

REDUNDANCY BOARD

RB/RN/172/2020

ORDER

Before:

Rashid Hossen	-	President
Amrita Imrith (Mrs.)	-	Member
Saveeta Deerpaul (Ms.)	-	Member

P. Jeewoonarain & Others

and

Health Contact Center Ltd

Twenty-five applicants as per a list shown below are seeking an order directing Health Contact Center Ltd hereinafter referred to as the Respondent to pay to the applicants' severance allowance at the rate of three months per year of service for having failed to comply with procedures laid down in Section 72 of the Workers' Rights Act 2019 (as amended). The averments common to all applicants are the following: -

On 21st October 2020, Respondent terminated their employment and did not comply with the procedures laid down in Section 72 of the Workers' Rights Act 2019 inasmuch as it failed to notify the Redundancy Board of its intention to terminate their employment and as such the termination of the employment is deemed to be unjustified.

The list annexed to the application reads as follows: -

Sn	First Name, Name	Job Title	Starting Date	Basic Monthly Wage (Rs.)
1.	Marie Maeva Jolando Aubineau	Team Leader	05/02/2018	17, 300
2.	Jane Manoula	Data Entry Operator	05/02/2018	13, 700
3.	Dylan Jason Moonsamy	Teleagent	06/02/2018	13, 700
4.	Deeksha Bolah	Teleagent	16/07/2018	13, 700
5.	Dinesh Lalljee	Team Leader	18/05/2017	17, 300

Sn	First Name, Name	Job Title	Starting Date	Basic Monthly Wage (Rs.)
6.	Marie Sylvette Milazar	Teleagent	05/03/2019	13, 300
7.	Mohammad Abdool Qadir	Teleagent	04/02/2018	13, 400
8.	Kevindass Ancharaz	Responsables des operations	28/12/2017	45, 000
9.	Marie Genevieve Casimir	Teleagent	01/06/2017	14, 400
10.	Yoni Bayaram	Teleagent	14/08/2019	13, 000
11.	Ali Leung	Teleagent	05/12/2017	13, 900
12.	Veroneze Sandra Thibaud	Teleagent	01/06/2017	14, 200
13.	Yadeelah Nazir	Teleagent	05/03/2019	13, 300
14.	Priyanka Jankee	Coordinatrice Back Office	27/11/2017	25, 000
15.	Dylan Seewoosurn	Teleagent	31/07/2017	13, 800
16.	Stacy Rebecca Sahye	Data Entry Operator	08/12/2017	14, 200
17.	Aliah Bibi Moussa	Teleagent	20/08/2018	13, 700
18.	Andrew Jupin	Team Leader	22/08/2018	17, 400
19.	Pravin Jeewoonarain	Data Analyst and IT Support	04/09/2016	45, 000
20.	Grit Rungapen	German Customer Service Representative	25/04/2016	33, 000
21.	Bettina Krämer	German Customer Service Representative	26/10/2015	38, 200
22.	Dona Lajoie-Carlitz	German Customer Service Representative	30/07/2019	30, 000
23.	Dagmar Long	Team Leader German Back Office	10/02/2014	36, 344
24.	Andreas Müller	Data Analyst and IT Support	02/05/2016	42, 200
25.	Anastasia Tanner	Teleagent	05/08/2019	13, 700

The Respondent filed a Statement of Case under the signature of Attorney F. Hardy: -

1. Appointment of Mr. Deokumar Gangoosirdar as Administrator of the Company

Mr. Deokumar Gangoosirdar was appointed Administrator of the Company by virtue of a resolution of its directors passed on the 21st October 2020. Document A.

2. Shareholding and stated capital of the Company

The Company has one shareholder namely PLAY4U HOLDING LIMITED with a stated capital of Rs 10, 000.

3. Object of Voluntary Administration

The primary object of a voluntary administration is to provide for the business, property and affairs of a company to be administered in a way that:

- (a) Provides the opportunity for the company or as much as possible of its business to continue in existence; or*
- (b) It is not possible to save the company or its business, to try and obtain a better return for the company's creditors and shareholders than would result from the immediate winding up of the company.*

4. Insolvency of the Company

- a) After his appointment as Administrator, Mr. Deokumar Gangoosirdar appraised himself of the financial situation of the Company from a statement of affairs prepared by the director, one Mr. Qui, which revealed that the Company was in fact totally insolvent. At the time of the Administrator's appointment, the financial situation of the Company was as follows:*
- b) The Company was no longer generating any income following the loss of its only contract with a foreign company.*
- c) Out of the cash held on the Company's bank account a sum of Rs. 40, 000 is left after the directors paid the salaries of the employees for the month of September 2020. The only assets of the Company remaining as at date are:*
 - (i) 43 laptops / PCs, out of which 37 have not been returned by employees*
 - (ii) Cash of Rs. 42, 000 on the Companies bank account.*
 - (iii) Company also received a payment of Euros 3, 500 from a debtor.*

