. "Whether my pension under the Rogers Money Purchase Retirement Fund should be readjusted to take into account my date of entry which is June 1976 instead of 1996." 2. "Whether I am entitled to a retirement gratuity as per provision of the law." The appeal was only in relation to dispute under limb 1 and it is conceded that the dispute under limb 2 in relation to gratuity fell within the exclusive jurisdiction of the Industrial Court.

The Tribunal made a few observations namely that an appeal under section 66 of the Act must be directed against the President of the CCM and not the CCM. Also, the Tribunal found that a Statement of Case will be more appropriate for the arbitration of a labour dispute and not for an appeal. The Tribunal had difficulty in ascertaining the grounds on which the Appellant was in fact challenging the decision in the present matter. Thirdly, the Tribunal was of the view that an appeal under section 66 of the Act must also be directed against the employer as Co-Respondent or at least be made in the presence of the employer.

Despite these issues, the Tribunal observed that The Private Pension Schemes Act 2012 (which appeared to be the relevant piece of legislation in that case) provided at section 54(2) the following: "Notwithstanding any other enactment, any civil or criminal proceedings instituted under this Act shall, in the Island of Mauritius, be entered before the District Court of Port Louis." The term "date of entry" had been used in a very vague manner in the terms of reference and the Tribunal would not linger over whether it related to the date Appellant joined his last employer, the Fund or simply to "continuous employment" which is specifically provided for under the Employment Rights Act (section 9).

For the reasons given in its order, the Tribunal found that the said appeal could not be entertained by the Tribunal and the decision of the President of the CCM was confirmed. The appeal was thus set aside.

ERT/RN 146/17 – Miss Marie Florence François (Disputant) And Rodrigues Regional Assembly (Respondent) In the presence of:- Ministry of Civil Service & Administrative Reforms (Co-Respondent)

The dispute was referred to the Tribunal for arbitration in terms of Section 69(7) of the Act, as amended. The point in dispute read as follows: "Whether in accordance with recommendation EOAC 316 paragraph 39.38 of the EOAC report PRB 2013, my grade as Higher Executive Officer should have merged with the grade of Office Management Executive and be restyled Office Management Executive as has been the case for my counterpart in Mauritius".

After considering both the testimonial and documentary evidence including the scheme of service of the various posts concerned, the Tribunal concluded that if it was to accede to the demand of the Disputant with regard to the merging of the Office Management Executive grade with that of the Higher Executive Officer, then the latter would be placed at a higher level than that of Senior Executive Officer who is at an intermediate level between Higher Executive Officer and Office Management Executive. The Tribunal held that this would be creating an anomalous situation.

The Tribunal also observed that it had been ushered that the different procedural appointments exercised between Mauritius and Rodrigues lead to discrimination. The tribunal referred to relevant case law and held that in the present matter, any difference in the merging of posts in lite cannot be considered to be discriminatory.

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

ERT/RN 143/17 – Mr Mahadeo Roopsing AND The State of Mauritius as represented by the Ministry of Civil Service and Administrative Reforms (Ruling)

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

> *Whether I should be granted Incremental Credit as per paragraph 18.9.19 of the Pay Research Bureau (PRB) Report 2013 for the Bachelor in science degree in Management awarded to me in December 2015 or be paid the relevant non-pensionable lump sum for same as per para. 18.9.16 (v) of the PRB Report 2016.*

The Respondent raised a threefold preliminary objection in law to the dispute to the effect that the dispute does not constitute a labour dispute as defined under *section 2*, *paragraph (b)*, of the *Employment Relations Act* (the "*Act*"); the Disputant's prayer in his Statement of Case would require a fundamental change from the relevant recommendations of the *Pay Research Bureau* ("*PRB*") *Report 2016*; and the Disputant is seeking to challenge an administrative decision.

The Tribunal, having considered the arguments of both parties, notably found that the Disputant would be barred from bringing a dispute for the payment of a lump sum for his BSc in Management qualification as per *paragraph 18.9.16 (v)* of the *PRB Report 2016* in view of the exclusion to the meaning of a labour dispute made at *paragraph (b)* under *section 2* of the *Act*.

The Tribunal therefore found that the first limb of the preliminary objection in Law raised by the Respondent should succeed. As the Tribunal found that the said dispute did not constitute a labour dispute as defined under the *Act*, it did not find it necessary to consider the other two aspects of the preliminary objection. The dispute was therefore set aside.

ERT/RN 174 /17– Mr Nazim Boolaty (Disputant) And UBS Transport Ltd (Respondent)

The labour dispute was referred to the Tribunal for arbitration in terms of Section 69(7) of the Act. The point in dispute read as follows: "Whether the UBS Transport Ltd should reinstate my hours of work from 06.00 am to 17.00 hours instead of from 05.30 am to 13.30 hours or from 13.30 hours to 21.30 hours."

The Disputant complained of the change brought in his hours of work. He was working on a schedule of 6.00 am to 5.00 pm on a 5 day week basis and this was changed as from 10th August 2016. He claimed that the change brought was the result of his active participation in trade union activities.

Both parties informed the Tribunal that an agreement had been reached and moved for an award in terms of the agreement. The Tribunal awarded accordingly.

ERT/RN 121/17 - Mr Satianund Nunkoo (Disputant) And Beach Authority (Respondent)

The dispute was referred to the Tribunal for arbitration in terms of Section 69(7) of the Act, as amended. The point in dispute read as follows: "Whether the Beach Authority should have suspended me from work without pay for a period of two days with effect from Tuesday 7 March 2017."

After referring to relevant case law on the matter, the Tribunal was of the opinion that the law specifically provides for a hearing in a case where a suspension is considered. Section 38 of the Employment Rights Act provides at its sub-section (9) the following: "Any suspension without pay as disciplinary action following a hearing shall not exceed 4 working days." The Tribunal observed that the legislator has not used the term "oral hearing" so that the 'hearing' mentioned in Section 38(9) of the Employment Rights Act can take the form of an oral hearing or of an "opportunity to answer a charge" which is in writing (**vide College Labourdonnais (Alliance Francaise) v Seenyen 1992 MR 213**). The employer will, depending on the particular facts of a case, decide whether there is a need for the "opportunity to answer the charge" to be oral or in writing. The Tribunal stated that what really mattered was that the worker must have a "fair" hearing bearing in mind all the circumstances of the case.

