REDUNDANCY BOARD

RB/RN/24/2021

ORDER

Before:	Rashid Hossen	-	President
	Saveetah Deerpaul (Ms.)	-	Member
	Chandrani Devi Gopaul (Ms.)	-	Member
	Suraj Ray	-	Member

Mr. Mablook Jonathan

and

Island Focus Co Ltd (Emotions)

On 25th January 2021, Mr. Mablook Jonathan, the Applicant filed a request for severance allowance at the rate of three (3) months per year of service following termination of his contract of employment by Island Focus Co Ltd (Emotions), the Respondent without following procedures laid down in section 72 of the Workers' Rights Act 2019.

Mr. T. Dabycharun, Counsel appeared for the Applicant. Mr. M. Ahnee, Counsel appeared for the Respondent.

In his application to the Redundancy Board (the Board), it is averred that Applicant worked at Respondent since 01 June 2016 as Data Development Executive. Respondent has more than fifteen (15) employees and the nature of its business is related to the hotel sector. Applicant's contract was terminated by Respondent on 05th December 2020 on economic ground and the Applicant has signed a letter accepting the termination not knowing the amendment brought in the Workers' Rights Act 2019 due to Covid – 19 pandemic and which stipulates: -

> *72 (1A) (a) "an employer shall, during the period starting on 1 June 2020 and ending on 31 December 2020, not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers."*

On 17th February 2021, Applicant filed a Statement of Case which is as follows: -

> *"I was employed since 1 June 2016 as Data Development Executive at Island Focus Co Ltd (Emotions). My salary was being credited every month in my bank account by the respondent.*

On the 5th of December 2020 I was compelled to sign a letter of acceptance for the termination of my employment by Island Focus Co Ltd (Emotions) despite the following amendments of the Workers' Rights Act 2019;

"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 reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers" and also the Cabinet decision taken on 18 December 2020 stating that the above section is being extended until 30 June 2021.

During the meeting called by my employer without prior notice, I was compelled to sign a compromise agreement as the representative of management threatened me by continuously repeating that without my signature no remuneration will be paid as the company was in acute financial difficulties.

I requested that the proposed document for signature be handled to me for verification before the signature of same, the representative of management refused and forcefully told that if I don't sign, I can leave the office with the consequences that I will not receive any remuneration for the month of December and even forthcoming months. No options were left to me as I was in urgent need of finance to be able to assume my social and family responsibilities.

I consider that the document I was compelled to sign is not a compromise agreement as defined under Section 16 of the Workers' Rights Act 2019 on the following grounds;

1. *No notice was given to me that management will propose a termination of employment compromise agreement in order to allow me to be represented by a labour officer or a representative of a trade union or a lawyer.*
2. *Management refused to hand over the compromise agreement to me to read and to take cognizance of its content and gives me the opportunity to seek technical advice before signature.*
3. *The document despite all the shortcomings as defined in 1 and 2 above, stipulates that the amount that has been paid to me represents all remuneration representing salaries and emoluments due to me during all my time of service which was only Rs 34, 100 is totally inappropriate as the amount paid is by far less than what I was supposed to benefit as prescribed under law.*

I consider that I have been psychologically forced to sign a compromise agreement not in line with the prescription of the Workers' Rights Act 2019.

After signing the document, I was then given a copy of the paper that I signed and I went to the Labour office to seek advice.

The labour office informed me that the paper I had signed is not in accordance with the legislation and advised me to apply to the Redundancy Board for payment of Severance allowance as the termination of my employment on the basis that there was an agreement between parties which is not justified.

Taking into consideration that the above raised elements, I pray that the Redundancy Board orders accordingly."

In its reply, to which are attached a *plea in limine litis*, the Respondent states: -

"The Redundancy Board has no jurisdiction in the present case inasmuch as:

(i) the employment of the Applicant was terminated by mutual agreement by way of a settlement as provided by section 72(3) of the Workers' Rights Act 2019 ("the Act"), which has not been repealed following the enactment of section 72(1A);

(ii) the abovementioned termination by mutual agreement being based on s. 72(3), s. 72(1A) had no application in the present matter;

(iii) an application for severance allowance under section 72(8) of the Act can only be brought before the Redundancy Board where the employment has been terminated in breach of subsections 72(1), (1A), (5) or (6) of the Act, which subsections are not applicable to the present case as the parties have reached a settlement under section 72(3) of the Act;

(iv) ex-facie the Applicant's statement of case, the Applicant is averring that the Applicant's consent has allegedly not been properly obtained which would amount to a breach of section 72(3) in relation to which the Industrial Court would be competent.

(v) section 72(8) of the Act is in contravention with Section 10(8) of the Constitution inasmuch as only a Court of law is empowered to adjudicate as to the extent of a civil right or obligation which reads as follows:

"(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time."

(vi) in view of the fact that in the settlement dated 5th December 2020, the Applicant declared that in consideration of the sum paid to him, he would have no claim, demand, suit, whatsoever, against the employer, he is debarred from entering the present action before the Redundancy Board claiming severance allowance.

The Applicant should therefore not be allowed to proceed with the present claim for severance allowance before the Redundancy Board."

ON THE MERITS

1. *The Respondent admits the first paragraph of the Applicant's statement of case.*

2. *The Respondent denies that:*
   a. *the Applicant was compelled by the Respondent to sign a letter of acceptance for the termination of the Applicant's employment*
   b. *the settlement agreement signed by the Applicant was made pursuant to section 72(1A), but avers that it was made pursuant*

to under section 72(3) of the Act as expressly set out in the said settlement agreement.

3. *Respondent denies that the Applicant was allegedly compelled to sign a compromise agreement as provided under section 16 of the Act and avers that the employment of the Applicant was terminated by mutual agreement by way of a settlement agreement signed pursuant to section 72(3) of the Act.*

4. *The Board's attention is drawn to the fact that the aforesaid settlement agreement expressly provides that there was no dispute between the parties at the time the settlement agreement was signed. Such a settlement agreement cannot therefore amount to a compromise agreement provided under section 16 of the Act.*

5. *Respondent denies that there were any threats from any representative of the Management regarding the Applicant's signature and that the meeting was called without prior notice and puts the Applicant to the strict proof thereof.*

6. *Respondent forcefully denies that the Applicant was not given the opportunity to verify the proposed document before signature. In any case, the Applicant repeats that the Board does not have jurisdiction to grant severance allowance in case of an alleged breach of section 72(3) of the Act. Section 72(8), under which the present application is made concerns only breaches to subsections 72(1), (1A), (5) or (6) of the Act.*

7. *The Respondent denies that no notice was given to the Applicant for the signature of the proposed settlement agreement. In any case, such an alleged failure to give notice would amount to an alleged breach of section 72(3) of the Act for which the Board does not have jurisdiction under subsection 72(8) of the Act.*

