

**REDUNDANCY BOARD
ORDER**

RB/RN/164/2020 to 167/2020

Before:	Bernard C. Marie	- Vice-President
	Amrita Imrith (Mrs.)	- Member
	Chandrani Devi Gopaul (Ms.)	- Member
	Suraj Ray	- Member
	S. Deerpaul (Ms.)	- Member

In the matter of: -

RB/RN/164/2020

(1) Atchia Mohammed Reyaz Mosajee Dawood

v.

Cine Bagatelle Ltd

RB/RN/165/2020

(2) Jean-Noel Tony Iyanasee

v.

Cine Bagatelle Ltd

RB/RN/166/2020

(3) Raya Koeny Emmanuel

v.

Cine Bagatelle Ltd

RB/RN/167/2020

(4) Rachel Janson

v.

Cine Bagatelle Ltd

Upon a joint motion by Counsel appearing on behalf of the Respondent and Trade Unionists, appearing on behalf of the Applicants, the four abovementioned cases (RB/RN/164/2020 to RB/RN/167/2020) were consolidated. The Board proposes to deliver a single order in respect of the four cases and file copies of same in each file.

On the 14th of October 2020, Messrs. Atchia Mohammad Reyaz Mosajee Dawood, Jean-Noel Tony Iyanasee, Raya Koeny Emmanuel and Mrs. Rachel Janson all, hereinafter referred to as the “Applicants”, applied to the Redundancy Board, hereinafter referred to as the “Board”, under Section 72(8) of the Workers’ Rights Act 2019 (as amended), for an order directing Cine Bagatelle Ltd, hereinafter referred to as the “Respondent” to pay each of them severance allowance at the rate of 3 months per year of service.

Background

- (1) On 14th of October 2020, the Applicants applied to the Board, under Section 72(8) of the Workers’ Rights Act 2019 (as amended), for an order directing the Respondent to pay them severance allowance at the rate of 3 months per year of service.*
- (2) On 21st of October 2020, all parties were convened to a preliminary meeting before the Board. The Respondent was represented by Mr. Nilesh Beekoo, financial controller and assisted by Counsel. The Applicants were in attendance and they were assisted by Mr. Reaz Chuttoo and Mrs. Jane Raghoo both of them trade unionists, members of la Confédération des Travailleurs du Secteur Privé (CTSP). Upon a joint motion, the four cases were consolidated on the grounds that the applications are against one and same Respondent and based on similar facts. Respondent filed its Notice of Preliminary Objections. The case was fixed for hearing on the 5th of November 2020.*

On the day of hearing, the Applicants were assisted by Mr. Reaz Chuttoo together with Mrs. Jane Raghoo, trade unionists, members of the CTSP. The Respondent was represented by Mr. Nilesh Beekoo, financial controller and was assisted by Counsel.

The Applicants’ Statements of Case

Averments as per Mr. Reyaz Atchia’s Statement of Case are:

“1. Applicant appeared before the Redundancy Board on Monday 7 September 2020 in a matter referred to it by the Cineco Ltd, which forms part of Cine Bagatelle regarding his termination of employment workforce and on that day the case was set aside.

2. Applicant worked at Cineco Ltd since September 1997 as Manager (the post of Manager since 2015) which forms part of Cine Bagatelle Ltd.

4. Cineco Ltd terminated the employment of the Applicant on 07 August 2020.”

Averments as per Mr. Jean Noel Iyanassee’s Statement of Case are:

“1. Applicant appeared before the Redundancy Board on Monday 7 September 2020 in a matter referred to it by the Cineco Ltd, which forms part of Cine Bagatelle regarding his termination of employment workforce and on that day the case was set aside.

2. Applicant worked at Cineco Ltd as Projectionist since September 1997 which forms part of Cine Bagatelle Ltd.

4. Cineco Ltd terminated the employment of the Applicant on 30 July 2020.”

Averments as per Mr. Koeny Raya’s Statement of Case are:

“1. Applicant worked at Cineco Ltd since December 1996 as Ticket Controller which forms part of Cine Bagatelle Ltd.