In that case, the Tribunal found that there was no "hearing" in relation to the "tenor and tone" of the letter in lite emanating from Disputant. A sanction was imposed on Disputant on the basis of that letter without Disputant having had the opportunity to answer any charge levelled against him in relation to that letter. The Tribunal stated that this tainted the procedure which Respondent had adopted to suspend Disputant from work. Also, the Tribunal was not satisfied that Disputant had been informed by the Respondent of the circumstances which could lead to a suspension and of any right of appeal which Disputant had following his suspension. For the reasons given in its award, the Tribunal found that though the tenor and tone of the letter of Disputant were unacceptable, the arrangements which were made to deal with the disciplinary matter were unsatisfactory.

However, the Tribunal added that an award as per the particular terms of reference in this case would not, as opposed to say, an order quashing or setting aside a sanction taken, be binding on the parties. For all the reasons given in its award and to maintain good employment relations, the Tribunal found that this was a fit and proper case where an acceptable solution to both parties could still be worked out. The Tribunal laid stress on the fact that good employment relations may only be achieved when there is no stubbornness and excessive rigidity. Whilst reckoning the very important duty of management to maintain discipline throughout its organization in order to achieve the

goals of the organization, the Tribunal was confident that a more palatable solution and which would yet address the shortcomings on either side was still possible. The Tribunal thus suggested strongly to both parties to put away all bad feelings and to strive to find a solution which would be in the best interests of one and all so that this unfortunate incident was instead used as a building block for more constructive and positive collaboration in the future. The dispute was otherwise set aside.

ERT/RN 161 /17 - Mr Muammar Shameem Ackburally (Disputant) And The Statutory Bodies Mutual Aid Association Ltd (Respondent)

The labour dispute was referred to the Tribunal for arbitration in terms of Section 69(7) of the Act. The point in dispute read as follows: "Whether the Statutory Bodies Mutual Aid Association Limited should waive the letter of warning issued to me on 11 August 2017."

When the matter was called for hearing, the parties informed the Tribunal of the following agreement reached:- "Both Parties regret any inconvenience which may have been caused with respect to the Annual General Meeting of the Respondent held on 31 January 2015. The representative of the Respondent undertook to give written instructions to the Disputant in connection with the organization of any Annual General Meetings of the Respondent and the Disputant undertook from then on to act only on written instructions in connection with the organization of any Annual General Meeting of the Respondent. The Respondent agreed to withdraw the letter dated 11 August 2017 issued to the Disputant. Each party had no further claim whatsoever against the other. Both parties moved that an award be made by the Tribunal in terms of the above." The Tribunal awarded in terms of the settlement.

ERT/RN 104/17 – Mr Roopesh Ramburn AND Irrigation Authority (Award)

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

> *Whether I, Roopesh Ramburn, should be posted back to Souvenir Sub-Office of the Irrigation Authority or otherwise*.

Mr Ramburn is employed at the Irrigation Authority since October 1998 and is presently an Irrigation Operation Officer ("IOO"). There are five posts of IOO at the Respondent, holders of which are posted to a different site/region or sub-office. In 2014, he was posted at the Headquarters of the Irrigation Authority in Port Louis. However, in March 2014, the Disputant was transferred to Plaine des Papayes Sub-Office. Following a complaint made to the Ministry of Labour, it was agreed that the Disputant would be posted at Souvenir Sub-Office as from January 2017. As another IOO, Mr Sawmy, was granted two-years leave without pay, the Disputant was transferred to Stage 1 Sub-Office (at Plaine des Papayes) as from March 2017 as replacement for the former. The Disputant, not being satisfied with his transfer to Plaine des Papayes since March 2017, prayed from the Tribunal that he be posted back to Souvenir Sub-Office.

Having considered the evidence on record and, in particular, the grounds upon which the Disputant was seeking to be transferred back to Souvenir Sub-Office, the Tribunal did not find any need to intervene into the matter. The Tribunal could not therefore award that Mr Ramburn should be posted back to Souvenir Sub-Office. The dispute was therefore set aside.

ERT/RN 24/18 - Syndicat Des Travailleurs des Etablissements Privés (Applicant) And Eastern Stone Crusher Ltd (Respondent)

This was an application for the making of an award enforcing a collective agreement between the Applicant and Respondent by virtue of Section 56(3) of the Employment Relations Act, as amended.

The case of the Applicant was that the Respondent had failed to comply with Articles 3 and 4 of the Collective Agreement. On 17th April 2018, both parties informed the Tribunal that an agreement had been reached between the parties and which they ratified before the Tribunal. Both parties thus moved for an award in terms of the agreement and the Tribunal awarded accordingly.

ERT/RN 18/18 - Mr Soobeeraj Porowtee (Disputant) And National Transport Corporation (Respondent)

The matter had been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Act. The terms of reference of the points in dispute read as follows:

1. "Whether the National Transport Corporation (NTC) should pay me the mileage allowance in lieu of travel grant for period June, August, September and October 2016 and January to June 2017."

2. "Whether the National Transport Corporation should pay me responsibility allowance for shouldering additional responsibilities namely, for being responsible for NTC payroll."

The Tribunal stated that the Disputant had the burden of proof in cases like the present one. It held that the Disputant had failed lamentably to prove any of the figures allegedly claimed by him as mileage allowance for the relevant months. There was no supporting document at all for the figures Disputant had put in his Statement of Case. As per the terms of reference, the latter was even claiming mileage allowance for June 2016 whereas he then stated that he had in fact been fully paid for June 2016. The Tribunal found that the Disputant had failed to show that Respondent should have paid him mileage allowance as claimed in the Statement of Case or as he tried to 'update' unilaterally in evidence before us for the period June, August, September and October 2016 and January to June 2017. There was also no sufficient evidence before us to suggest that Disputant performed official travelling during that period which had been duly authorized, as required, by Respondent.