8. *The Applicant received far less than what the Applicant was allegedly supposed to benefit as prescribed under law. In any case, such an alleged failure to pay compensation as provided under section 72(3) of the Act could only amount to a breach of the said section, for which alleged breach the Board does not have jurisdiction under section 72(8) of the Act.*

9. *Respondent denies that:*
    a. *the Applicant was psychologically forced to sign a settlement agreement. In any case, if the Applicant has allegedly been forced to sign a settlement agreement reached under section 72(3) of the Act, this would amount to a breach of the said section, for which the Board has no jurisdiction under section 72(8) of the Act;*

    b. *the document signed by the parties in the present matter amounts to a compromise agreement under section 16 of the Act. In truth and in fact, the document signed by the parties constitutes as expressly stated in the said document a settlement agreement under section 72(3) of the Act; the attention of the Board is again drawn to the fact that it is expressly stated in the document signed by the parties that there has been and that there is, at the time of the signature of the said document, no dispute between the parties, as a result of which the said document cannot amount to a compromise agreement under section 16 inasmuch as a*

compromise agreement can only come into existence "in resolution of a dispute concerning his termination of employment or short payment or non-payment of wages".

10. *The Respondent is not aware whether the Labour Office has advised the Applicant that the documents signed by the Applicant did not comply with the law. The Respondent therefore refuses to admit that such advice was given to the Applicant.*

11. *The Respondent further avers that prior to taking steps leading to the signature of agreement between the parties, the Respondent initiated discussions and sought advice from the Ministry of Labour, and the officers who were contacted confirmed that the steps to be taken by Island Focus Co Ltd were in compliance with the applicable legislation. As a result of the above, in a letter dated 4 December 2020, the Respondent took the precaution to sum up the steps to be taken as advised by the Ministry.*

CONCLUSION

12. *Respondent therefore humbly moves for the Board to set aside the application for payment of severance allowance."*

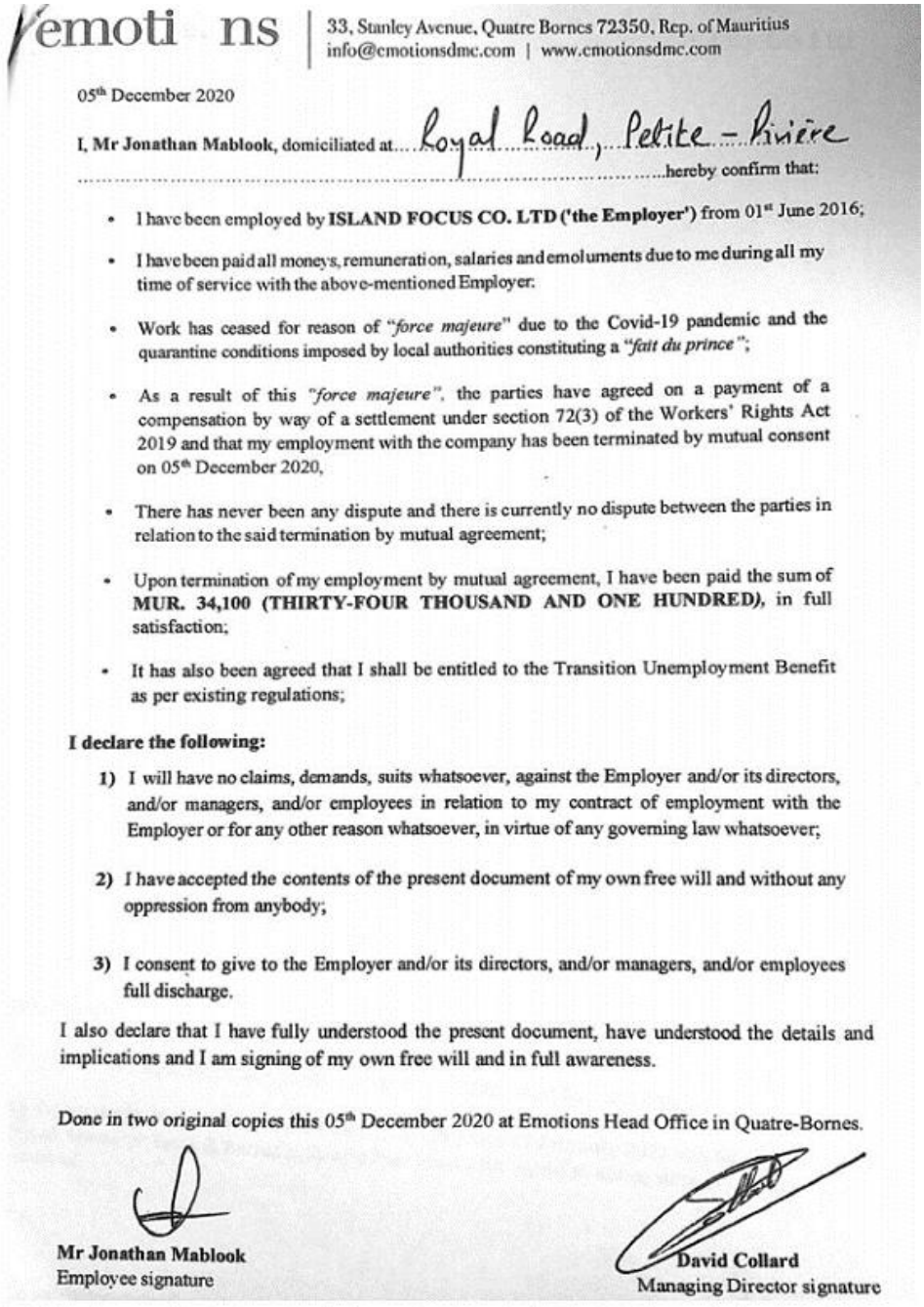
APPLICANT'S TESTIMONY

The Applicant whose deposition under oath was subject to cross examination started work at the Respondent on the 1st of June 2016 as Data Development Executive. On 5th September 2020, he was called, together with other employees by the Respondent and was given a cheque. He was informed that the company was in financial straits due to Covid-19. He was to take the cheque or he would not obtain anything from the company. He reckoned he had no time to show anyone the letter and since it was the month of December he was in need of cash to attend to his family's needs. He did sign the letter and took the cheque. On 9th December 2020, he proceeded to the Labour Office at the Ministry of Labour, Human Resource Development and Training and was informed that the matter is to be referred to the present Board. The cheque that he received is in the amount of Rs 34, 100 which is his monthly basic salary. He added that he is a member of CTSP Union. He was given no time to contact anybody when he was presented with the cheque. He is not aware whether other colleagues have refused to sign the agreement letter. He agreed having read and understood the following before he affixed his signature on the agreement.