4. Cineco Ltd terminated the employment of the Applicant on 12 September 2020.”

Averments as per Mrs Rachel Janson’s Statement of Case are:

“1. Applicant worked at Cineco Ltd since October 2003 as Bar Girl which forms part of Cine Bagatelle Ltd.

4. Cineco Ltd terminated the employment of the Applicant on 15 September 2020.”

Averments that are common to all four Statements of Case are:

“1.

2.

3. Respondent paid his/her remuneration every month and credited his/her wages in his/her bank account every month.

4. Respondent has an annual turnover of more than Rs 25 million per year.

5.

6. *Applicant avers that Respondent having failed to notify the Redundancy Board of its intention to terminate his/her employment, the termination of his/her employment is deemed to be unjustified.*
7. *Applicant is, therefore praying the Redundancy Board for an order directing Respondent to pay him/her severance allowance at the rate of 3 months per year of service.*

Yours truly,”

The Respondent's Notice of Preliminary Objection

The Respondent averred in its Notice of Preliminary Objection that:

“NOTICE OF PRELIMINARY OBJECTIONS

1. *CINE BAGATELLE LTD (Respondent) is not the Employer of the Applicants and, as such, the Applicants are debarred from proceeding with the present applications before the Redundancy Board.*
2. *At all material times, the Applicants were employed by CINECO LTD, which is a separate and distinct legal entity.*
3. *Mr. Atchia Mohammad Reyaz Mosajee Dawood and Mr. Iyanasee Jean-Noel Tony had entered applications before the Redundancy Board against CINECO LTD bearing Ref: RB/RN/148/2020 and Ref: RB/RN/149/2020 which applications were set aside when preliminary objections in respect of the jurisdiction of the Redundancy Board were raised.*
4. *The Respondent avers that the present applications are frivolous, vexations and an abuse of process and should be set aside outright.”*

The Respondent's Statement of Defence

The Respondent averred in its Statement of Defence that:

“STATEMENT OF DEFENCE

Preliminary Objections

1. *Ex-facie Paragraphs 1 and 4 of the Application lodged by the Applicant wherein it is averred that “Applicant worked at Cineco Ltd since December 1996...” and that “Cineco Ltd terminated the employment of the Applicant on 12 September*

2020”, the Respondent avers that the present application is flawed and that the Applicant has no cause of action against the Respondent before the Redundancy Board.

2. *The Respondent is not the Employer of the Applicant and, as such, the Applicant is debarred from proceeding with the present application before the Redundancy Board, the more so as the pay-slips and the statements of emoluments of the Applicant were issued by Cineco Ltd and the contribution to the NPF was also paid by Cineco Ltd which was, to all intents and purposes, the employer of the Applicant.*
3. *At all material times and to all intents and purposes, the Applicant was employed by CINECO LTD, which is a separate and distinct legal entity from the Respondent.*
4. *The Respondent avers that the present application is frivolous, vexatious and an abuse of process.*
5. *For all the above reasons, the Applicant moves that the present application be set aside.*

On the Merits

6. *The Applicant repeats paragraphs 1 to 5 above.*
7. *Save and except that the Applicant worked at Cineco Ltd since December 1996, the Respondent denies the other averments at Paragraph 1 of the Application and puts the Applicant to the proof thereof.*
8. *The Respondent denies the averments at Paragraph 2 of the Application, puts the Applicant to the proof thereof and avers that the Respondent was effecting payments to the Applicant at the request and on behalf of Cineco Ltd as and when required by Cineco Ltd under an arrangement between Cineco Ltd and the Respondent under which money was advanced by the Respondent for administrative reasons and to the knowledge of the Applicant who did not express any reserves. Furthermore, whenever the Respondent effected payments to the Applicant on behalf of Cineco Ltd, it was duly reimbursed such money by Cineco Ltd.*
9. *The Respondent makes no admission to the averments at Paragraph 3 of the Application and puts the Applicant to the proof thereof.*
10. *The Respondent admits the averments at Paragraph 4 of the Application and avers that the Applicant consequently has no locus standi against the*

Respondent in as much as the Applicant was at all material times employed by Cineco Ltd.