The Tribunal was not satisfied at all that Disputant was shouldering such additional responsibilities which would warrant payment of a responsibility allowance as claimed by Disputant in his Statement of Case (and more particularly at its paragraph 20) and before us. For the reasons given in its award, the Tribunal has set aside the disputes under both limbs.

ERT/RN 166/17 - Mr Avikash Sharma Beejan AND Irrigation Authority (Award)

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

Whether I should be reverted back to my previous posting at Plaine des Papayes substation following my transfer to Port Louis to look after projects found at St Felix, Bel Ombre, Plaisance, Belle Mare and Trou D'eau Douce or otherwise.

The Disputant works as an Irrigation Operation Officer at the Irrigation Authority having joined the organisation on 10 May 2005. He was posted at Plaine des Papayes for 12 years being entrusted with the responsibilities of two irrigation projects, namely Block 2 and Block 3. Following complaints received from a group of planters in Block 2 and Block 3, the Disputant was requested to submit his explanations to the Respondent. The Disputant did not submit same but instead, through his Attorney-at-Law, requested the Respondent to submit the names of the complaining planters. The Disputant was thereafter informed by the Respondent's Ag. Head of Administration that it has been decided to transfer him to Small Scale Irrigation Projects with immediate effect. The Disputant is since posted at the Head Quarters in Port Louis looking after irrigation projects in Belle Mare, Trou D'Eau,,Douce, Plaisance, St Felix and Bel,Ombre. The Disputant is therefore seeking to be reverted to his previous posting at Plaine des Papayes substation.

Having considered the grounds which the Disputant was relying upon in seeking to be reverted to Plaine des Papayes substation and, in particular, the statutory powers conferred upon the General Manager of the Irrigation Authority, the Tribunal could not find that the Disputant should be reverted back to his previous posting following his transfer to Port Louis to look after projects found at St Felix, Bel Ombre, Plaisance, Belle Mare and Trou D'Eau Douce. The dispute was therefore set aside.

ERT/ RN 79/17 to ERT/RN 88/17 - Mr Jean-Didier Fabrice Barbe & others (Disputants) And Air Mauritius Ltd (Respondent)

The above cases had been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Act. All the cases were consolidated following a motion made by Counsel for Disputants and to which there was no objection on the part of Respondent. The terms of reference were identical in all the cases and read as follows:

"1. Whether Air Mauritius Ltd was entitled unilaterally cancel all offers for the position of Crew Service Leader after having offered employment as Crew Service Leader to the employee; and

2. Whether the employee should be compensated with back-pay, including monthly allowances and other benefits as stipulated in Air Mauritius Ltd's offer of employment for the post of Crew Service Leader."

The Tribunal examined all the evidence adduced before it including a letter of offer of employment issued to the Disputants as Crew Service Leader on a probation basis for a period of six months. To the said letter was appended a list of duties which consisted of no less than twenty (20) "main duties" which the Crew Service Leader would amongst others be mainly responsible for. Also, specific basic salaries were inserted in the letters of offer. A cut-off date, which was Friday 3 April 2015 was expressly provided for in the letter for the addressees to return a signed copy of the "agreement" to indicate that they have accepted the terms of the offer of employment. It was admitted at paragraph 3 of the Statement of Case of Respondent that the disputants' acceptance of the conditional offer of employment was before the deadline of 3 April 2015. The real issue was the mail which was issued to all applicants on 26 March 2015 informing them that the post had been put on hold.

In this particular case, all the Disputants had agreed to the terms of the letters of offer addressed to them and had returned signed copies before the deadline imparted to them. By unilaterally putting on hold all offers for the post of Crew Service Leader and eventually not proceeding with the said post, the Respondent no doubt altered and revoked the offers made to the disputants. The putting on hold of the offers was done when the disputants were still within the delay imparted to them to accept the offer. The Tribunal held that in the absence of any "force majeure", the Respondent was not entitled, in that particular case, to unilaterally put on hold and eventually cancel the offers for the position of Crew Service Leader.

However, after analysing carefully the manner in which the terms of reference had been drafted under limb 1, the Tribunal found that several essential elements were missing including the timing of the cancellation or putting on hold and cancellation of the offers; and any acceptance of the said offers. In the absence of such elements the dispute was merely to the effect whether the Respondent as offeror (making unilaterally offers for the position of Crew Service Leader) was entitled to eventually cancel the offers made. The Tribunal stated that generally an offeror may cancel the offer he made unilaterally. Thus, on that basis alone the Tribunal awarded that the Respondent was entitled to unilaterally cancel all offers for the position of Crew Service Leader after having offered

employment as Crew Service Leader to the employees, and the dispute under limb 1 was set aside.

However, in the light of the observations made by the Tribunal in that case, the Tribunal urged all parties to put their heads together to find a solution which would be acceptable to one and all. All avenues were to be explored including any form of correction "so that future relations between all concerned be as smooth as possible." (Case of **Mrs D.C.Y.P and The Sun Casino Ltd, RN 202/1988**). The above situation had no doubt caused unnecessary tension, loss of energy, resources and trust and the sooner an effective and acceptable solution was worked out, the better it would be, not only for the Disputants but also for the Respondent. The Tribunal also bore in mind the own submission of Counsel for Respondent that "it may well be that damages might be an adequate remedy for the Disputant but that is not the forum for that kind of claims here … That claim should be made somewhere else." For all the reasons given in its award and bearing in mind the manner in which the terms of reference had been drafted where compensation in the form of back-pay including monthly allowances and other benefits were being sought, the dispute under limb 2 was also set aside.

ERT/RN51/18 – Tusk Contracting Limited AND Syndicat des Travailleurs des Etablissements Privés (Order)

The Applicant was seeking an order for the revocation of the recognition of the Respondent trade union pursuant to *section 39 (1) (b)* of the *Employment Relations Act 2008* (the "*Act*") and notably averred that the Respondent Union has ceased to hold 30% support of the workers in the bargaining unit.