- *"I also declare that I have fully understood the present document, have understood the details and implications and I am signing of my own free will and in full awareness.*
  …
- *I consider that the document I was compelled to sign is not a compromise agreement as defined under section 16 of the Workers' Rights Act…*
  …
- *I have accepted the contents of the present document of my own free will and without any oppression from anybody.*
  …

- *I will have no claim, demands, suits whatsoever, against the Employer and/or its directors, and/or employees in relation to my contract of employment…".*

For further ease of reference, the agreement is hereby reproduced: -



emotions | 33, Stanley Avenue, Quatre Bornes 72350, Rep. of Mauritius
info@emotionsdmc.com | www.emotionsdmc.com

05th December 2020

I, Mr Jonathan Mablook, domiciliated at Royal Road, Petite-Rivière .....hereby confirm that:

- I have been employed by **ISLAND FOCUS CO. LTD ('the Employer')** from 01st June 2016;
- I have been paid all moneys, remuneration, salaries and emoluments due to me during all my time of service with the above-mentioned Employer.
- Work has ceased for reason of "*force majeure*" due to the Covid-19 pandemic and the quarantine conditions imposed by local authorities constituting a "*fait du prince*";
- As a result of this "*force majeure*", the parties have agreed on a payment of a compensation by way of a settlement under section 72(3) of the Workers' Rights Act 2019 and that my employment with the company has been terminated by mutual consent on 05th December 2020,
- There has never been any dispute and there is currently no dispute between the parties in relation to the said termination by mutual agreement;
- Upon termination of my employment by mutual agreement, I have been paid the sum of **MUR. 34,100 (THIRTY-FOUR THOUSAND AND ONE HUNDRED)**, in full satisfaction;
- It has also been agreed that I shall be entitled to the Transition Unemployment Benefit as per existing regulations;

I declare the following:

1) I will have no claims, demands, suits whatsoever, against the Employer and/or its directors, and/or managers, and/or employees in relation to my contract of employment with the Employer or for any other reason whatsoever, in virtue of any governing law whatsoever;
2) I have accepted the contents of the present document of my own free will and without any oppression from anybody;
3) I consent to give to the Employer and/or its directors, and/or managers, and/or employees full discharge.

I also declare that I have fully understood the present document, have understood the details and implications and I am signing of my own free will and in full awareness.

Done in two original copies this 05th December 2020 at Emotions Head Office in Quatre-Bornes.

Mr Jonathan Mablook
Employee signature

David Collard
Managing Director signature

The Respondent did not adduce evidence.

COUNSEL'S SUBMISSIONS

Mr. Dabycharun briefly submitted that we are left in the dark as to whether any negotiation took place prior to the termination and there has been no representation of trade

union. The Applicant was compelled to sign the agreement and this is in breach of the Workers' Rights (Prescribed Period) Regulation 2020 since the respondent is not to terminate the employment of any of his workers. According to the agreement document, work had ceased at Respondent for reason of *force majeure* due to COVID-19 pandemic. Counsel further submitted that no weight should be attached to the unsworn evidence of Respondent. With regard to the constitutional points, redress should be before the Supreme Court.

Mr. Ahnee submitted *viva voce* and in writing that the agreement which was reached between the parties falls within section 72(3) of the Workers' Rights Act 2019. This section cannot be linked to section 72(8) of the Act which refers only to subsection (1), (1A) (5) or (6). It is his contention that it is the Industrial Court which will be competent when the validity of a settlement is contested. He added that where a settlement has been reached, the Board is not concerned at all. As a result of the Board's refusal to allow the preliminary objection in law as to its jurisdiction and the constitutionality of its power to be thrashed out *in limine litis* the Respondent had no other alternatives than abstaining from giving evidence before the Board. This has affected Respondent's right to a fair Hearing. Should the Board have concluded that it had no jurisdiction, evidence would have been elicited from the employer's representative and its witnesses before the Board and this would inevitably prejudice the employer's case if the latter is subsequently sued before the Industrial Court. It is Counsel's view that the points in law which have been raised do not necessitate evidence to be adduced and in any way the Board is not equipped to determine civil rights and obligations. He submitted that section 72(8) is in controversy with section 10(8) of the Constitution in as much as only a Court of law is empowered to adjudicate as to the extent of a civil right or obligation. Counsel referred to the case of Lo Fan Hin vs. TCSB whereby the Court decided that the Termination of Contract of Service Board could only decide whether the reduction of the number of employees was justified or not and the Board cannot decide on severance allowance as this issue should be before the Industrial Court. Counsel further submitted that those persons appointed on the Board cannot be impartial and independent since their appointment emanate from the Minister on such terms and conditions and for such period as the Minister may determine. This can in no way satisfy the specific condition of impartiality and independence set out in section 10(8) of the Constitution. On a different note, Counsel submitted that only Statements of Case are exchanged without following any rule and where a party is not entitled to ask for particulars and there may be some unwritten rules somewhere in the sky.

BOARD'S CONSIDERATIONS

On no less than six occasions, Mr. Ahnee repeatedly moved the Board to pronounce on the plea *in limine litis* prior to hearing evidence, if need be. The obstinacy and adamancy of Counsel are beyond the bounds of decency. Counsel was at all times informed that the Board would take up the matter on the merits with a view to act expeditiously. Indeed, once the Applicant had confirmed under oath the circumstances in which he came to sign the agreement, we would be in a better position to adjudicate on the issue of jurisdiction. In a show of tantrum, Counsel eventually decided not to adduce evidence at all following the rejection of his motion.

That evidence ushered before the Board may have a bearing on a probable and eventual case before the Industrial Court is neither here nor there. We should not get in the realm of hypothesis.

In the present matter, the termination of Applicant's employment contract by mutual agreement following a settlement is subject to the averment of duress exercised by the Respondent. To that extent we disagree with Counsel's submission that the Board should not proceed with hearing evidence prior to determining issues raised *in limine litis*. Section 72(8) of the Workers' Rights Act 2019 (as amended) reads: -

> *(8) 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 specific in section 70(1),*
>
> *and the Board may make such order as provided for in subsection (10) or (11).*
>
> *(Subsection (8) repealed and repealed by the Finance (Miscellaneous Provisions) Act 2020 – Act No. 7 of 2020 w.e.f 2 June 2020)*

Subsection (3) deals specifically with a situation where an agreement has been reached with the employer whereas in the present case the agreement is averred to have been entered by force. We reject the contention that since subsection (3) is not mentioned in subsection (8), there cannot be a breach as per the provision of section 8. Indeed, the contents of the agreement in particular with reference to *force majeure* due to Covid-19 pandemic relate to a reduction in the workforce. An employer who terminates the employment contract during the prohibitive period would be in breach of section 72(8), coupled with subsection 5 of the Workers' Rights Act 2019, as amended.