11. *The Respondent denies the averments at Paragraph 5 of the Application, puts the Applicant to the proof thereof, and avers that it was not the employer of the Applicant.*
12. *The Respondent denies the averments at Paragraph 6 of the Application and moves that the present application be set aside.”*

At the sitting of 5th November 2020, a joint motion was made by both Parties to invite the Board to give a ruling on a point of law which may thrash out the matter without having to consider its merit.

Evidence on behalf of the Respondent:

Mr. Nilesh Beekoo, witness for the Respondent, deponed as follows: -

He identified and produced:

- (i) National Pension Fund Return (NPF Return) with respect to all 4 Applicants (Document A);
- (ii) Mr. Reyaz ATCHIA's salary slips for the months of January 2020 to July 2020 (inclusive)(Document B);
- (iii) Mr. Koeny Raya's salary slips for the months of January 2020 to July 2020 (Inclusive)(Document C);
- (iv) Mrs. Rachel Janson's salary slips for the months of January 2020 to July 2020 (inclusive) (Document D);
- (v) Mr. Jean Noel Iyanassee's salary slips for the months of January 2020 to July 2020 (Inclusive) (Document E);
- (vi) Statements of Emoluments and Tax Deduction for Income Year ending June 2019 and June 2020 respectively in regards to all four Applicants (Document F1-F8);
- (vii) Letter from the Secretary of the Private Enterprises Employees Union to Cineco Ltd informing the latter of the election of Messrs. Koeny Raya and Reyaz Atchia as delegates to the Union (Document G);
- (viii) Letter from the Secretary of the Private Enterprises Employees Union to Cineco Ltd informing the latter of a case of violence at work perpetrated against Mrs. Rachel Janson (Document H);

- (viii) Workfare Programme Form (Ministry of Labour, Human Resource Development and Training) in respect to all four Applicants (Document J1 to J4);
- (ix) Letter from Cineco Ltd to Ministry of Labour, Human Resources Development and Training (Inspection and Enforcement Section) (Document K);
- (x) Registration of Complaint from Mr. Reyaz Atchia against Cineco Ltd for non-payment of wages (Document L1), registration of complaint from Mr. Keony Raya for reduced payment of wages (Document L2) and registration of complaint from Mr. Jean Noel Iyanasee for non-payment of allowance (Document L3);
- (xi) Mr. Reyaz Atchia's request for leave without pay addressed to Cineco Ltd (Document M);
- (xii) Letter from Labour and Industrial Relations Officer addressed to the Cineco Ltd (Document N).

In **examination in chief**, Mr. Nilesh Beekoo said that the Applicants were employed by Cineco Ltd and it had been doing the Applicants' NPF returns for the months of January 2020 to July 2020 (Doc A). The Applicants' salary slips for the months January 2020 to July 2020 had also been done by Cineco Ltd. The statements of emoluments and tax deductions for the Income Year ending June 2019 and 2020 with respect to all four Applicants had been done by Cineco Ltd. The Respondent and Cineco Ltd are different companies but they are both registered in Mauritius. The Private Enterprise Employees Union (PEEU) had in a letter dated 5th of March 2020 informed Cineco Ltd which is situated at Caudan Waterfront, Port-Louis that Messrs. Keony Raya and Reyaz Atchia have been elected and delegated for the year 2020/21 to be present in all meetings between Management of the Cineco Ltd and the Union. Cineco Ltd had been informed by PEEU that a complaint had been filed on behalf of Mrs. Rachel Janson for an alleged case of violence at work. He testified that the Applicants had joined the Workfare Programme when their employment had been terminated by Cineco Ltd and that the latter had been asked by the Ministry of Labour, Human Resource Development and Training (Ministry) to fill in a form together with the required documents attached to enable the Applicants to join the Workfare Programme. At the request of the Ministry, Cineco Ltd had been asked to provide relevant information in regard to the Applicants and which it did in a letter dated 30th September 2020. The witness further stated that on three different occasions, the Applicants had been complaining to the Ministry against Cineco Ltd. On the 7th of July 2012, Mr. Reyaz Atchia had complained about non-payment of wages, Mr. Keony Raya on 10th August 2020, about reduction of wages and Mr. Jean Noel Iyanasee, on 21st September 2020 about non-payment of allowance respectively. He also stated that on 7th February 2017, Mr. Reyaz Atchia had applied to Cineco Ltd for leave without pay. He explained that the Applicants had filed a complaint to the Ministry against Cineco Ltd for unjustified termination of their employment where numerous discussions had followed in order to reach a settlement and on the 15th of October 2020, Cineco Ltd had even submitted a proposal through the Ministry to the Applicants. The Ministry had later informed the financial controller of Cineco Ltd that the proposal they had made on the 30th September 2020 had been turned down by PEEU. The witness further explained that Cineco Ltd holds a bank account at MCB. The bank always requests for original signature of its directors for bank transactions and Cineco Ltd.'s employees used to see their monthly