The Tribunal found that the ground of change in representativeness, which was being forwarded by the Applicant, would only apply where the application for revocation of recognition of a trade union is being made by a trade union or a group of trade unions pursuant to *section 39 (1) (a)* of the *Act*. The Applicant, being the employer, not having invoked any default or failure to comply with any provisions of a procedure agreement could not therefore succeed in its application. The application was therefore set aside.

ERT/RN 93 /17– Syndicat des Travailleurs Des Etablissements Privés (Disputant) And Grewals Mauritius Ltd (Respondent)

This was a referral of disputes for voluntary arbitration under Section 63 of the Employment Relations Act 2008, as amended.

In its power to exercise its jurisdiction in such manner so as to enable the parties to the proceedings to avail themselves of the possibilities for further conciliation and mediation, the Tribunal invited the parties to further talks. Indeed, after intensive and laborious negotiations over a relatively long lapse of time under the constant supervision of the Tribunal, the parties finally and happily reached an agreement. Both parties ratified their agreement and moved for an award accordingly. The Tribunal awarded as per the terms of the agreement.

ERT/RN 67/18 – Air Mauritius Managers Association (AMMA) AND Air Mauritius Ltd (Ruling)

The Air Mauritius Managers Association (AMMA) applied to the Tribunal seeking an order to be recognised as a bargaining agent by the employer, Air Mauritius Ltd, pursuant to *section 38* of the *Employment Relations Act* (the "*Act*").

The Respondent raised a *plea in limine* to the application to the effect that the Applicant should have followed the procedure set out at *section 36* of the *Act* for recognition; and in the alternative, the Applicant should have first applied to the Respondent for recognition in a duly signed application letter and awaited the outcome of the application before applying to the Tribunal.

The Tribunal, having notably considered the requirements of *section 36* of the *Act* as well as the application letter addressed to the employer, found that the application made before it is consistent with the initial application made to the employer for recognition as a bargaining agent by the AMMA. The Tribunal could not therefore concur with the Respondent's argument that the application is a new one which has not followed the requirements of *section 36* of the *Act*. The Tribunal also noted that Counsel for the Respondent did not press with the second limb of the plea *in limine* set in the alternative. The plea *in limine* raised by the Respondent was therefore set aside.

ERT/ RN 155/17 - Mr Devendre Gopaul (Disputant) And The State of Mauritius as represented by The Ministry of Civil Service and Administrative Reforms (Respondent)

The case had been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Act. Both parties were assisted by counsel and the Tribunal proceeded to hear the matter following a ruling delivered by the same panel in relation to preliminary objections in law which were taken on behalf of Respondent. The terms of reference of the point in dispute read as follows: "Whether I should be granted an Incremental Credit for additional qualifications (Master of Laws) as per provisions set out in PRB Report 2013 instead of a lump sum as Higher Qualification Incentive [HQI] which has been provided for in the PRB Report 2016."

The Tribunal examined all the evidence on record including the submissions of both counsel. It was not disputed that Disputant signed the option form so that for all intents and purposes he accepted "the revised emoluments and terms and conditions of service as set out in the Report" (as per the option form following the 2016 PRB Report). Counsel for Disputant conceded that he would have no case in the absence of paragraph 18.9.18A of the Addendum Report to the main 2016 PRB Report. The said paragraph 18.9.18A reads as follows: "We additionally recommend that the Standing Committee should devise such regulations or principles as may be necessary to deal with the award of HQI as well as the smooth transition from the grant of Incremental Credit for Additional Qualifications to HQI." The Tribunal observed that the responsibility to devise regulations or principles as may be necessary to deal with the award of HQI as well as the smooth transition from the grant of Incremental Credit to HQI was given to the Standing Committee. The Standing Committee did come up with such regulations or principles which were publicized in the Circular No 1 of 2017 dated 3 February 2017.

The decision conveyed to Disputant was prior to that but along the same principle, that is, that the date of application is the cut-off date for determining eligibility for the award of Incremental Credit/HQI.

There was evidence that the onus was on a public officer to make a timely application for the grant of any increment. The Tribunal found nothing wrong with this evidence. The averment of Disputant that he assumed when he signed his option form that his application would still be governed by the 2013 PRB Report since he obtained his qualification prior to 1 January 2016 did not impress the Tribunal. The whole mechanism for additional qualification was being changed with the 2016 PRB Report and Disputant who should, at least, have been aware of same nevertheless preferred to sign the option form by assuming that his application which was then still pending, would be governed by conditions which existed under the 2013 PRB Report. The Tribunal observed that

even under the 2013 PRB Report, the date of award of a qualification was not necessarily the determining factor for the payment of the increment. The Standing Committee took the decision that the date of application would be the cut-off date for determining eligibility for the award of Incremental Credit/HQI and the Tribunal found nothing to suggest that it could not do so.

There was no explanation whatsoever from Disputant as to why he did not make his application at or about the time he obtained his qualification. Disputant allowed his right to 'lapse' in the circumstances by making his application only after 1 January 2016 and then opting to accept the revised emoluments and terms and conditions of service in the 2016 PRB Report. The Standing Committee came to its decision in relation to HQI and the Tribunal was not going to review that decision of the said Standing Committee. The Disputant had himself to blame for making his application only in January 2016 and then knowingly sign the option form under the 2016 PRB Report when the said report introduced a major change to the mechanism in relation to additional qualification. The Tribunal thus found that the Disputant could not have been granted Incremental Credit for additional qualification as per provisions set out in the 2013 PRB Report and the dispute was set aside.

ERT/RN 67/18 – Air Mauritius Managers Association (AMMA) AND Air Mauritius Ltd (Order)

The Air Mauritius Managers Association (AMMA) applied to the Tribunal seeking an order to be recognised as a bargaining agent by the employer, Air Mauritius Ltd, pursuant to *section 38* of the *Employment Relations Act* (the "*Act*"). The Association notably averred that it met the criteria for recognition as a bargaining agent under *section 37 (1)* of the *Act*.

Following the holding of a secret ballot exercise among the employees of the bargaining unit which showed that the AMMA had a support of 53.94%, the Respondent waived its objection to the application.