We further disagree with the submission that if consent is in issue, the matter should be before the Industrial Court. Section 72(1A) (a) and (5) clearly and unambiguously stipulate that the employer is not to proceed with termination of the employment. The Board has power to determine the issue of termination based on evidence adduced before it. If such termination falls short of satisfying the requirements of the law, it would be considered to be unjustified. We are of the view that to that extent the Board is entitled to probe into the circumstances the termination took place.

We refer to what the Court held in **Larrouilh C v JMG Academie Limited, 2013 SCJ 76: -**

"…It is not disputed that there was an exchange of correspondence between the parties in the present case.

…

Finally, the appellant signed a document dated 24 April 2008 witnessing a "redundancy payment" in the amount of 7, 966 euros in his favour (Document F).

The learned Magistrate was of the view that he should examine the various emails exchanged between the parties together with Document F in order to determine whether there was in fact a transaction. We find that this approach was the proper and correct one…."

In ***Padaruth, Ramkhelawon & Ors v. Cogefar Construzioni Generali Farsura SPA [1986 MR 91]****, the Court held that if an employer relies for his defence on a document signed by his employee in "full satisfaction", it was for the duty of the court to ascertain what was the parties' intention at the time the document was signed.*

In ***Nundlall and Ors. v. Nundlall [1982] MR 241****, the decision of* ***Dyson v. Attorney-General [1911] 1 K.B. 410*** *was quoted with approval: "Now it is unquestionable that, both under the inherent power of the Court and also under a specific rule to that effect made under the Judicature Act, the Court has a right to stop an action at this stage, if it is wantonly brought without the shadow of an excuse, so that to permit the action to go through its ordinary stages up to the trial would be to allow the defendant to be vexed under the form of legal process when there could not at any stage be any doubt, that the action was baseless. But from this to the summary dismissal of actions because the judge in chambers does not think they will be successful in the end lies a wide region, and the Courts have properly considered that this power of arresting an action and deciding it without trial is one to be very sparingly used, and rarely, if ever, excepting in cases* ***where the action is an abuse of legal procedure****. They have laid down again and again that this process is not intended to take the place of the old demurrer by which the defendant challenged the validity of the plaintiff's claim as a matter of law. Differences of law, just as differences of fact, are normally to be decided by trial after hearing in Court, and not to be refused a hearing in Court by an order of the judge in Chambers… To my mind it is evident that our judicial system would never permit a plaintiff to be "driven from the judgement seat" in this way without any court having considered his right to be heard, excepting in cases where the cause of action was obviously and almost incontestably bad."*

…

In ***Rama v. Vacoas Transport Co Ltd. [1958 MR 184]*** *it was held that "objections cannot properly be heard in limine unless the objector accepts - for the purposes of argument only- all the facts alleged by the plaintiff but argues that, even accepting them, his opponent cannot succeed. Where the objection is*

based on disputed facts the court must hear the evidence before it can rule on the point of law; the objection cannot be taken in limine.""

In the more recent case of **Treebhoohun M. v Mon Ile Luxury Com Ltee & Anor, 2019 SCJ 334,** it is apposite to refer to the following extracts: -

"... Article 2053 provides, inter alia, that a 'transaction' may be rescinded where there is 'dol ou violence' whilst Article 1116 provides that:

"le do lest une cause de nullité de la convention lorsque les manœuvres pratiquées par l'une des parties sont telles, qu'il est évident que sans ses manœuvres, l'autre partie n'aurait pas contracté.

Il ne se présume pas et doit être prouvé. »

The submission of Counsel for the appellant, however, is untenable in view of the binding "aveu judiciaire" made under solemn affirmation in Court by the appellant, upon which the learned Judge was perfectly entitled to act in order to determine the plea in limine litis.

Firstly, as rightly pointed out by the trial Judge, the appellant had expressly admitted in Court that he has signed the 2 documents [Doc. P6 and P7] by virtue of which he had, in clear and precise terms, agreed to settle and acknowledged having received the sum of two million rupees in full and final satisfaction of any claim in connection with the works he had carried out as a contractor for the first respondent at Pointe aux Cannoniers. More important still, the appellant had unqualifiedly admitted, under solemn affirmation in Court, that he had signed both the 'transaction' and the 'attestation' without being subjected to any form of pressure emanating from the respondents. ..."

In **M. Y. Soobhee v/s St Geran Hotel, 1999 SCJ 75**, it was held: -

"...The appellant's case before the Industrial Court was that her purported letter of resignation was obtained through 'dol' and/or violence and was therefore of no effect so that she must be deemed to have been unjustifiably dismissed.

...

It is trite law that the burden of proving 'dol' lies on the person complaining of it and that "le dol ne se presume pas" but has to be proved by "des présomptions graves, précises et concordantes." ...."

Likewise, the point raised by Counsel that the Applicant having declared that he would have no claim against the employer and therefore the matter should be set aside prior to hearing cannot stand.

With regard to the jurisdiction of the Industrial Court, section 3 of the Industrial Court Act 1973, as amended provides: -

*"**3. Establishment of Industrial Court***

There shall be an Industrial Court with exclusive civil and criminal jurisdiction to try any matter arising out of the enactments specified in the First Schedule, or any regulations made under those enactments."

The First Schedule includes the provisions of the Workers' Rights Act.

Section 72 deals with matters within the jurisdiction of the Board.

We refer here to **Encyclopédie Dalloz, Vo Lois note 117**:

"L'adoption d'une loi Générale laisse survive la loi spéciale antérieure qui fera exception au texte postérieur. De même une loi spéciale postérieure ……. a la loi générale antérieure qui n'est pas abrogée. Dans les deux cas la solution est que la loi spéciale l'emporte sur la loi générale, mais strictement en son domaine. Encore faut-il déterminer dans le premier cas l'intention de législateur : il a pu vouloir abroger la loi spéciale antérieure par la loi générale postérieure. Mais il faut alors que cette intention résulte clairement de l'objet ou de l'esprit de cette loi ».

