1. L'action disciplinaire - Le positionnement de la FPU

Il est entendu qu'un Employé (de surcroit s'il est membre d'un syndicat affilié à la FPU) doit être assuré d'une assistance statutaire quand il se présente devant un comité disciplinaire selon les dispositions de la loi, de son contrat de travail et surtout celles de l'accord de procédure (important) entre son syndicat et son employeur.

Les procédures disciplinaires doivent être établies conjointement par accord entre l'Employeur et le syndicat.

Il faut d'abord et avant tout vérifier les dispositions par lesquelles l'action disciplinaire est appliquée. Elle doit respecter **QUATRE** grands principes:

1) **CELUI** de la bonne foi qui est non seulement l'application de l'honnêteté dans les intentions et les pratiques, mais surtout qui permet à l'employé d'échapper à la rigueur de la loi;

2) **CELUI** de la justice naturelle qui incorpore l'impartialité, l'équité (qui implique les grands principes de l'Equité du système judiciaire et juridique anglais), le droit d'être entendu et de se défendre contre les éléments de preuve… la présentation des considérations atténuantes…. La prise en considération des éléments essentiels comme le préavis et l'enquête préliminaire….

3) **CELUI** de la présomption d'innocence (Qui est de respecter le droit que tout accusé doit être considéré innocent jusqu'à que sa culpabilité soit démontrée. C'est à l'accusateur de démontrer la culpabilité de l'employé et non à l'employé de prouver son innocence) et

4) **CELUI** du doute **OU** de la faute initiale de son Employeur. Qui doit jouer en faveur de l'accusé, par son acquittement.

Dans tous les cas de fraude, d'agression avec préméditation ou des cas de harcèlement…., l'employé doit être défendu par son avocat, pour que ce dernier lui assure sa défense et sa protection sur le plan pénal.

Au cas où un Employeur agirait d'une façon abusive ou non respectueuse des libertés et des droits de l'employé, de suivre les pratiques suivantes:

1. L'**Anticipation** - Rencontrer le responsable de l'entreprise pour lui communiquer les appréhensions et le manque de bonne foi des personnes appliquant la discipline ou ayant appliqué des sanctions. Surtout dans les cas possibles de licenciement. Cette action doit être menée **AVANT** toute décision de licenciement.

2. La **Conciliation - APRES** toute décision de licenciement, analyser objectivement les charges et les sanctions appliquées. Si l'analyse démontre qu'une conciliation serait souhaitable pour l'intégration de l'employé, notifier le Ministère du Travail sous la section 68(1) de l'**Employment Relations Act**. On a le droit de faire appel si l'analyse démontre que les sanctions ont été prises de bonne foi. Au cas contraire c'est au Ministère du Travail d'intervenir.

3. La **Protestation** - Si la sanction est considérée **INACCEPTABLE**, engager la FPU dans des actions de dénonciation publiques, de manifestations; voire même de grève de solidarité.

La nouvelle loi, la **Workers' Rights Act**, assure la protection des employés contre les licenciements abusifs et propose sous certaines conditions leurs intégrations. Voire en annexe les dispositions de la nouvelle loi. C'est surtout par rapport à cette partie de la loi que la FPU s'est démarquée de certains syndicats en soutenant cette loi (**PAS** le gouvernement) par la pratique du **soutien critique**. C'est une pratique de la gauche révolutionnaire pour ne pas soutenir objectivement **Business Mauritius** qui est contre cette loi **OU** la **Dynastie des Jugnauth**. Sans aussi déclarer que tout est bon avec la **Workers Rights Act**. La FPU n'est **NI** une agence syndicale **NI** un syndicat gauchiste, **NI** un organe d'un parti politique.

2 - Actions contre l'Evêché

L'Evêque a été notifié en deux fois :

1. Le 25 janvier 2019 (pour les cas de Christine Meunier et de Dolores Armoogum). Une rencontre entre l'Evêque et une délégation de la FPU (Jack Bizlall et Brinda Juttun) a eu lieu le 28 janvier 2019. Je lui ai communiqué le compte rendu le 30 janvier 2019.

2. Je lui ai demandé une deuxième rencontre en date du 18 juillet 2019. Il n'a pas répondu.

Ce comportement de ma part respecte la pratique de l'**Anticipation** et de la **Conciliation** de la FPU. J'ai ainsi rencontré M Guy Noël le 6 août 2019 concernant un employé de la MCB. J'ai aussi rencontré le CEO de MK le 2 août 2019 concernant 2 employésdéférés devant des comités disciplinaires.