The Tribunal therefore ordered that the AMMA be recognised as a bargaining agent by Air Mauritius Ltd in respect of the bargaining unit of Managers at Air Mauritius Ltd covering the categories applied for. The Tribunal also ordered that the AMMA and Air Mauritius Ltd are to meet at specified intervals or at such time and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.

ERT/RN 79 /18 – Organisation of Hotel, Private Club And Catering Workers Unity (Applicant) And Belle Mare Beach Development Co Ltd/Hotel The Residence Mauritius(Respondent)

The Applicant sought for an order for recognition as a bargaining agent for a bargaining unit consisting of workers in the maintenance, restaurant, housekeeping, spa, kitchen, front office, boutique, finance and kids club departments with the exclusion of employees holding managerial posts at the Respondent.

The Tribunal conducted a balloting exercise at the premises of the Respondent. Fifty-two workers voted "Yes" and eight voted "No" to the question whether they were in favour of the recognition of Organisation of Hotel, Private Club and Catering Workers Unity. This represented a support of only 16% in favour of recognition which was well below the requirement of 30%. The application was thus set aside.

ERT/RN 93/18 - Private Sector Employees Union (Applicant) And La Moisson Ltée (Respondent)

This was an application made by the Applicant union under section 38 of the Act for an order directing the Respondent to recognise the Applicant as the sole bargaining agent in a bargaining unit "consisting of the categories of manual employees under employment at La Moisson Ltée". The Applicant was represented by the Secretary of the union whereas the Respondent was assisted by Counsel. The application was resisted by the Respondent basically on the ground that the Applicant union did not have sufficient representativeness.

A secret ballot exercise was organised and supervised by the Tribunal at the seat of the Respondent on Friday 7 September 2018. There was a total number of 89 employees in the relevant bargaining unit as agreed by both parties and 52 of the said employees participated in the ballot exercise. Fifty-one (51) employees were in favour of the recognition of Applicant as their sole bargaining agent at the Respondent whilst one (1) employee voted against. The Applicant thus secured the support of 57.3 per cent of the workers in the bargaining unit, that is, a support of more than 50 per cent of the workers in the said bargaining unit. The Tribunal thus ordered that the Respondent was to recognise the Applicant as the sole bargaining agent in the bargaining unit consisting of manual employees employed by Respondent. The Respondent and the Applicant were to meet at such time and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.

ERT/RN 85 /18 – Organisation of Hotel, Private Club And Catering Workers Unity (Applicant) And Solana Beach Hotel /Solana Beach Co. Ltd (Respondent)

The Applicant sought for an order for recognition as a bargaining agent for a bargaining unit consisting of workers in the maintenance, gardening, restaurant, housekeeping, spa, public area, kitchen, front office, office, gymnase (sic) and entertainment departments with the exclusion of employees holding managerial posts at the Respondent.

A balloting exercise was held on 19th September 2018 at the premises of the Respondent. The following results were proclaimed: 14 voted "yes", 0 voted "no" and there was "one" void ballot paper to the question whether workers were in favour of the recognition of Organisation of Hotel, Private Club and Catering Workers Unity. This represented only 10.3% in favour of recognition which was well below the requirement of 30%. The application was accordingly set aside.

ERT/RN 37/17 – Ms Mansa Daby AND Open University of Mauritius (Ruling)

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

> *Whether I should be have been confirmed in my position of Assistant Lecturer/Lecturer held at the Open University of Mauritius, with effect from 01 August 2015.*

The Respondent raised a preliminary objection in law to the effect that the granting of an award in terms of the Terms of Reference of the labour dispute before the Tribunal will be inconsistent with *sections 5* and *10* of the *Open University of Mauritius Act* and thus, be contrary to *section 72 (5)* of the *Employment Relations Act* (the "*Act*").

The Tribunal, having notably considered the arguments of Counsel and the requirements of *section 72 (5)* of the *Act* as well as *sections 5* and *10* of the *Open University of Mauritius Act*, found that the remedy of confirming the Disputant in her position falls squarely within her terms and conditions of employment and if her confirmation is so awarded, the Tribunal would fall foul of the provisions of *section 72 (5)* of the *Act* in being inconsistent with *sections 5 (p)* and *10 (2)(a)(ii)* of the *Open University*

of Mauritius Act in relation to the terms or conditions of the Disputant's employment. The preliminary objection raised was therefore upheld. The dispute was thus set aside.

ERT/RN 89/18 - Private Sector Employees Union (Applicant) And Froid des Mascareignes Ltd (Respondent)

This was an application for an order "for Recognition of a Trade Union under Section 37(4)(b) of the Employment Relations Act 2008". The Applicant made, by way of a letter dated 19 July 2018, an application to the Respondent for recognition as sole bargaining agent as per section 36 of the Employment Relations Act 2008 ("the Act") in relation to a bargaining unit consisting of the categories of manual workers and operative staff up to supervisory level. The Applicant lodged the present application on 26 July 2018. The Respondent was assisted by counsel whilst Applicant was represented by its Negotiator.

Respondent filed a Statement of Case which basically raised issues of law. The main concern of the Respondent was that the Applicant union had not waited for the expiry of the maximum period of 60 days under section 36(3) of the Act before making an application to the Tribunal. The matter was fixed for Arguments and the Tribunal heard submissions of Counsel and statements made by the Negotiator representing Applicant.

For all the reasons given in its Ruling, the Tribunal found that the Applicant should have waited for the reply from the employer or at most for the expiry of the delay granted to the employer under section 36(3) of the Act before entering the said application. The application was thus not in order and was set aside.

ERT/RN 67/17 Hotel and Restaurants Employees Union (Disputant) And Maritim Mauritius Ltd (Respondent)

The Hotels and Restaurants Employees Union and the Maritim Mauritius Ltd jointly referred the labour dispute to the Tribunal for arbitration by virtue of Section 63 of the Employment Relations Act 2008, as amended. The point in dispute was as follows- "Whether the salaries of the employees at Maritim Mauritius Hotel should be increased and in the circumstances what should be the quantum thereof and the effective date of its application".