In **Bank of Baroda v Fazil Koodruth, 2009 SCJ 292**, the Court referred to: -

*"… a Privy Council case, namely **Barker v. Edgard & Ors [1898 A.C. 748]** where Lord Hobhouse made the following observations:*

> *"The general maxim is Generalia specialibus non derogant. When the legislature has given its attention to a special subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifested that intention very clearly. Each enactment must be constructed in that respect according to its own subject matter and its own terms."*

Counsel cited the case of **Lo Fan Hin T. K. v The Termination of Contracts of Service Board, 2009 SCJ 70**. An extract of which is reproduced: -

"…It is clear that both, under subsection (5) (a), where an employer reduces his workforce without giving notice to the Minister of his intention to do so, and under subsection (5) (b), where the employer breaches subsection (4) by reducing his workforce without waiting for the delay or the decision of the Board, it is provided that the employer "shall, unless good cause is shown, pay to the worker whose employment is terminated a sum equal to 120 days' remuneration together with a sum equal to six times the amount of severance allowance specified in section 36(3)", emphasis added. It also goes without

saying that in respect of subsection (5) (a) where an employer reduces the number of workers in his employment without giving notice to the Minister, the matter will not have been referred to the Board in the first place. This means that the "good cause", if any, could not have been meant to be shown before the Board. The forum intended by the legislature could be no other than the Industrial Court which, by virtue od section 3 of the Industrial Court Act 1973, is endowed with exclusive civil and criminal jurisdiction to try any matter arising out of the Act. To our minds, the legislature could not, in the same breath and without further precision, have intended that in cases falling under subsection (5) (b) – where the employer forestalls the Board and decide not only whether the reduction was justified, but also whether the employer has shown good cause for having breached the law a live issue …"

However, the issue before us in the present matter is not one where the employer forestalled the Board and decided to reduce its workforce in breach of the law. We are presently dealing with an application for severance allowance following termination in breach of section 72 (1A) (a) of the Workers' Rights Act 2019, as amended.

As regard rules and proceedings before the Board, section 72 paragraph (5) stipulates: -

"(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." (Emphasis is ours.)

It is clear that the notifier is first to file a written notice together with a statement showing cause for the reduction or closure within a specific time before carrying out his intention. It follows suit that in accordance with the principles of natural justice, the other party will be called upon to answer, if he so wishes, to the averments contained in the statement of case. A further reply or demand of particulars may be entertained if they are relevant to the matter *in lite* and in the interest of justice. The purpose of filing a statement of case of a party not only brings home to the other party the essential features of its case but also serves to enlighten the Board on issues that are to be adjudicated upon. Such course is now a common established practice before the Board. Our rules are not to be found in the sky as sarcastically put by Mr. Ahnee. In support of that practice, it is worth mentioning that section 75(7) of the Workers' Rights Act 2019, as amended provides: -

"The Board shall regulate its proceedings in such manner as it may determine."

With regard to the Constitutional points raised, we refer to what the Board stated in **Iswarduth Boodhun And Medine Ltd – RB/RN/154/2020**: -

"We will not make any pronouncement neither on the constitutional point nor on the Minister's power to introduce a retroactive law. These should be canvassed before the appropriate forum following the appropriate procedure.

Sections 83 and 84 of the Constitution make provision for reference of constitutional points: -

83. Original jurisdiction of Supreme Court in constitution questions

(1) Subject to sections 41(5), 64(5) and 101(1), where any person alleges that any provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for a declaration and for relief under this section.

(2) The Supreme Court shall have jurisdiction, in any application made by any person in pursuance of subsection (1) or in any other proceedings lawfully brought before the court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:

Provided that the Supreme Court shall not make a declaration in pursuance of the jurisdiction conferred by this subsection unless it is satisfied that the interests of the person by whom the application under subsection (1) is made or, in the case of other proceedings before the court, a party to these proceedings, are being or are likely to be affected.

(3) Where the Supreme Court makes a declaration in pursuance of subsection (2) that any provision of the Constitution has been contravened and the person by whom the application under subsection (1) was made or, in the case of other proceedings before the court, the party in those proceedings in respect of whom declaration is made, seeks relief, the Supreme Court may grant to that person such remedy, being a remedy available against any person in any proceedings in the Supreme Court under any law for the time being in force in Mauritius, as the court considers appropriate.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by this section (including rules with respect to the time within which applications shall be made under subsection (1)).

(5) Nothing in this section shall confer jurisdiction on the Supreme Court to hear or determine any such question as is referred to in section 37 or paragraph 2(5), 3(2) or 4(4) of the First Schedule otherwise than upon an application made in accordance with that section or that paragraph, as the case may be. (Amended 48/91).

84. Reference of constitutional questions to Supreme Court

(1) Where any question as to the interpretation of this Constitution arises in any court of law established for Mauritius (other than the Court of

Appeal, the Supreme Court or a court martial) and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the Supreme Court.

(2) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, where the decision is the subject of an appeal to the Court of Appeal or the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee. (Amended 48/91).

Notwithstanding its power to exercise judicial function, the Board finds no necessity for the application of section 84 of the Constitution. Counsel for the Respondent conceded during his submission that the retroactive law has not caused any prejudice to his client in the present matter although there may be a potential prejudice. The Board created by statute and whose function is judicial, is not mandated neither to decide on constitutional issues nor to invalidate any law, be it regulations made by the Minister. "The ordinary courts are appropriate for the decision of purely legal rights… the question in issue is not of purely legal rights but a conflict between private and public interests bound up in a greater or lesser degree with ministerial policy as outlined by statute." ***(Constitutional and Administrative Law, Fifth Edition, O. Hood Phillips at page 497)****."*

Leading the onslaught against the Board, Mr. Ahnee stressed that section 72(8) of the Workers' Rights Act is in contravention with section 10(8) of the Constitution inasmuch as only a Court of law is empowered to adjudicate as to the extent of a civil right or obligation.

Section 10(8) of the Constitution provides: -

"(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a Court or other authority, the case shall be given a fair hearing within a reasonable time."

This point was extensively delved into by the Supreme Court in **Mauritius Breweries Ltd v The Commissioner of Income Tax, 1996 SCJ 402**: -

" (1) Are the Tribunal and the MCCB Tribunal administrative tribunals, or Courts of law?

(2) What is the rationale, behind administrative tribunals and are they compatible with the framework of our Constitution?

...

(5) Are the Tribunal and the MCCB Tribunal, by reason of their, membership, independent and impartial?

...

With regard to the first question, we have no difficulty in holding that, in the light especially of the powers, functions and duties entrusted to the Tribunal and the MCCB Tribunal by the Legislator, both tribunals are essentially administrative tribunals and not Courts of law established "to exercise the judicial power of the State". In relation to the Tribunal, there is the additional argument that it is inconceivable that the Legislator would entrust judicial power to two members who are laymen without any legal training who may, contrary to the views of the Chairman, decide the outcome of the Tribunal's decision - vide ***Banana and Ramie Products Co. Ltd v. Ministry of Lands and Natural Resource*** *(1991) LRC 728 which makes an exhaustive analysis of the main cases on this issue.*

Moreover, applying the test laid down by Sankey L.C in ***Shell Company of Australia Ltd v. Federal Commissioner of Taxation*** *(1931) AC 275 at page 297, we consider that the Tribunal and the MCCB Tribunal are not Courts of law although (a) they give final decisions, (b) may hear witness on oath, (c) two or more contending parties appear before them between whom they have to decide, (d) they give decisions which affect the rights of parties, (e) there is an appeal against their decisions to a Court of law and (t) they are bodies to which a matter is referred. In other words, the Tribunal and the MCCB Tribunal do not cease to be administrative tribunals in spite of the fact that they act and are bound to act judicially and follow substantially the procedure of a Court of law.*