salaries delayed when the directors are unavailable. Therefore, at the request of the Applicants, an arrangement had been made between Cineco Ltd and the Respondent, whereby the latter would pay the monthly salary to the Applicants on behalf of Cineco Ltd and the next day it would be refunded to the Respondent. It was done on purpose because the Applicants had contracted loans which were being reimbursed by way of standing orders. He further stated that since Cineco Ltd would reimburse the Respondent money advanced for payment of remuneration to the Applicants, it would mean that Cineco Ltd was the one paying the Applicants' monthly salaries.

In **cross-examination**, the witness testified that he is an employee of the Respondent and has been employed as financial controller for 9 years now. He explained that sometimes it is difficult to find Mrs. Natasha Mallac Koenig for signature. He admitted that Mrs. Natasha Mallac Koenig is also the director of the Respondent. At some stage, Mr. Chuttoo had produced detailed information (which the Respondent did not object to) he had gathered from the Corporate and Business registration Department with respect to both the Respondent and Cineco Ltd (Document O1 and O2). The witness stated that although Mrs Mallac Koenig is the director of the Respondent, her signature is not necessary for banking transactions because the Respondent holds a bank account at La Banque des Mascareignes, not MCB. La Banque des Mascareignes adopts different procedures for banking transactions, in that the bank accepts authorization from clients via email for payment of salary and he always uses a copy of Mrs. Mallac Koenig's signature stored on his laptop. He testified that, right now, before the Board, he is not in possession of any bank statement but can bring same if need be. The transfer from Cineco Ltd to the Respondent can be seen in its audited account. He maintained that since February 2016, the Respondent had been making payment of salary on behalf of Cineco Ltd. In regard to NPF, Cineco Ltd used to effect payment by direct debit from the MCB's account. He did it online via MNS, by inserting Cineco Ltd's bank details. No **re-examination** of this witness.

No witness was called on behalf of the Applicants.

Submission of Counsel appearing on behalf of the Respondent

Counsel submitted that none of the documents produced by the Respondent were challenged by the Applicants. He then read the definition of the Workers' Rights Act 2019 and submitted that subject to sections 72, 111 and 115 of the said act, an employer means a person who employs and is responsible for the payment of the remuneration of the worker and it includes a job contractor and so on. He stated there that are two criteria. Firstly, it means that the person who employs the worker has an obligation of an employer towards the employee and secondly, is responsible for the payment of remuneration. Counsel stressed that it does not mean that the employer has to himself pay the employee but that the employer is responsible for payment of remuneration. He further submitted that this is an application by the four Applicants who are claiming severance allowance from the Respondent for unjustified termination of their employment but the name of Cineco Ltd as their employer appears on all four Applicants' pay slips. The name of Cineco Ltd as employer can be seen on the Statements of emoluments of the Applicants for the year 2019 and 2020. He stated that all correspondences from their trade union were addressed to Cineco Ltd and the fact that they were not challenged by the Applicants is evidence that Cineco Ltd is in fact their employer. He declared that all Applicants'