The Tribunal examined lengthily the evidence adduced by both parties and dealt with various issues including, amongst others the erosion of purchasing power, relevant Additional Remuneration Acts and the capacity to pay of the Respondent. The Tribunal considered the number of years that the employees did not benefit from any wage increase save and except from what had been provided by statutory provisions. In the light of all the evidence, the Tribunal thus considered that an increase of 10% on basic salary would be fair and reasonable. The Tribunal observed that such an increase should not place the operational sustainability at risk. The Tribunal further allowed the Respondent some breathing space to review its forecast for such increase and ordered that the salary increase is to take effect as from 1st January 2019.

In order to avoid any confusion regarding interpretation, the Tribunal awarded that the 10% increase to all employees concerned will be based on the current basic salary and any Government increase will be added to it i.e. basic salary + 10% of this present Award + any Government increase. The Tribunal added that Management should look at the wage hike as an effort to improve labour relations and performance. The Tribunal also observed the lack of clarity regarding the existence of a collective agreement between the Union and Management. While the Respondent stated there is one that has been reinforced through tacitereconduction, the Union strongly denied same. The Tribunal stated that it is ideal that collective labour relations are governed peacefully by collective bargaining agreements. Prolonged confrontation could result in tremendous economic losses for the workers and management themselves as well as considerable impact on people's lives. Both parties in that case should for their own mutual benefit consider the signing of a collective agreement. The Tribunal awarded accordingly.

ERT/RN 42/17 – Mr Alain Gaetan Sylvio Arthur AND Rights Management Society (Ruling)

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

> *Whether the Board of the Rights Management Society could recommend the post of Senior Officer/Lead Licensing to the PRB.*

The Respondent raised a plea *in limine litis* to the hearing of the dispute to the effect that the Tribunalhas no jurisdiction to hear and determine this matter as the alleged dispute cannot be treated as a "labour dispute" as defined in the *Employment Relations Act* (the "*Act*") in as much as the disputant has opted to be governed by the *Pay Research Bureau* ("*PRB*") *Report* in relation to his remuneration or allowances of any kind; and secondly, the award sought is in the nature of an administrative directive to Respondent and is outside the ambit and jurisdiction of the Tribunal.

In relation to the first limb of the plea *in limine litis*, the Tribunal found that the Terms of Reference, as worded, was not asking the Tribunal to enquire into a matter of remuneration or allowances but to ascertain whether the Board of the Respondent could recommend the post of Senior Officer/Lead Licensing to the *PRB*. The exclusion provided under *paragraph (b)* of the definition of a labour dispute did not thus find its application in the present matter. The first limb of the plea *in limine litis* could not therefore succeed.

The Tribunal proceeded to consider the second limb of the plea *in limine litis* and notably whether the dispute was a labour dispute as defined under the *Act*. The Tribunal found that same could not succeed. The plea *in limine litis* raised by the Respondent was therefore set aside.

ERT/RN 73/18 – Miss Hansa Soomaroo AND National Transport Corporation, in presence of: (1) Ministry of Public Infrastructure and Land Transport; and (2) Ministry of Civil Service and Administrative Reforms (Ruling)

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

> *1. Whether I should have been granted one increment for my higher relevant qualification acquired prior to my recruitment at the National Transport Corporation, which is higher than that prescribed in the scheme of service for the post of Senior Human Resource Officer.*
>
> *2. Whether I should be paid a Responsibility Allowance for having performed additional higher duties and responsibilities of the Industrial Relations Officer.*

The Respondent raised a plea *in limine litis* to the hearing of the dispute to the effect that the dispute is barred in as much as it has been reported more than 3 years after the act or omission which gave rise to the dispute; and the Tribunal has no jurisdiction to deal with the present matter because it does not constitute a labour dispute as defined by *section 2* of the *Employment Relations Act* (the "*Act*"), in particular *paragraph (b)* of the said definition, since the Disputant has exercised an option to be governed by the recommendation of the *Pay Research Bureau* ("*PRB*") *Reports 2008* and *2013*.

In relation to the first limb of plea *in limine litis*, the Tribunal found that the omission to pay the Disputant an increment for her higher relevant qualification was what had given rise to the dispute and this occurred as from 2 April 2008, being the date from when the increment would be due to her as she was already holder of the higher qualification when assuming duty at the Respondent corporation. The present dispute having been reported to the CCM on 10 April 2017 in accordance with *section 64 (1)* of the *Act*, it is clear that the dispute under the first paragraph of the Terms of Reference was reported more than three years after the omission that gave rise to it.

The Tribunal also found that the act of the Disputant being assigned higher duties of the Industrial Relations Officer gave rise to the dispute under the second paragraph of the Terms of Reference and this arose as from 17 December 2009. The dispute having been reported on 10 April 2017 to the CCM, the Tribunal could only find that this was done more than three years after the act which gave rise to the dispute under the second paragraph of the Terms of Reference.

As regards the second limb of the plea *in limine litis*, the Tribunal found that increment amply falls within the ambit of the term '*remuneration*'. It was not disputed that the Disputant opted for the *PRB Reports* in 2008 and 2013 as evidenced by the two Option Forms produced. A dispute concerning the grant of an increment would not therefore be deemed to be a labour dispute pursuant to *paragraph (b)* of the meaning of a labour dispute under *section 2* of the *Act*.

In relation to the second aspect of the Terms of Reference, the Tribunal found that as the Disputant had opted to be governed by the *PRB Reports* of *2008* and *2013*, she cannot now declare a dispute in relation to the payment of a responsibility allowance as

such a dispute is expressly excluded under *paragraph (b)* of the definition of a labour dispute under *section 2* of the *Act*.

The Tribunal therefore found that both aspects of the plea *in limine litis* raised by the Respondent to the Terms of Reference of the dispute should succeed. The dispute was therefore set aside.

ERT/RN 88/18 - Union of Post Office Workers (Applicant) And Mauritius Post Limited (Respondent)

This was an application for an Order for access to information under Section 41(4) of the Employment Relations Act 2008, as amended. In its application, the Applicant stated that it was engaged in a collective bargaining exercise over salaries and terms and conditions of employment of workers in the bargaining unit of the Respondent.