We turn now to our second question. In ***Wade on Administrative Law*** *(6th edition), the learned author at. pages 897 to 900, makes the following points-*

(a) the system of tribunals is an essential part of the machinery of government as it offers speedier, cheaper and more accessible justice in specialised fields while the process of the Courts of law is elaborate, slow and costly;

(b) there is a close relationship between the supplementary network of adjudicating bodies, like tribunals and Courts of law, since in the majority of cases Parliament has provided a right of appeal from the tribunals to the Courts on questions of law;

(c) the term 'administrative tribunals' is a misnomer since (i) they are independent and are insulated from administrative interference in their decision-making, (ii) their power to determine legal questions is entrusted by statute, (iii) their decisions are, in essence, judicial rather than administrative in that they ascertain the facts and apply legal rules to them impartially, without regard to executive policy;

(d) the tribunals are administrative only in so far as they are part of an administrative set-up for which a Minister is answerable to Parliament and there exist administrative reasons for preferring them to Courts of law.

So much for the "raison d'être", of administrative tribunals, like the Tribunal and the MCCB Tribunal. But how do those two tribunals fit in within the framework of our Constitution? The Constitution does not make specific mention of administrative tribunals but their existence is acknowledged, in our opinion, in section 10(8) to (10) thereof when our Constitution speaks of "any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial", (the emphasis is

ours), it has in mind administrative tribunals, like the Tribunal and the MCCB Tribunal and countless others.

We may here usefully refer to ***Akonaav and Anor v Attorney-General*** *(1994) LRC* ***399****, which was quoted to us by learned Counsel for the appellants in the sixth case, where at p. 410 Nyalal1 C.] had this to say –*

"We agree that the Constitution allow the establishment of quasi - judicial bodies, such as the Land Tribunal, What we do not agree is that the Constitution allows the Courts to be ousted of Jurisdiction by conferring exclusive jurisdiction on such quasi – judicial bodies. It is the basic structure of a democratic constitution that state power is divided and distributed between, three state pillars. These are the Executive, vested with executive power; the Legislature vested with legislative power, and the Judicature vested with judicial powers. This is clearly so stated under art 4 of the Constitution. This basic structure is essential to any democratic constitution and cannot be changed or abridged while retaining the democratic nature of the constitution. It follows therefore that wherever the constitution establishes or permits the establishment of any other institution or body with executive or legislative or, judicial power, such institution or body is meant to function not in lieu of or in derogation of these three centrals pillars of the state, but only in aid of, and subordinate to, those pillars" (the underlining is ours).

His Lordship went on to observe that any purported ouster of the jurisdiction of the ordinary Courts over a justiciable dispute would therefore have been unconstitutional but adjudicative powers could properly be conferred on bodies other than Courts provided that final adjudication by way of review or appeal was reserved for the High Court of Appeal.

...

The fifth question can be easily resolved by reference to the case of ***Bryan v United Kingdom****, a judgment of the European Court of Human Rights of November 22, 1995, which was again cited to us by learned Counsel for the appellants in the sixth case to whom we are grateful. Bryan lays down the following propositions:*

(a) in order to ascertain whether a body which makes decisions in relation to an applicant's civil rights and obligations could be considered to be independent and impartial for the purposes of Article 6(1) of the European Convention of Human Rights, regard must be had, inter alia, to the matter of appointment of its members and to their term of office, to the existence of guarantees against outside pressures and to the question whether the body presented an appearance of independence;

(b) even if the body referred to in subparagraph (a) does not meet the "Article 6(1) standards, the Convention will not be breached if that body is subject to the control of a judicial institution which does comply with Article 6(1);

...

Since section 10 (8) of our Constitution is derived from Article 6(1), we may apply the principles of ***Bryan*** *to the composition of the Tribunal. We hold that since the Chairman and the Vice-Chairman are appointed by an independent Commission i.e. the Public Service Commission, they are not only independent and impartial but also perceived to be so. As far as the members of the Tribunal are concerned, they do not in*

principle satisfy the section 10(8) standards of our Constitution for the reasons advanced by the three learned Counsel for the appellants in the first, fifth and sixth cases respectively, although there are many undoubted safeguards attending the procedure before the tribunal. However, given the fact that the Tribunal is subject to the supervisory control of the Supreme Court, the latter's scope of review which is the same as that of the High Court of England, is sufficient to comply with section 10(8) of our Constitution.

As for the President of the MCCB Tribunal, his appointment by the President of the Republic of the Republic of Mauritius who consults the Minister of Finance but is not obliged to act in accordance with his advice [section 8(3)(b) of the MCCB Act and section 64 (4) of the Constitution. In any event, even the appointment does, in our view, satisfy the section 10(8) standards of our Constitution. In any event, even if the appointment does not, the full right of appeal over the MCCB Tribunal by the Supreme Court is sufficient to comply with section 10(8) of our Constitution."

The following pertinent extracts from Wade and Hood Phillips are worth mentioning: -

Constitutional and Administrative Law, Ninth Edition, E. C. S. Wade and G. Godfrey Phillips, Page 637

> *... tribunals exist not because they are required to exercise a political discretion which could not be entrusted to the courts but because (and this is the second broad reason for the existence of tribunals) the tribunals can do the work more efficiently than the courts.*
>
> *This bold claim can be justified on several grounds, which are practical in character rather than theoretical... Practical factors that have favoured the setting up of special tribunals include the following: the desire for a procedure which avoids the formality of the ordinary courts, ... the need, in implementing a new social policy, <u>for the speedy</u>, cheap and decentralised determination of a very large number of individual cases; the need for expert and specialised knowledge on the part of the tribunal which a court with a wide general jurisdiction might not acquire; ... (Emphasis is ours.)*

Constitutional and Administrative Law, Fifth Edition, O. Hood Phillips, Sweet & Maxwell, Page 499

> ***Reasons for creating special tribunals***
>
> *The reasons why Parliament increasingly confers powers of adjudication on special tribunals rather than on the ordinary courts may be stated positively as showing the greater suitability of such tribunals, or negatively as showing the inadequacy of the ordinary courts for the particular kind of work that has to be done. In the following summary we choose mainly the former method.*

(i) *Expert knowledge*

Many of the questions that have to be decided under modern social legislation call for an expert knowledge of matters falling outside the training of the lawyer; also an understanding of the policy of the legislature and experience of administration. They are not primarily legal questions, although at some stage a judicial habit of mind may be required.

(ii) *Cheapness*

The vast number of questions that arise from day to day, affecting the interests of thousands of people, must be disposed of much more cheaply than can be done in the stately and costly courts of law. The speed and informality mentioned below contribute to the relative cheapness of administrative justice.