L'action proposée aux syndicats concernés ne peut épargner l'Evêché en tant qu'Employeur. J'agis de bonne foi dans cette affaire et je me suis appuyé sur la loi et la justice pour le faire.

L'Eglise Catholique Romaine doit montrer l'exemple en appliquant ce qu'elle représente et pas ce que les religieux décident. Elle a dans le passé failli à ses obligations et a eu à exprimer la repentance en plusieurs occasions. Je fais une différence entre Dieu, la Foi, la Croyance, l'Eglise, en tant qu'institution informelle, l'Eglise en tant qu'institution formelle, les Religieux et la Spiritualité.

Dans ces trois cas précis, ce sont deux religieux, deux laïcs engagés, deux fonctionnaires, trois administrateurs et trois conseillers légaux qui ont été impliqués dans ces décisions réactionnaires.

Au stade où nous en sommes je ne peux que souhaiter que le bon sens pousse l'Evêqueà accepter la conciliation, la médiation ou l'arbitrage. **SINON** ce sera un conflit qui va durer des années.

J'ai observé que l'Eglise prend du temps pour reconnaitre ses fautes. Entre autres : L'Inquisition (pour combattre l'hérésie), L'antijudaïsme (accusation de déicide), l'antiscience (Galilée), le CODE NOIR (pour eliminer le protestantisme et le judaïsme) ; l'esclavagisme (Ce fut terrifiant) ; le collaborationnisme (Chili, Espagne, Allemagne, Italie…). La liste est longue…. J'ai pris la décision de ne pas mentionner les plus **ACCABLANTES**.

Quand je lis le rapport de la Commission Vérité et Justice, je me demande quand l'Eglise Catholique Romaine va tirer les leçons qui s'imposent et rectifier ses décisions illégales et antichrétiennes.

Pourquoi je m'adresse au Pape François

Il est un Jésuite. Cette congrégation (19,000 membres) fondée par Ignace de Loyola a été ostracisée au sein de l'Eglise Catholique Romaine. Pourtant elle est la deuxième congrégation après les franciscains.

Dans la lettre adressée à Mme Dolores Armoogum pour lui dire qu'aucun département de l'Église ne veut d'elle. C'est de l' ostracisme. Je me suis demandé qui dirige cette église.

On a écrit au Pape et la manifestation prévue est une manifestation pour qu'il agisse.

Il y a deux autres cas

Il y a les cas de Mme Praveena Salaye et de Mme A. Rampadaruth .On va tester la bonne foi du Gouvernement avec la nouvelle loi.

Jack Bizlall
16 août 2019

3 - Les 5 cas soutenus par la FPU

1. Marie Christine Meunier

Excerpts of her Statement of Case before the ERT

1- In Jan 2017 I was promoted to the post of DHM.

2- In May 2017 I got married to Jean Fabien Bégué who was living in Rodrigues, and therefore asked for my transfer to Rodrigues.

3- I did **NOT** believe at **ALL** that the Roman Catholic Church to which I belong would maintain a married couple to be separated **NOT** at **ALL**. In 2017, I requested to be transferred to work in Rodrigues to be with my husband. That was refused.

4- Since May 2017 I have had to travel to Rodrigues as follows:

2017 -April - August - December.
2018 - April - August - December
2019 -April - June …… (July – December)

On the 1st September 2018 I reported the matter to the Ministry of Labour.

Grounds in support of claim

5- Mobility from Rodrigues to Mauritius and vice-versa and even to Agalega cannot be refused. We are all citizens of the same Republic.

6- There has been for some time a kind of positive discrimination to protect the interests of Rodriguans regarding their lack of qualifications. This is **NO** more the case.

7- The provisions of the Constitution under Section 75 do **NOT** make Rodrigues a **SEPARATE** country and the Republic of Mauritius a Federal State.

8- I belong to the Roman Catholic Church and I am married under the Roman Catholic precept of ; "Personne ne peut séparer ce que Dieu a uni"

9- I referred to Respondent the Award of the Tribunal in the case of Virginie Allas v/s SBI (Mauritius) **ERT/RN 159/2015**

10- **NEITHER** the UPST **NOR** the Union representing the Rodrigues teaching staff has made any objection to my request of transfer in 1995 and in 2017.