complaints to the Labour Office are entered against Cineco Ltd as their employer and they even joined the Workfare Programme as a result of termination of their employment with Cineco Ltd. He further pointed out that even in their statements of case, the Applicants had claimed that they are employed by Cineco Ltd, but he argued that the latter did not form part of the Respondent. He contested that this did not make sense inasmuch as the trade union representatives have produced documents from the Registrar of Companies which revealed that the Respondent and Cineco Ltd are two separate and distinct entities even though they may have same directors. He argued that if the Applicants have a claim against Cineco Ltd, it can only be before another jurisdiction. He claimed that the payments of remuneration by the Respondent on behalf of the Cineco Ltd have not been challenged by the Applicants during the cross examination of Mr. Beekoo and if the Respondent were effecting payment of salary it would have been counted as expenses in the Respondent's account. The statements of emoluments would have been in the name of the Respondent instead. Counsel filed in a copy of the decision in the case of *Maurice v. Merville Beach Hotel and Ors* (2009) SCJ 414 in support of his submission. He concluded that apart from the payment of remuneration, there was, from the very beginning, an employee-employer relationship between Cineco Ltd and the Applicants. A relationship of responsibility and obligation. He submitted that numerous complaints were filed against Cineco Ltd, request for leave without pay addressed to Cineco Ltd and proposals as well as counter proposals for payment compensation before the Labour Office were made by the Applicants to Cineco Ltd. He stressed that all essential elements disclosed that the employer is in truth Cineco Ltd and not the Respondent and the applications are flawed.

The Trade Unionists appearing for the Applicants did not offer submissions.

ANALYSIS

The definition of employer can be found in **Section 2 of the Workers' Rights Act 2019 (as amended)** which provides as follows:

“employer”, subject to sections 72, 111 and 115 –

(a) means a person who employs a worker and is responsible for the payment of remuneration to the worker; and

(b) includes –

(i) a job contractor;

(ii) a person, other than a share worker, who shares the profit or gross earnings of another share worker”. (underlining is ours)

For the purpose of **Sub-Part III of the Workers' Rights Act 2019 (as amended)** which deals with termination of employment with respect to reduction of workforce and closure of enterprises, **Section 72(2)** of the said Act defines an employer as:

“...person employing not less than 15 workers in an undertaking or an undertaking having an annual turnover of at least 25 million rupees”.

And a breach of **Section 72(1A) (a) of the Workers' Rights Act 2019 (as amended)** by an employer, enables a worker to seize the Board for redress under **Section 72(8)** of the said Act which 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 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).”

Before the Board decides on whether the employments of those four Applicants were terminated by the Respondent in breach of subsection (1),(1A),(5) or (6), it will have to identify who is the employer of the four Applicants and also whether the employer has a turnover of at least 25 million rupees as averred by the Applicants.

Was there a contract of employment between each Applicant and the Respondent?

Under the French law, a contract of employment exists, if and only if, the three essential elements are present. They are namely *“la prestation du travail”, “la rémunération”* and *“le lien de subordination”*. Back in 1970, in the **Caledonian Insurance v M.I. Mowlah** [1970 SCJ 3], the Supreme Court decided that:

“It is settled law that in order to constitute the relation of employer and employee there must be a “subordination juridique” between them without which there cannot be a “louage de service”. We quote from Dalloz Nouveau Repertoire vo. Louage d’ouvrage et d’industrie:

23. Cette subordination du locateur de services au maître ou patron est un des traits essentiels du contrat de louage de services et le distingue du contrat de louage d’industrie ou d’entreprise, réglé par les arts. 1787 et s.C.Civ., dans ce dernier contrat, l’entrepreneur fait le travail sans aucune direction ni surveillance du maître et il le lui remet une fois terminé; dans le premier, au contraire, le maître a la direction et la surveillance du travail (Trib. comm. Saint Etienne 23 mars 1905, D.P.1905.5.30. Comp. Req.27 janv. 1851, D.P.51.1.66; Paris, 31 Oct. 1893. D.P.94.2.313.Pic, nos 873 et 873 bis Baudry-Lacantinerie et Wahl, t.2, nos 1641, 1881 et 3865 et s).

24. Il y a donc louage de services lorsqu’un ouvrier travaille sous la direction d’un patron, si important que soit le travail, et, inversement, il y a louage d’industrie et l’ouvrier devient entrepreneur, dès qu’il travaille pour son compte, d’une façon indépendante, si minime et de si peu de valeur que soit le travail (trib. paix Paris, 2 dec. 1909, D.P. 1910 5.5. Baudry-Lacantinerie et Wahl, loc.cit).

