REDUNDANCY BOARD
ORDER

RB/RN/38/2020

Before:	Bernard C. Marie	-Vice-President
	Amrita Imrit	-Member
	Chandrani Devi Gopaul	-Member
	Abdool Feroze Acharauz	-Member
	Suraj Ray	-Member
	Saveetah Deerpaul	-Member

In the matter of:-

Les Frais de L'Artigiano Ltd

Employer

In a letter dated 18th May 2020, Le frais de L'Artigiano Ltd, hereinafter referred to as the 'Employer', an employer having an annual turnover of more than 25 million rupees, gave notice of its intention to the Redundancy Board, hereinafter referred to as the "Board" to lay off a worker, namely Mr. Abhinav CHUTTUN, a delivery driver, hereinafter referred to as the 'Worker', on grounds of redundancy in accordance with section 72 of the Workers' Right Act 2019 as amended.

Background

(1) On 18 May 2020, the Employer notified the Board that it would terminate the employment of three employees, in order to reduce the operating costs of the company. (Doc B).

(2) On 4 June 2020, the Employer was convened to a preliminary meeting before the Board but the Employer attended unaccompanied by the representative of the worker as previously requested in a convocation letter dated 20th May 2020.

(3) On 11 June 2020, the Employer informed the Board that out of the three employees, 2 of them have accepted an offer from the Employer. The matter not being settled for one employee, the Employer now intends to proceed with the

termination of employment of only the 'Worker'. Parties requested more time to discuss further with the view to reach a settlement.

(4) On 19 June 2020, both parties were in attendance. Employer was represented by Counsel. Worker was not legally represented. As the parties have not been able to reach a settlement, the matter was fixed for hearing on the 1st of July 2020.

(5) Both parties, on a joint motion, have agreed to allow the Board more time to complete its proceedings.

On the day of hearing, both parties were in attendance, Employer was assisted by Counsel whereas the Worker did not file his statement of reply and was not legally represented.

The Employer filed a Statement of Case, averring *(same is reproduced in toto)*:-

*"**Objet : Demande d'autorisation pour la réduction du personnel employé***

Le Frais de L'Artigiano compagnie incorporé le 27 Juin 2016 n. 139706, BRN n. C16139706 et VAT n. 27432145 travaille dans l'importation de produits alimentaire italiens frais.

Les 90 % des clients de la compagnie sont représentés dans les Hotels qui en raison du COVID 19 ont fermé leurs portes jusqu'à une date à définir. La fermeture des hôtels a mis la Compagnie dans une situation de difficulté pour trois principales raisons :

- *Perte du chiffre d'affaires (ci-joint un réépilogue des chiffres d'affaire de la première année comparé à l'année précèdente)*
- *Blocage des paiements par les Hôtels*
- *Fermeture de certains restaurants qui annonce la défaillance de l'entreprise.*

Mois	**Chiffre d'affaires**	**Mois**	**Chiffre d'affaires**	**Variation %**
Giu 2018	3,507,292.44	Giu 2019	4,551,539.94	29.77
Lug 2018	4,644,579.86	Lug 2019	5,433,326.37	16.98
Ago 2018	5,402,024.82	Ago 2019	6,394,254.94	17.53
Set 2018	4,624,355.82	Set 2019	6,315,404.82	36.57
Ott 2018	6,124,787.84	Ott 2019	7,006,392.68	14.39
Nov 2018	5,521,601.99	Nov 2019	7,152,344.24	29.53
Dic 2018	9,495,719.91	Dic 2019	11,214,648.11	18.10
Gen 2019	5,300,996.57	Gen 2020	6,583,147.47	24.19
Feb 2019	5,163,850.13	Feb 2020	5,789,674.65	12.12
Mar 2019	5,387,359.56	Mar 2020	4,346,804.97	**-19.31**
Apr 2019	6,089,694.36	Apr 2020	2,259,183.21	**-62.90**
Mag 2019	2,876,474.00	Mag 2020	805,474.83	**-72.00**