11- I will **NOT** leave my position of DHM as if I was on the Rodriguan Establishment I would have been appointed DHM same as **OTHER** DHM who are my juniors and/or in the same group recruited in 1989.

La grande question demeure le fait que Mme Meunier est divorcée de son premier mari et que l'Eglise Catholique ne reconnait PAS son second mariage. Question de morale religieuse.

2. Mrs Dolores Armoogum (Cas refere au MDT)

Excerpts of her Statement of Case before the ERT

1. I have talked to Mrs. Dolores Armoogum about content of your letter dated 29.05.2019 and the relationship between her and the Roman Catholic Church as Employer. Your Church glaringly does **NOT** want her - as an employee - in **ANY** of its institutions. It is quite awkward, for your Church to write such a thing as if she is pestiferous. Do you believe that with such a letter she will get any employment elsewhere?

2. I cannot but conclude that any disciplinary action taken against her will contravene Section 38 of the Employment Relations Act 2008. There is no serious misconduct from her part to terminate her employment.

3. To my humble opinion, therefore, it would be most reasonable to record that you will have the obligation to pay to her severance allowance **OR** face a claim thereof before the Industrial Court.

Proposals

1. I suggest that you meet Mrs. Armoogum assisted by Mr. Jean Claude Noel, to come to an amicable settlement on the amount of compensation to be paid to her, starting with the proposal you mentioned in paragraph 4 of your letter. This may be done any time this week. In which case the month of June may be considered as the prescribed notice. The Compensation to be made anyway will be a monetary package. A certificate of employment will have to be issued to her.

2. I do not get involved in issues of compensation. In case parties do not agree on the quantum of compensation, an independent person, may be appointed to conciliate parties.

Je dois dire ici que le vrai problème est au fond entre le mari de Mme Armoogum et le Père Veder. On espère ne pas avoir à faire référence.

3. Lynelle Saintas (Cas référé au MDT)

Le cas de L. Saintas est beaucoup plus inacceptable.

Elle a été accusée d'avoir été en retard et de n'avoir pas, des fois, « recorded her attendance »

Quand je prends note de son contrat je constate que ses heures de travail sont de 8.45 à 15.45.

Mais quand je ne prends que les 5 premiers jours de sa présence au travail je note

7 janvier	9.06 – 16.27
8 janvier	9.07 – 16.47
11 janvier	9.06 – 17.21
14 janvier	8.46 – 16.25

15 janvier 9.00 – 16.53
16 janvier 9.07 – 16.35
17 janvier 8.59 – 17.49

La suite est une centaine de fois pire. Le 30 avril elle quitte son travail à 18.02 Elle n'a pas ce jour là, noté son heure d'arrivée.
On ne met **PAS** à la porte dans des conditions semblables.

INCROYABLE - Dans sa lettre de licenciement il est écrit « ***We thank you for your personal contribution to the Parish and trust in your collaboration as you remain a members of our congregation***"

D'autre part accepter des faits concernant sa présence au travail n'est pas en soi un délit. Il faut une justification. Or elle a déclaré que son retard est explicable, que d'autre part elle est au travail bien plus que son contrat ne l'impose et elle ne réclamé **AUCUN** overtime. Que d'autre part elle devrait etre permise de travailler en « flexy time »

De surcroit elle a écrit à la direction plusieurs fois pardon. Oui, pardon.

La nouvelle loi autorise le flexy time et interdit que l'on licencie un travailleur pour un « minor misconduct ».

4. A. Rampadaruth

Excerpts of her Statement of Case before the ERT

1- I was referred to a Disciplinary Committee in March 2011 under the following charges:

1. ***Falsely accusing my Supervising Officer of 'exerting pressure to release approval on doubtful and questionable file';***
2. ***Falsely accusing him of harassment against your person on several occasions;***
3. ***Threatening Him with legal action in case of non-compliance with your request to call back his email.***

2- The Disciplinary Committee was presided by Mr Raymond D'Unienville. The Bank was represented by Sanjay Buckory, Bar-at-Law and I was represented by Mr S Ruchpaul, Bar-at-Law.

3- During the course of the hearing of 20 April 2011, I produced a document:

1) to prove that I was not a lazy employee
2) to put forward the reasons as to why Mrs X loan could not be approved while others have been approved for disbursement
3) to support my stand that my Supervising Officer was exercising pressure on me to release the approval of a doubtful and questionable file and
4) to provide the committee with information concerning the date I referred the file to Curepipe Unit(24.01.2011) and the date my Team Leader raised the issue (28.01.2011).