5. Impossibility to comply with Section 72 of the Workers' Rights Act 2019

a) *In the absence of assets to liquidate, the Administrator was not in a position to negotiate anything with the employees or their trade union representative as the Company has nothing substantial to offer.*

b) *The Administrator could not maintain the employees in their employment as he would otherwise have become personally liable to pay the remuneration of the employees in accordance with Section 225(3) of the Insolvency Act 2009 which provides that an administrator is personally liable for the payment of wages or salary that accrue during the administration unless the administrator has lawfully given notice of termination of the contract of employment within 21 days.*

c) *True it is that the Administrator could have applied to the Bankruptcy Division for an extension of the 21 day period, but it is submitted that such an application would not be justified when there is no hope of salvaging the Company. There was no possibility of avoiding the reduction of workforce or closing down by means of: -*

- (i) restrictions on recruitment;*
- (ii) retirement of workers who are beyond the retirement age;*
- (iv) reduction in overtime;*
- (v) shorter working hours to cover temporary fluctuations in manpower needs'*
- (vi) providing training for other work within the same undertaking; or*
- (vii) redeployment of workers where the undertaking forms part of a holding company.*

- *as contemplated by Section 72(1)(c) of the Workers' Rights Act 2019.*

d) *By letter dated 21 October 2020, the Administrator wrote to all employees requesting them to come and collect the letter of termination at the office on the 27 October 2020.*

27 out of 44 letters were collected, the remaining 17 were sent to the employees by post, and one was undelivered.

- e) *The Administrator held the watershed meeting of the creditor on the 19 November 2020. In the view of the fact that no deed of company arrangement could be proposed by the Administrator to the creditors of the Company, the creditors voted for the termination of the administration and resolved to appoint Mr. Deokumar Gangoosirdar as liquidator.*
- f) *It is submitted that the Administrator could not be made to wait for a period of 30 days before terminating the employment of the employees of the Company as he would otherwise have become liable to pay the wages or salaries of the employees.*
- g) *It is submitted that Section 72 cannot apply to a company in circumstances where none of the possibilities contemplated by Section 72(1)(c) can materialize or be realized.*
- h) *It is further submitted that Section 72 of the Workers' Rights Act 2019 conflicts with Sections 225 and 240 of the Insolvency Act 2009 inasmuch as:*
- (i) an administrator cannot give notice in terms of Section 72(3) or Sections 75(8) or 75(9) without incurring personal liability for the payment of the wages and salaries of employees.*
 - (ii) consequently, the effect of these legal provisions is to coerce an administrator into incurring personal liability in the course of his administration of a company when there is no possibility of at all for him to be compensated from the sale of the company's assets.*
 - (iii) the combined effect of Section 225(3) of the Insolvency Act 2009 and Section 72(7) of the Workers' Rights Act 2019 will lead to a situation where each time an administrator is appointed to a company and feels obliged, in order to avoid personal liability, to terminate the employees' employment, the Company will be deemed to have unjustly terminated the contract of employment of its employees, which is an absurdity.*
- i) *It is further submitted that the Liquidator will not be able to fully realise the assets of the Company if the equipment kept by certain employees are not remitted to the liquidator.*

The Respondent has written to the Ministry of Labour to register all the employees of the Company on the Welfare Program.

Miss Deeksha Bolah (Applicant No. 4) testified to the effect that she had been in the employment of the Respondent since July 2018. Her employment contract was terminated on the 21st October 2020. She was on duty during the confinement period and in mid-July all access to software was cut. Since mid-July to October the Applicants were not really working as they were informed that the company had lost its contract with its clients. One lady who works in the Administrator's office informed them that they had to come and collect their termination letter. The Applicant actual date of appointment is 16 July 2018 on a basic salary of Rs 13, 700. Her average total monthly allowance came to a minimum of Rs 25, 000. According to the Applicant there was no consultation prior to termination. She agreed that she was being paid up to the month of September. She was made aware that the company was going through difficult times.

Miss Yadeelah Nazir (Applicant No. 13) also deponed. She was working as "Tele Agent" at the Respondent's company since March 2019 with a basic salary of Rs 13, 400 and an overall monthly package of Rs 45, 000. Her contract of employment was terminated on the 21st of October 2020. She received a WhatsApp message requesting her to collect her termination letter. She was not given any notice of the termination of her contract. She has in the meantime been enrolled in the Workfare Programme.