Noms	Numero ID	Poste
DANIELA QUARANTA	Q110377830001F	Director
MARIE JEANNE VEDANJALEE	S1205794615205	Assistante de direction
MERLE PASCAL JULIEN	M0712890401931	Cold room attendant
NEEHULL ASHA	S2912830200128	Cold room attendance
PITCHEN DAVID JONATHAN	P211893801950	Cold room attendant
LOUIS BRIAN FIDELE	F011296110008E	Chauffeur Livreur
MOHUN DEVENDRASINGH	M26097413102	Chauffeur Livreur
KHADUN ROYVEER	K2305940401788	Comptable
ANAS GOWRY	G110492461422C	Store keeper
MASSIMO BENEVELLI	YA2093882	Pizza Chef
MARIE GEOGELINE DORTIE	M2304780401037	Cold room attendant
ABHINAV CHUTTUN	C29069942601670	Chauffeur Livreur
DHYANESH PRAYAY	P030492301542A	Cold room attendant

La compagnie actuellement embauche 13 personnes, ci-dessus les détails :

La perte du 72% du chiffre d'affaire demande le licenciement de huit personnes sur treize personnes. Vu l'importance du travail et le lien qui existe avec les employées, la Compagnie fait l'effort de prendre en charge une grande partie des employées et il demande de pouvoir licencie sans pénalité les suivant employées :

Name	Numero ID	Poste	Emboche'le
MARIE GEOGELINE DORTIE	M2304780401037	Cold room attendance	20.01.2020
ABHINAV CHUTTUN	C2906942601670	Chauffeur Livreur	30.10.2018
DHYANESH PRAYAY	P030492301542A	Cold room attendance	01.12.2019

Les trois employés ils n'ont pas travailler pour tous la période de COVID 19 et ne sont jamais rentrez au travaille après la fin du confinement.

Mme Marie Geogeline Dorotie et M Dhyanesh Prayay était en formation dans le laboratoire pour la préparation des commandes mais vu la situation actuelle on a un surplus dans ce département. En plus les deux employées il ne se sont pas présentez au travaille après la réception du WAP.

M Adhinav Chuttun est chauffeur/livrer. Vu la réduction du chiffre d'affaire on a déjà autres deux chauffeurs livreurs dans la compagnie qui on travaillez pour la période de COVID 19 en soutien de la compagnie dans ce période difficile.

Merci de me donner aussi les détails de la loi à suivre pour définir le montant de la liquidation.

Bien cordialement,

La Direction

M Silvano Marchetto *Mme Daniela Quaranta »*

The Evidence of witnesses on behalf of the Employer

Mrs. Daniela QUARANTA, Director of Le Frais de L'Artigiano Ltd, witness for the Employer, deponed to the effect that:-

Le Frais de L'Artigiano Ltd is a company involved in the importation of food products from Italy. The Employer imports fresh products like cheese and cold meat 'charcuterie' which expire within a very short period of time.

She stated that due to Covid -19 the Employer is incurring huge losses in its stock owing to a reduction in sales. During the lockdown period, the Employer tried to keep all of its employees but due to a decrease in its turnover, it had no choice but to part with some of them. Those with 2 to 3 months traineeship at the company, who were hired for the peak season in December, had to be parted with. She averred that 2 employees, other than the Worker, were made redundant and accepted an offer of compensation.

She testified that the Employer had to lay off one of the three drivers and a proposal was made to the Worker but the latter refused. According to her, the Worker did not turn up for work during the lockdown period despite the fact that the Employer's activities fall in the category of essential services and it deals in perishable products. The Employer's products came by plane and are very expensive due to import costs. All the employees that attended work, were made aware of the Employer's financial situation and the decrease in its turnover. Those who were absent were kept informed of its financial situation.

She further stated that the Worker sought advice from the Labour Office. They met a labour officer on the Employer's premises. On the basis of new figures calculated by the labour officer, the Employer made a new offer to the Worker who again refused and the latter was even put on the Workfare Programme.