(iii) *Speed*

Again, if these multitudinous questions are to be disposed of without the delay that would clog the administrative machine and work great hardship on interested parties, institutions must be devised and procedure adopted that will dispatch the business much more speedily than the ordinary courts can do. Indeed, the courts would not have time to take over this work, in addition to what they already have without being entirely reconstituted and so losing their present identity. (Emphasis is ours.)

(iv) *Flexibility*

Although every body of men that has to make decisions evolves in course of time general working principles, and government departments tend to follow their own precedents, the new tribunals are not hampered by the rigid doctrine of binding precedent adhered to by the courts. They thus have greater freedom to develop new branches of law on the basis of modern social legislation and suitable to the needs of the Welfare State, as in times past the Court of Chancery developed Equity. This does not mean that the decisions of tribunals are entirely capricious and unpredictable: there is a growing practice for some of them to publish selected decisions.

(v) *Informality*

Tribunals are not bound by such complex rules of procedure or such stringent rules of evidence as prevail in the ordinary courts. They may admit hearsay evidence; they must observe the rules of natural justice, but cross-examination is not essential. Procedural rules of varying degrees of completeness are prescribed for some of these bodies, but the sources from which they derive their information are not usually restricted. This means that the layman is not at such a disadvantage in presenting his own case and following the proceedings as he is in the courts.

Furthermore, in a Ruling delivered by the Employment Relations Tribunal in **Ashok Seesaghur & Others and The President, Rodrigues Commission for Commission and Mediation, (ERT/RN 65/12),** the Tribunal held amongst others: -

"It is apposite to quote from *Elliot and Phipson Manual of the Law of Evidence by D. W. Elliot* (at page 319) cited in *C. Sooknah v The CWA* [*1998 SCJ 115*]:

> *"A court includes not only the regular superior courts of judicature but also inferior courts and tribunals, even domestic tribunal, provided they have jurisdiction either by the law or by the parties consenting to submit their affairs to adjudication by such tribunals. Thus the principle of conclusiveness has been held to be applicable to decisions of courts-martial, arbitrators and domestic tribunals such as the General Medical Council. In the present context, the awards of any such tribunal, however lowly, "are as conclusive and unimpeachable (unless and until set aside on any of the recognised grounds) as the decisions of any of the constituted courts of the realm.""*
> (The underlining has been added)

Moreover, from the definition of an "administrative tribunal" in the Oxford Dictionary of Law, fifth edition, the following may be noted:

> *A body established by or under Act of Parliament to decide claims and disputes arising in connection with the administration of legislative schemes, normally of a welfare or regulatory nature. Examples are employment tribunals and rent assessment committees. They exist outside the ordinary courts of law, but their decisions are subject to judicial control by means of the doctrine of ultra vires and in cases of error of law on the face of the record."*

In ***Chadraduth Sooknah v. The Central Water Authority SCJ 115 of 1998, the Supreme Court*** stated: -

"…The question that needs to be asked here is whether the Permanent Arbitration Tribunal can be equated to a Court. The answer is to be found in the following passage at page 319 in Phipson op. cit.:

> *"A court includes not only the regular superior courts of judicature but also inferior courts and tribunals, even domestic tribunals, provided they have jurisdiction either by the law or by the parties consenting to submit their affairs to adjudication by such tribunals. Thus, the principle of conclusiveness has been held to be applicable to decisions of courts-martial, arbitrators and domestic tribunals such as the General Medical Council. In the present context, the awards of any such tribunal, however lowly, "are as conclusive and unimpeachable (unless and until set aside in any of the recognized grounds) as the decisions of any of the constituted courts of the realm."*

Reference can also be made to Encyclpédie Dalloz v Chose Jugée:

> *12. L'autorité de la chose jugée s'attache également aux sentences arbitrales (Cass. Civ. 26 août 1873, DP 74.1.475 ; Cass. Req. 31 mai 1902, DP 1902.1.352) même si les arbitres ont la qualité d'amiables compositeurs (Cass. Civ. 21 juin 1852, DP 53.1.109 ; 18 nov. 1884, DP 85.1.317). Ainsi, l'une des parties ne peut pas recommencer le procès devant une autre juridiction, ni devant d'autres arbitres (Cass. Civ. 21 juin 1852, 18 nov. 1884, préc. ; 28 déc. 1927, DH 1928.51).''*

Thus, the issue of referring this constitutional point to the Supreme Court does not arise.

We respectfully disagree with all the legal points raised by Counsel for the Respondent.

We hold that the Redundancy Board set up by Statutes to give final decisions to hear cases on oath where two or more contending parties appear before it between whom it has to decide to give decisions which affect the rights of parties, being a body to which a matter is referred and where judicial reviews lie against its decisions, it has jurisdiction to adjudicate issues on law.

ON THE MERITS

The basis of the application is the termination of the contract of employment on economic ground and Applicant accepted the termination "not knowing the amendment brought to the Workers' Rights Act 2019". (Emphasise is ours.)

"Ignorantia legis neminem excusat" is latin for *"ignorance of the law excuses no one."* This legal principle holds that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content. The rationale of the doctrine imputes knowledge, no matter how transiently, of the law to all persons within the jurisdiction.

Some three weeks following the lodging of the application, more precisely on the 17 February 2021, we see that the nature of the application took a different path. It travelled from ignorance of the law to that of duress. Given the length of time that have lapsed between the initial application and the Statement of Case, the issue of force appears to be an afterthought. We are more inclined to accept as a fact that Applicant signed the agreement because he was in need of money during that month of December 2020 as he put it himself. We do not consider the exercise of duress to be sufficiently persuasive. We are in presence of no evidence whereby Applicant requested for some time to contact a third party, be it a lawyer or his union before signing the agreement. He did not avail himself of an opportunity to seek advice. It is our view that after accepting the cheque, the Applicant is before the Board for another bite at the cherry.