Mr. Pravin Jeewoonarain (Application No. 19) stated that he represents all the Applicants in the present matter and that he has personal knowledge regarding each one's employment contract including his or her's starting date of employment as well as their basic wage. He attached the list of Applicants' details to the application. He started work at the Respondent's Company in September 2016 as "Tele Agent" and then in 2018 he carried on as Data Analyst and IT Support. His basic salary was Rs 45, 000. The contracts of all the applicants were terminated on the 21st of October 2020. The Applicants received a WhatsApp message requesting them to collect their termination letters. He maintained that no one was notified prior to the termination. The company was a Call Center and its customers were based in France and Germany. It dealt with supplementary products in relation to health such as vitamins.

Mr. Raj Deokumar Gangoosirdar for the Respondent confirmed that he is an Insolvency Practitioner and has been appointed as Administrator of the company. He was to find a potential buyer to take over the company. He received his letter of appointment on 21st October 2020. He found that the liabilities of the company exceeded its assets. He stated that he only had ten days to call the first Creditors' meeting according to the Insolvency Act and twenty one days to take a decision about the employees failing which he would be personally liable for employees' wages. As at 31st September 2020, there was a cash at bank of Rs 788, 572 before payment of salaries for that month. The total liabilities of the company at present amount to Rs 3.2 million with a deficit of Rs 1.6 million. Since his appointment could only be confirmed ten days after the appointment day, he was left with only eleven days to take a

decision. In order to avoid being personally liable, he decided to terminate the contract of the Applicants. During the watershed meeting of the 19th November 2020, it was decided that the company would go into liquidation. According to the witness, only some Applicants returned the PCs and / or laptops that were in their possession. He maintained that the company is insolvent and there was no need to seek for further time to give notice of termination of contract. He did not consider Section 72 of the Workers' Rights Act 2019 (as amended). The Applicants are on the Workfare Programme.

Section 225 of the Insolvency Act 2009 as amended provides for the effect of the appointment of an Administrator on the company's employees in the following terms:

- (1) The appointment of an administrator does not automatically terminate an employment agreement to which the company is a party.*
- (2) The administrator is not personally liable for any obligation of the company under an employment agreement to which the company is a party, unless the administrator expressly adopts the agreement in writing, or subsection (3) applies;*
- (3) The administrator is personally liable for payment of wages or salary that, during the administration of the company, accrue under a contract of employment with the company that was entered into before the administrator's appointment, unless the administrator has lawfully given notice of the termination of the contract within 21 days of appointment.*
- (4) The Court may, on the administrator's application, extend the period of 21 days in subsection (3) within which notice of termination must be given, and may extend it on terms that the Court thinks appropriate.*

Section 72 of the Workers' Rights Act 2019 as amended lays down the procedure for reduction of workforce with a prohibition to terminate employment at **Sub-section (1A) of the Workers' Rights Act** as follows:

- (1A) (a) Subject to paragraph (b), an employer shall, during such period as may be prescribed, not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers.*
- (b) Paragraph (a) shall not apply to -*
 - (i) an employer specified in section 72A; or*
 - (ii) an employer who has applied for any of the financial assistance schemes set up by the institutions listed in the Tenth Schedule for the purpose of providing financial support to an enterprise adversely affected by the consequences of the COVID-19 virus and his application has not been approved.*
- (c) In this subsection –*
“COVID-19 virus” means the novel coronavirus (2019-nCov).

The prescribed period referred to in **Section 72 (1A) of the Act (supra)** was specified in the **Workers' Rights (Prescribed Period) Regulations 2020**. **Section 3 of the Workers' Rights (Prescribed Period) Regulations 2020** provides as follows:

For the purpose of section 72 (1A) of the Act, an employer shall, during the period starting on 1 June 2020 and ending on 31 December 2020, not reduced the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers.

Section 72 (8) of the Act (supra) provides for the remedy available to a worker when his employment has been terminated during the prescribed period as defined in the **Workers' Rights (Prescribed Period) Regulations 2020** as follows:

Where the employment of a worker is terminated in breach of subsection (1), (1A), (5) or (6), the worker may apply to the Board for an order directing his employer –

- (a) to reinstate him in his former employment with payment of remuneration from the date of the termination of his employment to the date of his reinstatement; or*
- (b) to pay him severance allowance at the rate specified in section 70 (1), and the Board may make such order as provided for in subsection (10) or (11).*

An Administrator who contemplates to dismiss employees has to lawfully give notice of termination of the employees' contracts and **Section 225 (3) of the Insolvency Act 2009 as amended** dispenses him from being personally liable if he seeks for extension of time.