She claimed that on the 18th of May 2020, she notified the Board (Doc B) and gave the reasons why the Employer is asking for a reduction in workforce. She further explained the decrease in the Employer's turnover. She filed in a copy of a document (Doc C), a French translation of an identical reproduction of the table found in document (Doc B), for ease of reference. She stated that 90% of the Employer's clients are in the tourism industry. The Employer used to have a growth of 14% to

30% each month, but since March, the company had a decrease of 19.31% in its turnover, in April a decrease of 72.90% and in May a decrease of 72% respectively. She said that the number of clients dropped by 90% and she did not know when the hotels will be re-opened again.

She averred that the Employer used to grant credit facilities between 60 to 90 days to hotels but its clients had not been paying since December 2019 and had requested for further delay. She filed in 3 emails, exchanged between the Employer and Beachcomber, Sun Resort group and Alizee Resort Management respectively (Doc D).

She explained that because Mauritius is on the EU list of high-risk countries, insurance companies in Italy are not willing to cover the Employer anymore because they are expecting a fluctuation in Mauritian currency. The Employer has an average monthly running cost of Rs. 544,000/-. In May 2020, Rs. 230,809/- was required for the Employer to break even. She even claimed that as at the letter dated 18th of May 2020 (Doc B), debtors owe the Employer Rs. 14,244,618/-, the Employer has contracted a loan of Rs. 23,627,000/- and Mr. Marcheto who is also a shareholder, had to inject Rs. 4,928,787/- from his own money to salvage the company. The Employer has started to pay back its debts but nevertheless it met with a 15% depreciation of the Mauritian currency.

She filed in a copy of an email dated 16th of May 2020 together with a letter addressed to the Worker and the Worker's pay slips, from June 2019 to May 2020, all in one same bundle (Doc E). According to her, Mr. Marcheto made a final offer to the Worker on the 29th June 2020 but the latter refused the offer.

In cross-examination, the witness stated that since the Covid 19 period started, some employees refused to come to work due to health and safety reasons. At the beginning, the Employer did not request for a Work Access Permit (WAP) for the Worker because the latter refused to come to work. The Worker's WAP came on the 15th of May. The Worker has not been working since the letter dated 4th of June (Doc E) but conceded that she did not require him to resume work. She further stated that the Employer is now asking the Board to deem justified the reduction in its workforce.

Mr. Sylvano MARCHETO, Director of Le Frais de L'Artigiano, witness for the Employer, deponed as follows:-

He confirmed that the version given by Mrs. Quaranta before the Board was true. He had injected a total of 4,928,767 in Mauritian Rupees from his personal account, to salvage the company. He stated that unfortunately, due to the current situation in hotels, the Employer could not keep all its employees. He said that he called the Worker on his personal mobile phone on the 29th of June 2020 and asked him whether he is willing to accept the offer but the latter refused. He testified that he has no more money left in Italy. He said that he thought the situation will get better in July but instead it is getting worse. The witness was not cross-examined.

The Evidence of the Worker

Mr. Avinash CHUTTUN, the Worker, deponed before the Board:-

According to him, the termination of his employment was unjustified because he was not issued with a WAP to attend work despite his request for same. He said that 24 days after his request, he received an email from the Employer where he was told that if he did not report to work in 48 hours, his contract of employment will be terminated. He then asked for an official termination letter but he was not provided with same and was further told that he will be dealt with after confinement. He then said that he reported the matter to an inspector from the Labour Office and he was told that if ever the Employer decides to go ahead with the termination of his employment during the confinement period, a formal complaint will have to be addressed to the Labour Office after confinement.

He stated that he was issued with a WAP and he reported to work on the 15th of May. However, he was told by Mrs. Quaranta, that there was no more work for him and he would have to stay at home. He further stated that he was told by Mrs. Quranta that he will be paid his monthly salary by the Government.

He also explained that on the 4th of June, he was shown a termination letter and he reported the matter to the Labour Office where he was told that an employer before proceeding with termination of a contract of an employee shall notify the Board of its intention to do so. The witness averred that he was made to sign an acknowledgment of a termination letter prior to the decision of the Board.

He also claimed that he did not receive any salary for the month of June 2020, while he was supposed to be still in employment.

