REDUNDANCY BOARD

ORDER

RB/RN/174/2020 & 175/2020

RB/RN/177/2020 to 183/2020

RB/RN/185/2020 to 190/2020

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

In the matter of: -

RB/RN/174/2020

(1) Rajwantee Ramchurn & Others

v.

Atics Ltd

RB/RN/175/2020

(2) Aarti Buchanah

v.

Atics Ltd

RB/RN/177/2020

(3) Darvind Hungraj

v.

Atics Ltd

RB/RN/178/2020

(4) Chandrani Purnima Koylavin

v.

Atics Ltd

RB/RN/179/2020

(5) Anita Gopaul

v.

Atics Ltd

RB/RN/180/2020

(6) Marie Jiovanie Milap

v.

Atics Ltd

RB/RN/181/2020

(7) Neera Bhoyrub

v.

Atics Ltd

RB/RN/182/2020

(8) J.A.W Duval

v.

Atics Ltd

RB/RN/183/2020

(9) Cliff Schmicheal Faron

v.

Atics Ltd

RB/RN/185/2020

(10) Navnishan Mandhub

v.

Atics Ltd

RB/RN/186/2020

(11) Claude Gervais Adeline

v.

Atics Ltd

RB/RN/187/2020

(12) Viswanee Sham

v.

Atics Ltd

RB/RN/188/2020

(13) Sammuel Rodney Rose

v.

Atics Ltd

RB/RN/189/2020

(14) Nitesh Goodoorat

v.

Atics Ltd

RB/RN/190/2020

(15) Selvanen Kistnasamy

v.

Atics Ltd

The workers of Atics Ltd, hereinafter referred to as the "Applicants", applied to the Redundancy Board, hereinafter referred to as the "Board", under Section 72 of the Workers' Rights Act 2019 (as amended), for an order directing Atics 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

The Applicants applied to the Board, under Section 72 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.

On 22nd of December 2020, the parties were convened before the Board. Mr Rose was elected by the Applicants to appear on their behalf and they were assisted by Counsel. The Respondent was represented by Mr Raj Essoo, its Managing Director and assisted by Counsel.

The record shows that the Applicants did not take up employment with the Respondent on the same day and their applications were submitted to the Board on different dates.

Applicant Name	Employment Date	Ref	Application date
MRS RAJWANTEE RAMCHURN	04.11.2013	RB/RN/174/2020	10.11.2020
MRS SHARMILA MOONESAWMY	04.11.2013	RB/RN/174/2020	10.11.2020
MS BIBI SABEELA BEEGUN	28.06.2018	RB/RN/174/2020	10.11.2020
MRS SOOKMEEN MADOO	05.02.2018	RB/RN/174/2020	10.11.2020
MRS JANICK MARIE DANIELLA	09.03.2018	RB/RN/174/2020	10.11.2020
MRS SANTEE JAWAHEER	21.02.2018	RB/RN/174/2020	10.11.2020
MRS AARTI BUCHANAH	05.02.2018	RB/RN/175/2020	11.11.2020
MR DARVIND HUNGSRAJ	22.05.2018	RB/RN/177/2020	13.11.2020
MRS CHANDRANI PURNIMA KOYLAUN	19.03.2018	RB/RN/178/2020	16.11.2020
MRS ANITA GOPAUL	09.03.2018	RB/RN/179/2020	17.11.2020
MRS MARIE JIOVANIE MILAP	13.04.2018	RB/RN/180/2020	13.11.2020
MRS NEERA BHOYRUB	13.04.2018	RB/RN/181/2020	13.11.2020
MR JEAN ANTHONNY WILDLEY DUVAL	07.05.2019	RB/RN/182/2020	17.11.2020
MR CLIFF SCHMICHAEL FARON	25.03.2019	RB/RN/183/2020	17.11.2020
MR NAVNISHAN MANDHUB	23.03.2018	RB/RN/185/2020	20.11.2020
MR CLAUDE GERVAIS ADELINE	09.05.2018	RB/RN/186/2020	19.11.2020
MS VISWANEE SHAM	03.09.2018	RB/RN/187/2020	18.11.2020
MR SAMMUEL RODNEY ROSE	20.03.2018	RB/RN/188/2020	20.11.2020
MR NITESH GOODOORAT	10.01.2019	RB/RN/189/2020	13.11.2020
MR SELVANEN KISTNASAMY	13.06.2018	RB/RN/190/2020	25.11.2020

Upon a joint motion of both Counsel, all 15 cases were consolidated on the grounds that the applications are against one and same Respondent and based on similar facts. **The Board proposes to deliver a single Order in respect of all 15 cases and file copies of same in each file**.