In the present case, we note at Paragraph 5 (b) of its Statement of Case dated 30th November 2020, the Respondent has contended that the Administrator terminated the Applicants' employment so as to escape liability in accordance with the provisions of **Section 225 (3) of the Insolvency Act 2009 as amended**. Indeed, this is a misconception of the provision of the law protecting Administrators from personal liability,

It is our firm view that for the termination of Applicants' employment to be lawful, the provisions of the **Workers' Rights Act** have to be complied with. The provisions of **Section 225 (3) of the Insolvency Act 2009 as amended** do not override the provisions of the Workers' Rights Act 2019 as amended inasmuch as the provisions of **Section 225 (3) of the Insolvency Act 2009 as amended** are not "notwithstanding" those of the **Workers' Rights Act 2019 as amended**.

The only derogation brought to the requirement of negotiation in Section 72 (1) of the Workers' Rights Act (supra) is to be found in Section 72A of the said Act: -

- (1) The Minister may, by regulations, exempt an employer who provides services in the sectors specified in the Eleventh Schedule from the application of section 72.*

(Amended by the Finance (Miscellaneous Provisions) Act 2020 – Act No. 7 of 2020 w.e.f 7 August 2020)

(2) *Where an employer who has been exempted pursuant to subsection (1) intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise, the employer shall give written notice to the Board, together with a statement showing cause for the reduction or closure at least 15 days before the intended reduction or closing down, as the case may be.*

(3) *Notwithstanding section 75(8) and (9), the Board shall complete its proceedings within 15 days from the date of notification by the employer.*

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ELEVENTH SCHEDULE

[Section 72A]

- 1. Air traffic control*
- 2. Air transport services, or any airline and aviation related services*
- 3. Civil Aviation and airport, including ground handling and ancillary services*
- 4. Port and other related activities in the ports including loading, unloading, shifting, storage, receipt and delivery, transportation and distribution as specified in section 36 pf the Ports Act*

(New Schedule inserted by the Finance (Miscellaneous Provisions) Act 2020 – Act No. 7 of 2020 w.e.f 7 August 2020)

Section 72 (1A) of the Workers’ Rights Act 2019 as amended coupled with Section 3 of the Workers’ Rights (Prescribed Period) Regulations 2020 prohibit employers from terminating the employment of their workers for the period from 1st June 2020 to 31st December 2020. By virtue of **Section 72 (1A) (b) (ii) of the Workers’ Rights Act**, the employer would need to have recourse to the Redundancy Board if he intends to terminate the employment contract during the above-mentioned period if he has applied for financial assistance and his application has not been approved.

We fail to understand the Administrator who clamoured insolvency on all the roofs when he could have also applied for financial assistance from one of the institutions listed in the **Tenth Schedule of the Workers’ Rights Act**, i.e., the Development Bank of Mauritius Ltd, the Mauritius Investment Corporation Ltd or the State Investment Corporation Limited. Had his application been refused, he should have given written notice of the intended reduction

of workforce to the Redundancy Board in accordance with **Section 72 (5) of the Workers' Rights Act**. **Section 72 (5) of the Workers' Rights Act** provides as follows:

(5) Where no agreement is reached under subsection (3) or (4), or where there has been no negotiation, an employer who takes a course of action as specified in subsection (1), shall give written notice to the Redundancy Board set up under section 73, together with a statement showing cause for the reduction or closure at least 30 days before the intended reduction or closing down, as the case may be.

Bearing in mind **Section 225 (3) of the Insolvency Act** which imposes a time constraint on the Administrator inasmuch as the latter has to lawfully give notice of termination of the employees' contracts within a period of 21 days as from the date of his appointment, the Administrator had the possibility of applying to the Bankruptcy Division of the Supreme Court under **Section 225 (4) of the Insolvency Act** for an extension of the period of 21 days.

In light of the Respondent's financial situation, the Administrator could have given 30 days' written notice of the intended redundancy to the Redundancy Board while applying to the Bankruptcy Division of the Supreme Court under **Section 225 (4) of the Insolvency Act** for an extension of the 21 day period pending completion of the redundancy procedure in compliance with **Section 72 of the Workers' Rights Act**.