The Federation of Civil Service and other Unions, appointed as Negotiator of the Union, requested the Employer by way of letter to provide information regarding the salaries of officers serving in the different grades from Operation Manager to the grade of Corporate Affairs and Administrative Manager. The Union was informed in writing by the Employer that the information requested for could not be provided as these were privileged under the Data Protection Law.

The Tribunal quoted from the judgment of **Nassé v Science Research Council [1979] UKHL 9**, where the principles in relation to discovery of documents were laid down. The Tribunal held that there would be no prejudice caused to the enterprise or to a worker if the information provided to the union is to work out a fair salary ratio. The Tribunal found that this interest overrode the information to be considered personal relating to the privacy of a worker and thus consent was not an issue. The information did not fall within the purview of Section 41(3) of the Employment Relations Act 2008, as amended. The Tribunal thus ordered that the information be provided.

ERT/RN 65/18 – Mr Mahendranath Bonomaully (Disputant) And Municipal Council of Curepipe (Respondent) i.p.o Ministry of Local Government and Outer Islands (Co-Respondent)

This case had been referred to the Tribunal by the CCM under Section 69(7) of the Act. All parties were assisted by counsel and the Tribunal proceeded to hear the matter. The terms of reference of the points in dispute read as follows: "Whether the Municipal Council of Curepipe should have paid me: (i) return trip by taxi from Curepipe to Rivieredu Poste as I finished work at 10.00 p.m when no public transport is available. (April 2015 to January 2017); (ii) responsibility allowance for performing duties of Gangman from April 2015 to January 2017; (iii) Overtime for work performed from April 2015 to January 2017 on a 30-hour basis instead of a 40-hour basis."

The Tribunal has examined all the evidence adduced before it and for the reasons given in its award found that there is nothing on record which would suggest that Disputant ought to be paid "return trip by taxi from Curepipe to Riviere du Poste" for the period in lite. There was no single evidence on record in terms of receipts or otherwise to substantiate the taxi fares allegedly incurred by Disputant. Even the terms of reference did not refer at all that the claim was because Disputant had incurred taxi fares. The point in dispute under limb (i) of the terms of reference was thus set aside.

The Tribunal found that responsibility allowance is not to be granted merely because a worker is shouldering a few additional responsibilities. Responsibility allowance may only be given as per the recommendations of the PRB Report. Paragraph 18.10.3 of the PRB Report 2016 (Vol 1), thus provides as follows: 18.10.3 A Responsibility Allowance is paid to an officer, who for administrative convenience, has been assigned duties of a higher office by the appropriate Service Commission or by the Responsible Officer/Supervising Officer, as delegated. The Tribunal thus could not intervene in that case since it was not satisfied at all on the basis of the evidence before it that Disputant had been formally and properly assigned duties of Gangman by the appropriate Service Commission or by the Responsible Officer/ Supervising Officer, as delegated for the 4 p.m to 10 p.m shift or any other shift. Also, to be eligible for a responsibility allowance, evidence must be adduced to the effect that an officer has been assigned duties of a higher office. There was no evidence on record that Gangman, Supervisor or Field Supervisor constitutes a higher office when compared to the post of Driver, HMU. For the reasons given in its award, the dispute under limb (ii) was also set aside.

As regards dispute under limb (iii), in the absence of a clear intention to extend the 30-hour regime to Driver, HMU, the Tribunal was not prepared to find that the Driver, HMU which falls under the Administration Department at the Respondent should also be

entitled to overtime for all additional hours of work put in above 30 hours. Disputant by working in the refuse collection section was only working as per the operational requirements in that section. Disputant was (normally) completing 36 hours of attendance per week during the relevant period, that is, less than the relevant normal 40 hours of attendance. The Disputant failed to show that as Driver, HMU he should be entitled, as per the relevant PRB Reports and his terms and conditions of employment, to overtime for work performed during the relevant period on a "30-hour basis". The dispute under limb (iii) was thus also set aside.

ERT/EPPD/RN 01/18 – Ms Simla Douraka & Ors. And Medical and Surgical Centre Ltd (Wellkin Hospital) (Award)

The dispute was referred to the Employment Promotion and Protection Division of the Tribunal by the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training (the "Ministry") on the following Terms of Reference:

> *Whether the reduction of the workforce affecting the disputants is justified or not in the circumstances or otherwise.*

The five Complainants were employed by the Respondent since it took over the operations of the former Apollo Bramwell Hospital in January 2017. The Respondent, in September 2017, effected a reduction of its workforce and informed the Ministry of same by way of a Notice dated 26 September 2017 citing economic and structural reasons for the reduction of fifteen positions, which included that of the Complainants, at Wellkin Hospital. The Complainants were each informed of their redundancy by letter on the same date with their termination to take effect as from 31 October 2017.

The Tribunal proceeded to analyse the economic and structural reasons evoked by the employer to justify the reduction of workforce effected. The Tribunal notably found that the Respondent is very much solvent and capable of meeting its long-term financial commitments and that it is a going concern according to its Auditors. The Tribunal could not therefore reasonably find that the Respondent was facing substantial economic difficulties.

In considering the structural reasons put forward, the Tribunal could not be satisfied that the positions of Business Development Executive and Procurement Executive were fully impacted by the restructuration exercise. However, as regards the positions of Project Coordinator and Deputy Chief Medical Officer, the Tribunal found that their posts no longer exist within the new structure.

The Tribunal also considered the issue of whether the employer had properly engaged in consultations as is required by law. After having considered the evidence in relation to this issue, the Tribunal was not satisfied that proper consultations, as required under *section 39B (3)* of the *Employment RightsAct* (the "*Act*"), were held with the recognised trade union in the present matter prior to the five Complainants being made redundant.

The Tribunal thus came to the conclusion that the reduction of workforce affecting the five Complainants was unjustified in the circumstances. The Tribunal therefore ordered that the Complainants each be paid severance allowance in accordance with *section 46 (5)* of the *Act*.