In cross-examination the witness maintained that he had signed an acknowledgment of a termination letter. He further explained that from the very beginning he was told that the Employer will not take him back and he was also asked by Mrs. Quaranta to return the Employer's belongings i.e a Polo Shirt. He averred that to him it was clear that the Employer has terminated his employment.

He further explained that the products have expiration dates on them and are kept in specific places. However, he denied that the Employer deals in only fresh products and that the company has stopped trading. He claimed that he used to work for both Le Frais de l'Artigiano Ltd and to deliver dry products on behalf of L'Artigiano Ltd. He stated that the Employer used to and is still dealing in dry products which last longer. He conceded that during and even after lockdown period there were no deliveries to hotels and restaurants, which represent 90% of the Employer's clients, however he maintained that the Employer kept on doing home deliveries.

He agreed that for the time being, because the borders are closed, hotels and restaurants have stopped their activities. Moreover, he admitted that the Employer's activities have slowed down but he maintained that it is still doing business. When the witness was questioned about the figures produced by Mrs. Quaranta, in relation to a decrease by 72% in the monthly sales, the Worker conceded that the Employer's turnover has gone down but insisted that it is only with respect to hotels. He still maintained that he was shown a termination letter and he confirmed that he received his last pay slip on the 27th of May but to the present date, the 1st of July, he has not received his wages for the month of June 2020.

Submission of Counsel appearing on behalf of the Employer

According to Counsel, the Employer did abide by the law and notified the Board for a reduction in its workforce on the 18th of May 2020. Counsel submitted that the Employer has established its case in a just and reasonable way. He stated that in relation to the Worker, things have to be put in its context. He further submitted that since the 16th of May 2020, both directors have been telling the truth and deposed as witnesses of truth. Counsel further added that the Worker did not challenge their versions during examination.

Counsel stated that the Employer was in a situation of conflict with the Worker despite the fact that the former has been acting rationally while communicating with its employees. He submitted that other cases have been settled before the Board and this shows the good character of the Employer. Counsel submitted that the Board must not conclude that there has been a termination of the Worker's contract of employment based on the fact that, as at the 1st of July 2020, the Worker has not yet been paid his salary for the month of June 2020. He further added that the Employer owes due respect to the Board and to all laws in Mauritius and is respecting all authorities and judicial bodies.

Furthermore, Counsel submitted that confinement was a complicated period and to adhere to all procedures was very difficult but nonetheless the Employer has acted in good faith.

Procedural aspects

The question in this particular case is whether the Employer has complied with the requirements laid down in Section 72(1) of the Workers' Rights Act 2019 (as amended) and explored the possibility of avoiding the reduction of workforce by means of the alternatives specifically listed prior to notifying the Board of its intention to terminate the contract of employment of the Worker.

The Board takes note that:

a. A notification letter (Doc B) dated 18 May 2020 was produced by Mrs Daniela QUARANTA, witness for the Employer during the hearing;
b. Mrs. Daniela QUARANTA, witness for the Employer, stated under oath, that the representatives of the Employer met with the Worker. The latter was explained the financial situation of the company and an offer for compensation was made to the Worker which was refused, without mentioning that negotiation in view to explore the possibility of avoiding the reduction of workforce, took place during the said meeting;
c. A letter dated 4th of June 2020 (Doc E), addressed by the Employer to the Worker which reads: *'Avec le présent courier on vous informe que on est obligé de mettre fin a notre rapport de travaille comme suite à notre première phase de réduction du personelle. Sure de votre compréhension, on vous remercie pour le moment pour le support apportez à la compagnie pendant votre tempe de service'.*

Section 72(1) of the Workers' Rights Act 2019 (as amended) provides that:

"Subject to Section 72A, an employer who intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise, shall notify and negotiate with–

a) the trade union, where there is a recognised trade union;

b) the trade union having a representational status, where there is no recognised trade union; or

c) the workers' representatives, elected by the workers where there is no recognised trade union or a trade union having representational status,

to explore the 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;

iii. reduction in overtime;

iv. shorter working hours to cover temporary fluctuations in manpower needs;

v. providing training for other work within the same undertaking; or

vi. redeployment of workers where the undertaking forms part of a holding company."