28. De même, le contrat intervenu entre un artiste et le directeur d’un music-hall est un louage de services, lorsque l’artiste ne présente pas une attraction créée et réglée par lui, mais joue dans une revue, un rôle imaginé et réglé par la direction (Trib. civ. Seine, 24 févr. 1912 Gaz. Pal.1912.1.1311).

Again in Dalloz Encyclopedie Civile vo. Contrat de Travail at note 19 we read the following: Le salarié serait place sous l'autorité de l'employeur qui aurait le droit de lui donner des ordres pour l'exécution du travail, de surveiller leur accomplissement, et de reprimer par des sanctions les fautes disciplinaires. Il faudrait ce lien de subordination juridique pour que le contrat puisse être qualifié contrat de louage de services”.

In **Morris J. v Merville Beach Hotel & Ors [2009 MR 420]**, the concept of employee-employer relationship was lengthily discussed. The Supreme Court stated that:

“[18] Our second qualm relates to substantive law. In the modern employment law, the concept of employee-employer relationship has evolved away from the traditional binary and personal nature where it started originally, about which see below. This has led to the development of other criteria than the conventional “he who pays the piper calls the tune!” In a number of modern business arrangements, the mere fact of who pays the wages or salaries is not enough. In appropriate cases, cumulative criteria are applied to find out who is legally the employer of a party. It is not in all cases that an employer is he who pays the wages or the salary.

[19] The relegation of the remuneration-based criterion is not one that is unknown, is recent or foreign to our jurisdiction. Thus, in the case of Local Government Service Commission v. Bancillon [2003 SCJ 252], this is what this Court stated, on appeal, against the decision of the learned magistrate who had applied the conventional criterion: “In his analysis of the employer/employee relationship, the learned magistrate again erred in relying solely on one of the elements normally making up that relationship, namely the remuneration aspect, basing himself on section 2 of the Labour Act. Since no single test is conclusive, it is the duty of the trial court to look at all the elements to see whether that specific relationship; has been established. The weight to be given to each element will depend on the facts and circumstances of each individual case (vide Warner Holidays Ltd v Secretary of State for Social Services [1983 IRC 440]). We are, therefore, of the opinion that the learned magistrate was wrong to adopt the very restrictive nexus of remuneration in analyzing the employer/employee relationship and that he had failed to consider other relevant factors, like the nature of the enterprise, the right of control, the existing appointment and dismissal mechanism.”

[20] The other “relevant factors” mentioned in the above citation of this Court may be referred to, as it is in the Doctrine, as the cumulative criteria, applicable in a complex set of situations obtaining in an intra-corporate or inter-corporate structure or business activity. We read at para. 21, Critères Cumulatifs, Rép. trav. Dalloz, avril 2005:

“L’existence du contrat de travail suppose normalement la réunion de trois critères: d’une part, l’exécution d’une prestation de travail, d’autre part, le versement au travailleur concerné d’une remuneration en contrepartie de l’accomplissement de cette prestation, et, enfin, la subordination juridique de ce travailleur au donneur d’ouvrage qui est, en principe, le bénéficiaire de cette même prestation de travail (V.P. FIESCHI-VIVET, Les éléments constitutifs du contrat de travail, RJS 7/1991, p. 414; V. également E. DOCKES, La

détermination de l'objet des obligations nées du contrat de travail, *Dr. Soc.* 1997, p. 140; *Th. REVET, L'objet du contrat de travail, Dr. soc.* 1992, p. 859).

[21] *Doctrine and jurisprudence today converge on the point that:*

“Compte tenu du caractère cumulative de ces critères, l'absence de l'un d'entre eux (tel que la rémunération) devrait normalement conduire à dénier à la relation contractuelle ou factuelle litigieuse la qualification de contrat de travail. Aussi, pour éviter que, par ce biais, des travailleurs puissent se voir privés du bénéfice des dispositions du code du travail et/ou de la protection sociale avantageuse offerte par le régime général, la Cour de cassation n'exige, en réalité, la réunion cumulative de ces critères que lorsque aucun comportement fautif ou frauduleux ne peut être reproché au donneur d'ouvrage.