In the matter of **Iswarduth Boodhun and Medine Ltd** (mentioned earlier), we quote: -

> "*… 'Transaction' are governed by the stipulations of Article 2044 to 2058 of the Civil Code. Those articles had given rise to quite a lot of controversy in French Legal and judicial circles. It appears however that both "doctrine" and the "jurisprudence" have now somewhat clarified the whole question.*

Article 2044 of the Civil Code reads as follows: -

> *"La transaction est un contrat par lequel les parties terminent une contestation née, ou préviennent une contestation à naître. »*

In the encyclopédie de Droit Civil, Dalloz: Vo. Transaction – we read the following: -

> *"5. Selon la majorité de la doctrine, trois éléments sont nécessaires à l'existence d'une transaction :*
>
> *1. Une situation litigieuse*
>
> *2. L'intention des parties d'y mettre fin*
>
> *3. Des concessions réciproque consenties dans ce dessin... »*
>
> *(*as reproduced in **S. Thanacoody v. New Dairy Co Ltd 1973 SCJ 4).**

***In ACMS Ltd v. Mark Clive Biencowe 2014 SCJ 112**, the Supreme Court referred to an article written by Patrick Chauvel, agrégé des Facultés de droit, an ex-professor at the University of Auvergne, "…on 'transaction', the author expatiates on the fact that for the agreement or undertaking of a party to constitute a valid 'transaction', three essential elements should be present; as stated by me above when referring to **Encyclopédie Dalloz**. On the first element, Professor Chauvel wrote the following:*

> ***Note 13**: Situation litigieuse – La nécessité d'une situation litigieuse, contestation née ou a naitre, résulte de la définition même de la transaction donnée par l'article 2044 de code civil : le contrat par lequel les parties terminent ou préviennent une contestation.*
>
> ***Note 14**: Difficulté contentieuse ou simple incertitude ? – Il convient de noter que cette conception se différencie de celle retenue par le droit romain. Le terme de transaction recouvre alors, non seulement le contrat mettant fin à un litige, mais encore toute convention par laquelle **les** parties entendent éliminer une incertitude existant dans leurs relations juridiques, même s'il n'existe entre elles aucune difficulté contentieuse ».*

On the second element, the Professor wrote at note 60 that:

> *L'intention des parties de mettre fin à un litige – ou de le prévenir – est parfois présentée comme le troisième élément nécessaire a la **qualification** du contrat de transaction. Quoique la question se soit rarement posée en jurisprudence, elle est d'importance capital, car il est bien certain que si cette intention fait défaut, l'accord intervenu entre les parties n'est pas une transaction ».*

On the third element the following is what the Professor has noted:

> *Le mot concession implique, de la part de celui qui y consent, une **renonciation** a une partie de ce qu'il prétend être son droit. Néanmoins, on peut donner à la proposition un sens positif et admettre, a titre de concession, une prestation extérieure au litige, la souscription d'une obligation nouvelle. Cette possibilité est conforme au sens originaire de la notion ».*

Article 2052 of the Code Civil provides:

> *"Les transactions ont entre les parties, l'autorité de la chose jugée en dernier ressort ».*

Elles ne peuvent être attaquées pour cause d'erreur de droit, ni pour cause de lésion ».

We find it suitable to refer to what the Law Lords stated in ***Leymunlall Nandrame and others (Appellants) v. Lomas Ramsaran (Respondent) (Mauritius), (2015 UKPC 20)****, "This conclusion follows even without considering the impact on the case of the Civil Code. Article 2044 of the Code defines as "la transaction" a contract to bring to an end either existing or contemplated litigation. Article 2052 provides that such a transaction has, as between the parties, "l'autorité de la chose jugée en dernier ressort ». Articles 2052 and 2053 limit the basis on which such a transaction can be challenged to errors as to the identity of parties or the subject matter of the dispute, or fraud or violence. The Board has not needed to hear detailed submissions on the precise meaning of these expressions, which did not form the basis of the decision of the Supreme Court, but it may well be that they have an effect similar to that to which the common law leads".*

In the present matter there was a litige between the parties, they entered into negotiations and finally they reached an agreement putting an end to the litige and both parties made reciprocal concessions and as pointed out in ***Dalloz, Répertoire de droit civil, v° Transaction, notes 11:*** *Dans le cas de la transaction judiciaire (contestation née), celle-ci met toujours fin au procès, quelque soit le moment où elle intervient. Hence the aim of such a compromise is not only to end an actual litige but also to prevent any future and pending litigation through reciprocal concessions.*

There has been transaction which becomes the law of the parties, in compliance with art.1134 of the Civil Code: ***Dalloz, Répertoire de droit civil,v° Transaction, notes 415.*** *It is significant that the cause of action of the plaintiff is not one of the defendant's non-compliance with the terms of the agreement reached out but one of making additional claims consequential to the agreement and now claiming more than what had been agreed upon to be full and final satisfaction of his claim.*

It is not denied that all receivables were duly received and were duly paid out to the applicant. By asking for more than was jointly agreed the applicant is, in effect, challenging the finality of the agreement; and incidentally dealing anew with the litige which is tantamount to an abuse of process: ***Devendranath Hurnam v. Kailashing Bholah and Soobashing Bholah [2020] UKPC 12, PRV 120.*** *An agreement made in full and final satisfaction cannot form the basis of a cause of action for additional claims. We are comforted in that view from the following extracts from* ***Dalloz, Répertoire de droit civil,v° Transaction, Chap 7: effets, Section 3, notes 447,448.***

> *447. On s'accorde, aujourd'hui à reconnaître que la transaction est simplement déclarative.* ***Elle ne crée ni ne transfère aucun droit; elle éteint seulement le droit d'agir en justice*** *qui existait pour faire reconnaître les prétentions des parties, auxquelles, précisément, il a été renoncé. En cela, elle consacre des droits préexistants. Mais la transaction n'est pas, ce faisant, un acte récognitif : ni l'un ni l'autre des contractants ne reconnaît le bien-fondé de la demande de l'autre.*
>
> *448. Parce que la transaction ne crée ni ne transfère aucun droit sur la chose litigieuse,* ***elle n'a, en principe aucun effet novatoire. Les créances et les dettes reconnues par la transaction ne naissent pas de celle-ci et acquièrent pas une nature juridique nouvelle****. Ce sont les créances et les dettes qui existaient antérieurement entre les parties. La transaction les a confortés, en les mettant à l'abri de la contestation.*

We find it apposite to quote further from **Dalloz, Répertoire de droit civil, v° Transaction, notes 429 and 431**:

> 429. *C'est par son effet extinctif que la transaction s'apparente le plus à une décision judiciaire. Dans un cas comme dans l'autre, il est mis fin au litige par l'épuisement du droit d'action des parties. Ainsi, si un procès venait à renaître malgré la transaction, le défendeur disposerait d'une exception péremptoire, l'exceptio litis finitae per transactionem, semblable à l'exceptio litis finitae per rem judicatam. C'est ce qu'exprime l'alinéa 1er de l'article 2052 de code civil : «Les transactions ont entre les parties l'autorité de la chose jugé en dernier ressort »*
>
> *431. La transaction met fin à la contestation en éteignant l'action en justice relative au droit litigieux. L'effet extinctif se manifestera donc par l'exception de transaction qui s'opposera, le cas échéant, à ce que le procès soit, selon le cas, engagé, continué ou repris… "*

For the above reasons, the Board finds that the parties had entered into a transaction thereby putting an end to the dispute between them.

The application for severance allowance is accordingly set aside.

(SD)

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Rashid Hossen
(President)

(SD)

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Ms. Saveetah Deerpaul
(Member)

(SD)

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Ms. Chandrani Devi Gopaul
(Member)

(SD)

……

Suraj Ray
(Member)

Date: 23 July 2021