(underlining is ours).

The Employer, through an email addressed to the Worker on the 16th of May 2020 (Doc E), notified the Worker of its intention to reduce its workforce.

In relation to negotiation as required under Section 72(1) of the Workers' Rights Act 2019 (as amended), there is a duty imposed on the Employer to negotiate with, the Worker or if the latter is represented, a recognized trade union or trade union having a representational status or a workers' representative, elected by the workers where there is no recognised trade union or a trade union having representational.

In the repealed Employment Rights Act 2008, 'consultation' under section 39B was compulsory and failure to observe same rendered the process of reduction of workforce unjustified. Under the new Workers' Rights Act 2019 (as amended), 'negotiation' under section 72(1) has not been reduced to a lesser prominence. Negotiation as well as consultation are similar kind of mechanism that aim at achieving the same goal, which is to avoid the reduction of workforce or closure.

Notifying a Worker of the Employer's intention to make him redundant followed by an offer of compensation but in the same breath bypassing negotiation is to put the Worker *devant le fait accompli*. This has certainly not been intended by the legislator, if one reads from the list of alternatives provided in section 72(1) to avoid reduction of workforce or closure.

In the matter of **Dhanraj Kissoon & Ors v. The Mauritius Shipping Corporation Ltd ERT/EPPN/RN01/16** the Employment Relations Tribunal observed that: *"The duty to consult the relevant trade union is mandatory in this particular case and is a requirement of the law."*

The Board finds that there was no evidence put forward by the Employer to substantiate that it did fulfill its obligation which is to explore all means possible listed in Section 72(1), in respect to negotiation, with a view to avoiding making the Worker redundant. In a redundancy situation, there must be adequate negotiation and fair selection. One must also bear in mind, that notification to the Board should be the Employer's last resort when no alternative other than a reduction of workforce or closure is possible.

We accordingly hold that it was incumbent for the Employer to negotiate with the Worker prior to it notifying the Board of its intention to reduce its workforce and that the Employer having failed to do so, has acted in breach of Section 72(1) of the Workers' Rights Act 2019 (as amended).

Termination of the Worker's contract of employment

The Board must now determine (a) whether the Worker was made redundant by the Employer prior to the determination of the Board or (b) whether by not resuming work, the Worker has on his own volition put an end to his contract of employment.

Facts that the Board takes into consideration

1. The Employer, in a letter dated 16th May 2020 (Doc E), informed the Worker of the financial downturn of the company and of an extra of 80% in their workforce. The Worker was also informed that the Employer intends to restructure the company;
2. On the 18th May 2020, the Employer notified the Board of its intention to make redundant the Worker together with two other cold room attendants (Doc B);
3. On the 4th of June 2020, the matter was called before the Board for preliminary hearing;
4. Mrs. Daniela QUARANTA, deponed and explained that the Worker did not turn up for

work since the lockdown period. She further stated that the Employer did not request the Worker to resume duty. She conceded under oath that the Worker was last paid in May 2020. She also produced the Worker's last pay slip dated 27th May 2020;

5. The Worker deponed and stated that he could not attend work because he was not favoured with a WAP. It was only when he finally received his WAP that he turned up to work on the 15th of May 2020, but he was told by Mrs. Quaranta to go back home as there was no work for him;
6. The Worker further explained that in a meeting on the 4th of June 2020, the Employer conveyed its intention to make him redundant on grounds of financial difficulties. He was also told that his contract of employment has been terminated and was asked to sign an acknowledgement letter with respect to termination of his employment.

Section 72(6) of the Workers' Rights Act 2019 (as amended) provides that:

"An employer shall not reduce the number of workers in his employment either temporarily or permanently before the time specified in section 75(8) and (9)."……..

……..

Sec 75(8) The Board shall complete its proceedings within 30 days from the date of notification by the employer.