4- At no time I understood that the information contained was considered confidential under the Banking Act and my lawyer was the most appropriate person to assess the document and to submit same to his two other lawyers.(Messrs Buckory and D'Unienville).

5- While my lawyer was questioning a witness of the Bank on that document, the disciplinary committee was suspended. The next day I received a letter to the effect that I had been suspended from work.

6- I was referred to another Disciplinary Committee for breach of confidentiality. This time chaired by Mr Bellepeau who was then the **Magistrate of the Industrial Court**. The Bank was represented by Mr Sanjay Buckory and I was represented by Mr S Ruchpaul.

7- I was dismissed on 3 June 2011 for having communicated confidential information to my lawyer and to the Disciplinary Board. The document concerned was a personal daily work. It was **NOT** a confidential document of the Bank and I could not do otherwise than to produce same in the context of my defence. The submission of this document could not be considered as a Breach of Confidentiality in the context of a disciplinary committee set up by the Bank.

8. I went on a hunger strike on 20 January to 22 January2013 following which Minister Arvind Boolell intervened into the matter under the instruction of the then Prime Minister.

9. Rectifying its decision the Bank paid an Ex-gratia compensation and I was promised an alternative employment in a government controlled institution.(including the SBM)

10. That agreement has been respected by the government following the 2014 general election in as much as I have been employed at the NPFL on 22 October 2015. Minister N Bodha, R. Bhadain and S Callichurn have intervened in that decision. I have carried out the job at NPFL without any problem dealing with difficult policyholders and investors of EX BAI in their recuperation of their deposits and investments.

11. The CEO, Sanjiv Issary has never been at ease with the fact that I have been reported under directives from the government and has been pestering me since then.

12. He terminated my contract on 16 October 2017 and I had to report the matter to Mr.Callichurn and Mr N Bodha and I was employed once more on 7 February 2018 for a one year contract on the understanding that my contract would be renewed.I was on secondment at Ministry of Financial Services and Good Governance from 7 February to 31 December 2018.(letter enclosed).

13. Once again, my contract has been terminated and since 3 January 2019, I was dumped in a board room with no office facilities with compliance checking on very old files of SCBG. For me it is clear that S Issary does not like me at all on basis of above Mr Bizlall had on 17 February 2017, to assist me in a Disciplinary matter which had no substance in the charges levelled against me.

14. In a meeting held in the premises of Ministry of Labour on 11 March 2019 what is considered disturbing regarding this issue is the declaration of Mr A Toorabally that he is not aware at all about the background of employment of Mrs B D Rampadaruth. As so long that Mr Toorabally be Legal Advisor of NPFL and S Issary as CEO, I shall

continue to suffer from the harassment. If you need to know the detail of such harassment and the reasons thereof, I am ready to supply same to you.

15. The matter rests with the CCM for an amicable settlement.

5- Praveena Salaye

1. On 04.09.2009 I joined the Mauritius Broadcasting Corporation (MBC) as News Editor on a freelance sessional basis.

2. February 2011- Public Relations Coordinator
February 2012- Officer In Charge of Programmes
February 2013- Officer In Charge of Programmes
September 2013- Programme Manager
September 2014- Programme Manager

3- Following an open vacancy notice for the position of Programme Manager, I applied for the job. An interview was carried out, and I was offered the position of Programme Manager as from 01.09.2013. As per the terms of the agreement, it was said that only upon completion of one year contract period that I would be placed on the Permanent and Pensionable Establishment, after one year, I was placed on permanent capacity as from 01.09.2014.

4. During a meeting held in the Board Room of the MBC on 30.07.2015, I was informed by the Director General that as from the month of August 2015, I will be given a new and additional responsibility that is to fulfill the duties of Duty Officer on a roster basis.

5. One of the roles of a Duty Officer is to take appropriate decisions on behalf of the Director General when the latter is not present at the Corporation.

6. On 30.07.2015, during a Board meeting held at around 17H00 at the MBC, the Chairman of the MBC Board, the Director General and the other members of the Board requested me to work on a new concept for a programming issue which I accepted.

7. On 04.08.2015 at around 10.00am, I was called at the Director General's Office, where the latter informed me that as per MBC Board's decision of 03.08.2015 my services were terminated **forthwith**.