[22] *In a situation where the one pays the piper and some other calls the tune, it is the latter who becomes the employer by the rule of “lien de subordination juridique”:*

“Cela étant précise, de ces trois critères de qualification, celui relative au lien de subordination juridique apparaît prépondérant, voire décisive, dès lors qu'il correspond à l'autorité inhérente à la qualité d'employeur et qu'il constitue, de ce fait, un élément de distinction fondamental avec d'autres contrats ou concepts voisins.” (V. en ce sens, Cass. Soc. 13 nov. 1996, Bull. Civ. V, No 386, RJS 12/1996, no 1320, JCP, éd.E, 1997. II. 911, note J. Barthélémy, Dr. soc. 1996, p. 1067, note J.J. Dupeyroux: J. PELISSIER, A. LYON-CAEN, A. JEAMMAUD et E. DOCKES, les grands arrêt du droit du travail, op. cit., no 2, p. 4; 23 janv. 1997, 2e esp., RJS s/1997, no 325, faisant référence à la fois à l'article L. 242-1 du code de la sécurité sociale et à l'article L. 121-1 du code du travail. Rapp. P. PIGASSOU, l'évolution du lien de subordination en droit du travail et de la sécurité sociale, Dr. soc. 1982, p. 578) ”.

The Board takes notes that:

- (a) All the documents produced by the Respondent disclosed only the name of Cineco Ltd. Be it the numerous complaints filed by the Applicants against Cineco Ltd, the National Pension Fund Return (NPF Return), the Statements of Emoluments and Tax Deduction, the letter from the Secretary of the Private Enterprises Employees Union to Cineco Ltd informing the latter of the election of Messrs. Koeny Raya and Reyaz Atchia as delegates to the Union, the letter from the Secretary of the Private Enterprises Employees Union to Cineco Ltd, informing the latter of a case of violence at work perpetrated against Mrs. Rachel Janson, the Workfare Programme Form, Mr. Atchia's request letter for leave without pay addressed to Cineco Ltd and even the Applicants' salary slips;
- (b) The documents produced by the Respondent have not been challenged by the Applicants;

- (c) The Applicants did not dispute the version of Mr. Nilesh Beekoo, witness for the Respondent, in regard to the payment of the Applicants' monthly salary by the Respondent on behalf of Cineco Ltd in the absence of the directors;
- (d) The documents from the Corporate and Business Registration Department filed by Applicants clearly shows that the Respondent was not the shareholder of Cineco Ltd; and
- (e) The absence of the Applicants' version before the Board to substantiate their averments.

The Board is of the opinion that although, the payments of remuneration were made by the Respondent but on behalf of Cineco Ltd and were one of the criteria in determining the existence of the employee-employer relationship, it remains that the "*lien de subordination juridique*" was the decisive constitutive element in the present matter. The Board also observes that Counsel appearing on behalf of the Respondent has clearly established that there was no "*lien de subordination juridique*" between Applicants and the Respondent. On the contrary, the "*lien de subordination juridique*", if any, existed between the Applicants and Cineco Ltd.

Hence, based on the above, it is quite obvious that there is a total absence of the three vital elements of a contract of employment, which would mean that there was no contract of employment between the Applicants and the Respondent. It can be inferred that at no point in time the Respondent employed the Applicants as workers and there was no employee-employer relationship that existed between them.

The Board therefore concludes that the Applicants were unable to prove on a balance of probabilities that their employment were terminated by the Respondent. The Board holds that it has no jurisdiction for the purpose of those applications inasmuch as the Respondent does not satisfy the definition of employer under **Section 2 of the Workers' Rights Act 2019 (as amended)** and therefore upholds the *plea in limine* raised by the Respondent.

Furthermore, this conclusion makes it inappropriate for the Board to rule on the merits of those applications, which is therefore set aside.

(SD)

Bernard C. MARIE
(Vice-President)

(SD)

Ms Chandrani Devi Gopaul
(Member)

(SD)
Mrs Anrita Imrith
(Member)

(SD)
Mr Suraj Ray
(Member)

(SD)
Ms. S. Deerpaul
(Member)

17th December 2020