Sec 75(9) The Board may extend the period specified in subsection (8) for such longer period as may be agreed by the parties to allow the Board to complete its proceedings."

In the case of **Coprim Ltée v Yves Menagé [2006] Privy Council Appeal no 42 [2006 PVR 42** the Law Lords had the following to say:

".....in acting as he did, the respondent was simply using the rights which the law accorded to him as an employee who had been given due notice of his employer's intention to terminate his employment. In particular, although, as the Board discussed in Mauvilac Industries v Ragoobeer [2007] UKPC 43, at para 10, dismissal is a unilateral act which does not require any action by the person who is dismissed, nevertheless, once notice has been given, the employer cannot withdraw it without the consent of the employee. The employee can therefore take advantage of any rights accruing to him as a result of the notice of dismissal……their Lordships therefore respectfully agree with the Supreme

Court when it said that, in the present case, the notice given by the directors in the letter of 31 March 2001 in any event could not be revoked unilaterally.'

....That being the situation, there is nothing in the conduct of the respondent which is open to substantial criticism. The Board will assume that – as the language of his letter might suggest – the respondent had taken legal advice about his situation before the letter was composed and sent. That was something which anyone faced with the prospect of having his employment terminated might be well advised to do. Moreover, since Coprim had no power to withdraw the notice in its letter of 31 March without the respondent's consent, it was open to him, if he wished, to act in the way which made the most of the legal rights accruing to him as a result of the notice. In particular, he was under no obligation whatever to consider the belated offer from Coprim to continue his employment on the same conditions as before. In short, the respondent did what he considered most advantageous for himself in the situation which Coprim had created. He cannot be criticised for that. Nor does it make the situation in any way special."

Similar conclusion has been reached in the case of **WOOZEERALLY N B & ANOR v NUNLALL INVESTMENT GROUP 2008 IND 28,** where an employer, whose intention was to terminate the contract of employment of its employees on the ground of redundancy as from 1st October 2006, but due to a change in circumstances, issued another letter dated 20 September 2006 before the expiry of the delay, asking its employees to resume work was disapproved by the Industrial Court. The President of the Industrial Court concluded that:

"Having considered the contents of the letter, I find that it has been established that the letter was indeed an expression, in writing, of the intention of the employer to terminate the employment of the plaintiffs as part of a scheme of reduction of its workforce."

Based on the contents of the letter dated 4th of June 2020 (Doc E), precisely reference to paragraph 5 of the said letter, which reads, *'Avec le présent courier on vous informe que on est obligé de mettre fin à notre rapport de travaille comme suite à notre première phase de réduction du personnelle. Sure de votre compréhension, on vous remercie pour le moment pour le support apportez a la compagnie pendant votre tempe de service.'*, the admission of Mrs. Quaranta that the Worker was not requested to resume duty, coupled with the fact that Worker was neither paid his

monthly salary for June 2020 nor issued with a pay slip on the 27th of June 2020, the Board can safely conclude that the Worker's contract of employment has been terminated.

The Board is also of the opinion that the Worker is nowhere accountable for the unilateral act of the Employer to put an end to his contract of employment. The Letter dated 4th of June 2020 (Doc E) is to be construed as the final nail in the coffin, which clearly put an end to the contract of employment. We therefore find that the Employer had undoubtedly made the Worker redundant without awaiting for the determination of the Board hence contrary to section 72(6) of the Workers' Rights Act 2019 (as amended). Furthermore, the Employer cannot expect a Worker to come to work during the lock down period if the latter is not issued with a WAP.

Financial Aspects

Mrs. Quaranta deponed and averred that the Employer has reported to be in financial difficulties due to COVID 19 lockdown in that:

(i) the company's turnover has drastically reduced for period March 2020 to May 2020 due to non-operation of activities; and

(ii) there was no receipt of payments from client hotels; and

(iii) some client restaurants have closed down during that period and onwards.

She went on to explain the evolution of the Employer's turnover for financial years 2018 to May 2020 as in Table 1 below, but did not submit the Financial Accounts of the company for the said period. However, the version of Mrs. Quranta regarding the financial situation of the Employer remained unchallenged during the hearing.