ERT/RN 129/18 - Artisans and General Workers Union (Applicant) And Sugar Investment Trust (Respondent)

This was an application for an Order for access to information under Section 41(4) of the Act. The Artisans and General Workers Union requested by way of a letter for certain information in relation to the percentage increase granted in terms of salary to the Chief Executive Officer in the revision of his basic salary effected in February 2017 and also to five employees effected in June 2018.

The Representative of the Union stated that the information was required for the purpose of negotiation. However, he confirmed that there had been no engagement in collective bargaining so far. The Tribunal held that since the engagement in collective bargaining had not started, Section 41 above could not be invoked. The application was thus set aside.

ERT/RN 149/18 - Maritime Transport And Ports Employees Union (Applicant) And Mauritius Shipping Corporation Ltd (Respondent)

This was an application made by the Applicant union under section 53(5) of the Employment Relations Act (the "Act") for an order directing the Respondent to start negotiations with the Applicant with a view to reaching a collective agreement. Both parties were assisted by Counsel and the Tribunal proceeded to hear the parties.

Ex facie a copy of an option form circulated to employees, there was a report on the Review of Pay and Organisation Structures and Conditions of Service conducted by a consultant. It was suggested by Respondent that "each and every employee of "MSCL Staff" had unconditionally signed the option form and agreed to be governed by the terms and conditions of the above report."

Respondent has not suggested that it was agreed with the Applicant that the salary report, if accepted by the Board of Directors would become binding or would be made a collective agreement between the parties. There was also no evidence that the Applicant had agreed to the employees signing or encouraged the employees to sign the option forms. The Tribunal however was not satisfied that the requests for negotiations had been in accordance with section 53(3) of the Act and more especially in relation to the requirement to specify the bargaining unit concerned. The Tribunal thus could not grant an order directing the Respondent to start negotiations.

The Tribunal however made certain observations in relation to "collective bargaining" as a key means for good and harmonious employment relations. The Tribunal referred to the Code of Practice and International Conventions like the **Collective Bargaining Convention, 1981 (No. 154).** The Tribunal also referred to legislation in U.K which seeks to prevent "an employer going over the heads of the union with direct offers to workers, in order to achieve the result that one or more terms will not be determined by collective agreement with the union if offers are accepted" (**vide Kostal UK Ltd v Dunkley and others [2018] IRLR 428**). There was unchallenged evidence on record that previously management was negotiating with the union even following the drawing of a report which was then used as the proposal of the Respondent. No explanation had been given as to why this procedure had changed this time. The Tribunal also stressed on the alleged willingness of the Respondent to start negotiations with a view to signing a new collective agreement with the union, whilst the Respondent at the same time, appeared to be saying that what had already been done, be it rightly or wrongly, had to be accepted now. The Tribunal observed that this was bound to lead to friction and hinder good employment relations. The Tribunal trusted that the parties would bear in mind

the above and that parties would allow collective bargaining. For the reasons given in its order, the application was otherwise set aside.

ERT/RN 12/16 - Mr Moonsamy Goundan (Disputant) And Central Electricity Board (Respondent) I.P.O: Mr Nunkoomar Ramlowat (Co-Respondent)

This dispute had been referred to the Tribunal by the CCM under Section 69(7) of the Act. The Co-Respondent was joined in as a party. The terms of reference of the point in dispute read as follows: "Whether the Central Electricity Board ought to align the salary of the applicant with that of Mr N. Ramlowat as from April 2011 being given that latter was drawing a lower salary than the applicant from a lower salary scale before he was promoted to the salary scale of the applicant."

The Tribunal observed that promotion to a higher grade is different from upgrading of a post. The Tribunal considered the terms of reference of the salary consultant in that case. The Tribunal did not accept the suggestion made on behalf of Disputant that the latter had a "legitimate expectation to pursue matter with the Board to resolve issues concerning upgrading of posts". The Tribunal stated that discussions were suggested on these specific issues between unions and management and not between individual workers and management.

The Tribunal failed to understand the rationale of the case of the Disputant before the Tribunal. The latter seemed to be saying that the consultant had no power to make the recommendation at paragraph 5.95A in the 'Report on Errors, Omissions, Clarifications and Other Issues' but at the same time was praying that the Respondent should align the salary of the Disputant with that of Co-Respondent as from April 2011. The said paragraph 5.95A read as follows: 5.95A: We also recommend that the Principal Technical Officer and the Health & Safety Officer who are classified under salary scale CEB (S) 7 be exceptionally allowed on reaching the top of the salary scale, to proceed incrementally in the master salary scale up to salary point Rs 52000 subject to satisfactory performance, conduct and availability.

Whilst the Tribunal had no issue in relation to the conduct or performance of Disputant at work for the relevant period, the Tribunal could not, on the basis of the evidence before it, jump to conclusions to find that there had been some form of injustice towards Disputant. The Tribunal was left in the dark as to various factors such as the then external relativities considered (if any), any changes to job specifications "as needed in a modern electric utility", reassignment of tasks if any and so on. Also, paragraph 5.95A

emanated from the Report on Errors, Omissions, Clarifications and Other Issues, 2010 which had been prepared **following** the Appanna Report on Pay Structures and Conditions of Employment 2009. The words used were clear and simple and the intention of the maker thereof was that the Principal Technical Officer and the Health & Safety Officer who were classified under salary scale CEB (S) 7 be **exceptionally** allowed on reaching the top of the salary scale, to proceed incrementally in the master salary scale up to salary point Rs52000 subject to certain conditions. The only reasonable conclusion was that the maker thereof knew that there were incumbents of other posts in the same salary scale CEB (S) 7 who would thus not benefit from the said exceptional recommendation.

For all the reasons given in its award, the Tribunal found that the Disputant had failed to show on a balance of probabilities that the Respondent ought to align his salary with that of Co-Respondent as from April 2011. The dispute was thus set aside.

EVENTS


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RECEPTION


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Statistics

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

During the year 2018:

- The number of disputes lodged before the Tribunal was 163 out of which 79 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 95

- There were 24 Awards, 1 Judgment and 10 Orders issued and the Tribunal had to deliver 12 Rulings.

- The Tribunal has disposed of 143 cases during the period January to December 2018. As at 31st December 2018, there were 83 cases/disputes pending before the Tribunal.