8. The termination letter was handed to me and no reason for my dismissal was given therein.

9. On 05.08.2015, I wrote an official letter to the Director General of the MBC and requested to know the reason/s for the termination of my services.

10. Following my request, on 07.08.2015, I received a letter signed on behalf of the Director General of the MBC stating that ***"we must inform you that there is no obligation on our part to disclose the reasons for deciding as we do.***

11. On 06.08.2015, I wrote an official letter to the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training to inform about the termination of my services from the MBC and requested for his intervention for my reinstatement.

12. On 12.08.2015, I made an official complaint at the Ministry of Labour of Port Louis about the sudden, abrupt, unjustified and arbitrary termination of my services from the MBC and requested for my reinstatement.

13. I was convened at the Ministry of Labour of Port Louis on the 04.09.2015 at 14h00 and once again I requested for my reinstatement.

14. I took the matter before the Commission for Reconciliation and Mediation, hereinafter referred to as the Commission, for arbitration.

15. On 22.12.2015, the President of the Commission referred the matter as a Labour Dispute to the Employment Relations Tribunal.

16. The Commission for Conciliation and Mediation in a letter dated 22 December 2015 informed me that " after due consideration the Labour Dispute is being referred to the Employment Relations Tribunal for arbitration in terms of section 69(7) of the Employment Relations Act 2008.

17. On 16th March 2016 the Employment Relations Tribunal delivered its award in a 23-page document.

On page 10 of the Employment Relations Tribunal award, "*Mr R. D'Unienville, Q.C., Counsel for the Respondent, submitted that an employer can terminate the employment of an employee without stating the reason as long as severance allowance in accordance with the law is being paid and that apart from certain circumstances in cases brought before the Industrial Court and also in cases of redundancy, there cannot be any order for reinstatement".*

18. After analysing the various laws on the issue of reinstatement the Employment Relations Tribunal concludes as follows:

«We conclude that the legislator would have made it clear and in no uncertain terms if it intended to empower the Tribunal to deal with issues of reinstatement after termination of a contract of employment.

We award accordingly and the dispute is set aside »

19. Upon legal advice I applied for a Judicial Review of the award of the Employment Relations Tribunal before the Supreme Court on 6th June 2016.

20. In a Judgment delivered on the 19th April 2018, the Court stated the following :

"As rightly pointed out in a previous award of the Tribunal – Mr Sheryad Hosany and Cargo Handling Corporation Ltd (ERT/RN 40/13) – to which reference was made in the award under consideration, the legislator had found it necessary to have recourse to the Employment Rights (Amendment) Act 2013 to confer to the Tribunal the power to order reinstatement in a limited number of circumstances (which are not applicable in the present case). And the Explanatory Memorandum to the relevant bill indicated that one of the objects for the amendments to the law was with a view to "introducing the concept of reinstatement in cases of unfair termination of employment on grounds of redundancy, discrimination and victimization for participation in trade union activities". And as pointed out by the Tribunal in its award relating to the present case, a finding by the Tribunal that it had jurisdiction prior to the Employment Rights (Amendment) Act 2013 to order reinstatement of a worker in the case of termination of a contract of employment would lead to absurd results. Indeed, the Employment Rights (Amendment) Act 2013 would then have to be interpreted as restricting the right of workers for reinstatement to only a few specific cases instead of "introducing" the concept of reinstatement in cases of unfair termination of employment on the specific grounds provided. We wish to add something about the inclusion of the word "reinstatement" in the definition of "labour dispute" in the Employment Relations Act 2008. Indeed, "labour dispute" is defined as including a dispute between "a worker .... and an employer" which relates wholly or mainly to, inter alia, "reinstatement" of a worker. However, as rightly pointed out by the Tribunal in its award, the said Act covers the jurisdiction of the National Remuneration Board and the Commission for Conciliation and

Mediation. The mere inclusion of reinstatement as an issue in relation to which there may be a "labour dispute" is insufficient, in the absence of a specific provision of the law, to confer on the Tribunal jurisdiction to deal with the issue of reinstatement following termination of employment in the teeth of sections 71 (a) of the Employment Relations Act 2008 and section 3 of the Industrial Court Act."

20. Though I have been dismissed from my work since 04th August 2015, where I was on a Permanent and Pensionable Capacity, the Minister of Labour Industrial Relations and Employment did not deem it necessary *to question the Mauritius Broadcasting Corporation the reason behind my dismissal.*

FPU – 16 Août 2019