Observation

It is worth pointing out at the very outset that the viability and sustainability cannot be effectively determined solely on the basis of the turnover of a company. The Board observes that the reduction of turnover was inevitable during the lockdown period as there were no activity. From the information provided, it can be seen that the Employer has lost revenue from its operations by (19%) to (72%) for the months March 2020 to May 2020. However, this situation might be considered to be temporary although it is uncertain about its duration. In view of the past trend of turnover figures of the Employer, it is likely that the financial situation will improve as soon as the hotel activities will come back to normal again. The table below shows that the turnover of the Employer had an increasing trend from June 2018 to February 2020 ranging from 12% to 37%. It

can safely be inferred that the Employer might have generated sufficient reserves to be able to sustain its operations and therefore, maintain its number of employees. But again, in the absence of complete financial statements, it is not possible to determine the solvency and liquidity position of the Employer. The Board is of the opinion that once the Mauritian borders is opened, activities of its client hotels and restaurants will pick up and more likely than not the payments due from its debtors will be recovered, which in turn will result in a rise in the liquidity position of the company. The Turnover for period March to May for years 2019 and 2020 is shown below:

Table 1

Turnover	**2018**	**2019**	**2020**	**% increase/(decrease)**
	Rs m	Rs m	Rs m	
June	3.5	4.6		30
July	4.6	5.4		17
August	5.4	6.3		18
September	4.6	6.3		37
October	6.1	7.0		14
November	5.5	7.2		30
December	9.5	11.2		18
January		5.3	6.6	24
February		5.2	5.8	12
March		5.4	4.3	(19)
April		6.1	2.2	(63)
May		2.9	0.8	(72)

Conclusion

True it is that companies which based clients are hotels and restaurants have been facing financial difficulties during the lockdown period. However, in the present matter, the burden lies on the Employer to satisfy the Board that there were valid financial reasons for terminating the Worker's employment. A very pertinent observation was made by the President of the Industrial Court in **H. Nunkoo v. Mauritius Biscuit Making Company Ltd (In Receivership) 2015 IND 54**:

"It is not enough for an employer to claim that his business is facing economic or financial downturn. He has to adduce sufficient objective proof of economic difficulties to such an extent that it could no longer keep a particular employee or employees without affecting its competitiveness. Therefore, statement of accounts and expert evidence has to be adduced. The mere fact that the plaintiff has conceded that the company was facing economic difficulties is not in itself sufficient

proof that it was facing economic difficulties that the post occupied by the plaintiff should be made redundant."

In the absence of statements of accounts and expert evidence, and based on the constant monthly encouraging figures submitted by the Employer with respect to the past 12 months prior to the COVID-19, the Board is reluctant to believe that the Employer has not generated sufficient reserves to preserve the post occupied by the Worker. The Board also notes that the Employer could have requested financial support from financial institutions to sustain itself, the more so, that according to witnesses on behalf of the Employer, the company is expecting Rs. 14,244,618/- from its debtors. This is concrete evidence that the Employer will be able to honour its obligation towards those institutions whenever so required.

Furthermore, it is also quite clear to the Board that the Employer has failed to comply with sections 72(1) and 72(6) of the Workers' Rights Act 2019 (as amended).

For all reasons given, the Board is of the view that the termination of the Worker's employment on the ground of redundancy was unjustified.

Under section 72(11) of the Workers' Rights Act 2019 (as amended) the legislator has conferred to the Board the power, with the consent of the worker, to order the employer to reinstate the worker in his former employment. However due to the edgy relationship that exists between both parties, the Board instead orders as per section 72(10) of the said act that the Employer shall pay to the Worker severance allowance at the rate of 3 months' remuneration per year of service.

The Board orders accordingly.

Bernard C. MARIE
(Vice-President)

Ms Chandrani Devi Gopaul
(Member)

Mr. Abdool Feroze Acharauz
(Member)

Mrs Amrita Imrith
(Member)

Mr Suraj Ray
(Member)

Ms Saveetah Deerpaul
(Member)

23rd of July 2020