It is worth stressing that compliance with **Section 225 (3) of the Insolvency Act (supra)** does not restrain an Administrator from applying the provisions of **Section 72 of the Workers' Rights Act (supra)** simply because it is a matter of insolvency. **Section 72 of the Workers Rights' Act (supra)** makes provisions for the procedure to be adopted even in cases of closure of enterprises. Indeed, such closure, be it for voluntary or compulsory liquidation, entails reduction to nil of the workforce. We are comforted in that respect by what was held in *Re: Louis Jimmy Tan Hoo, TCSB 253/78*.

"When the case came for hearing, the workers concerned decided to oppose the application. Surprisingly enough, Counsel who appeared for the applicant submitted that the Board has no jurisdiction to hear the case since there were no reduction of the number of workers as he understood the expression in Section 39 of the Labour Act, 1975, in as much as, in his view, reduction to zero (which the closing down of the concern implied) was no reduction at all. Hence the act did not find any application.

As a consequence, the Minister sought and obtained from his legal adviser a written opinion to the following effect:

Inasmuch as the Termination of Contracts of Service Board has power to enquire into a reduction of work-force, it has power to enquire into a total reduction of workforce, as for example

where an employer is closing down his business altogether.

Counsel thereupon maintained his submission and said he did not agree with that view. He however, did not elaborate on his submission.

What the law provides is as follows:

Section 39 (2) –

An employer who intends to reduce the number of workers in his employment either temporarily or permanently shall give written notice to the Minister, together with a statement of the reason for the reduction

Section 39 (4) –

Where the Board finds that the employer's reduction of the number of workers in his employment –

(a) is justified...

(b) is not justified...

There is, in the opinion of the Board, nothing to indicate that by using the words “reduce” and “reduction” the legislator meant to exclude from the Board's jurisdiction a reduction of workers to zero. If we turn to etymological and arithmetical meaning of the words “reduction” and “reduce” we find in the Shorter Oxford English Dictionary:

Reduction (arithmetical) the process of changing of a number from one denomination to another: the process of bringing down a fraction to its lowest terms.

We find in mathematics, trigonometry and differential calculus, inter alia, frequent reductions of expressions to zero by algebraical process or other.

Now, it is a cardinal principle of English Labour Law, as far as redundancy is concerned that redundancy exists where the employer has ceased or intends to cease to carry on a business on which the employee was employed. It seems therefore natural to conclude that a reduction to zero (where a business close down) means that all employees have become redundant and accordingly are all dismissed.

Lastly, the economy and guide lines of all our Labour Laws promulgated since the late thirties have had for their main purpose the promotion of the interests of workers. By placing the construction

suggested by Counsel on the law as it stands, great harm might be done to innocent workers by unscrupulous employers, whereas the Board's construction entitles it to enquire into the reasons for closing down a business or concern."

With regard to the averment of absurdity of the law raised in Respondent's Statement of Case, there has been no argument, evidence or submission in support of it. Furthermore, Respondent's Counsel, during the course of her submission conceded that the procedure provided in Section 72 of the Workers Rights' Act (supra) should have been followed.

As regard the submission made by Mr. S. Mohamed, we fully endorse their contents, both oral and written. On the issue of the Administrator being held personally liable for the payment of severance allowance for failing to lawfully give notice of termination of the employees' contracts of employment, the applicants may consider lodging their claims before the appropriate forum.

It is clear that the Respondent failed to comply with the provisions of **Section 72 of the Workers' Rights Act** in terminating the employment of the Applicants. The Respondent has inter alia failed to comply with the provisions of **Sections 72(1A) and (5) of the Workers' Rights Act**.

Section 72 (8) of the Workers' Rights Act provides that:

Where the employment of a worker is terminated in breach of subsection (1), (1A), (5) or (6), the worker may apply to the Board for an order directing his employer –

- (a) to reinstate him in his former employment to the date of his reinstatement; or*
- (b) to pay him severance allowance at the rate specified in section 70 (1), and the Board may make such order as provided for in subsection (10) or (11).*

In terminating the contracts of employment of applicants during the prohibition period, Respondent has been in breach of **Sub-section (1A) of Section 72 of the Workers Rights' Act (supra)**. In accordance with the provisions of **Section 72 (8) of the Workers' Rights Act**, the Applicants are, therefore, entitled to severance allowance at the rate specified in **section 70 (1) of the Workers' Rights Act 2019 (as amended)**.

The Board orders accordingly.

(SD)

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Rashid Hossen
(*President*)

(SD)

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Mrs. Amrita Imrith
(*Member*)

(SD)

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Ms. Saveeta Deerpaul
(*Member*)

Date: 29 December 2020