The case was fixed for hearing on the 8th of January 2021.

The Applicants' Amended Statement of Case

The Applicants averred in their statement of case that:

"*INTRODUCTION:*

1. My services have been retained by the Applicants who were in the continuous employment of the Respondent company.

2. The terms and conditions of employment of the Applicants were governed by the Workers' Rights Act 2019-Act No. 20 of 2019.

3. The Respondent company is a private company incorporated under the laws of Mauritius.

4. The Respondent company is an employer employing not less than 15 persons.

5. The Applicants were employed by the Respondent company…. [on different dates]. (see the table above)

6. By way of a letter dated 31.07.2020, the Respondent company permanently terminated Applicants' employment with immediate effect on the ground of reduction of workforce.

BREACHES:

(i) restrictions on recruitment;

(ii) retirement of workers who are beyond the retirement age;

(iii) reduction in overtime;

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

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

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

7. The Respondent company acted in breach of S. 72 (1A) of the Workers' Rights Act 2019, coupled with the Workers' Rights (Prescribed Period) Regulations 2020 (Government Notice No. 183 of 2020) by terminating the employment of Applicants between 1 June 2020 and 31 December 2020.

8. The Applicants therefore avers that the said reduction of workforce was unjustified.

9. The Respondent company had furthermore, by its acts and doings, committed a criminal offence actionable under S. 123 (1) (f) (ii) of the Workers' Rights Act 2020 by flouting the Board's Order to reinstate applicant.

PRAYER:

10. In light of the above, the Board is humbly prayed:

(i) To find that the termination of Applicants' employment on the ground of reduction of workforce in the present circumstances was wholly unjustified; and

(ii) For an ORDER directing the Respondent Company to pay to the Applicants severance allowance at the punitive rate (a sum equivalent to 3 months remuneration per 12 months of continuous employment) together with payment of remuneration from the date of the termination of employment until the Board gives a ruling in this case."

The Respondent's Statement of Defence

The Respondent averred in its Statement of Defence that:

"STATEMENT OF DEFENCE

Plea in limine litis

The Respondent avers that the present matter should be set aside for the following reasons:

a. The present application amounts to an abuse of process because it represents the re-litigation of a dispute already referred to the Redundancy Board, whereby the Redundancy Board already made an order for reinstatement of the Applicants [amongst other employees] in the matter of Atics Ltd – RB/RN/137/2020:

i. By letter dated 27th July 2020, the Respondent referred the present dispute to the Redundancy Board, whereby the Applicants were represented by the following workers' representatives: Mrs. Artee Groochurn and Mr. Jean Fabrice Steeven Bonne [themselves appointed to that capacity since the 30th June 2020];

ii. By a determination dated the 28th August 2020, the Redundancy Board ordered that the all the workers [which included the Applicants] be reinstated.

iii. The Applicants have failed to come with clean hands and disclose the above-mentioned determination to the Redundancy Board.

b. The present application cannot be entertained because it is subject to the doctrine of 'res judicata' as result of the determination of the Redundancy Board on the 28th August 2020.

c. The present application is a disguised appeal of the Redundancy Board's decision dated the 28th August 2020 in the case RB/RN/137/2020. Hence, the present application cannot be entertained.

In the alternative, to limbs [a], [b] and [c] above:

d. The present application should be set aside in as much as there is a 'transaction', i.e. a settlement agreement dated 1st July 2020, which binds the parties and therefore the present application should be set aside.

On the Merits

1. Unless where expressly admitted, all the contents of the Statement of Case of the Applicant are denied [hereinafter referred to as the 'SOC'].

2. The Respondent reiterates its averments under the plea in limine litis. The Respondent reiterates that the Applicants have failed to come with clean hands and disclose to the Redundancy Board the fact that the latter forum had already decided the present dispute.

3. The Respondent takes note of paragraph 1 of the Statement of Case of the Applicants.

4. The Respondent takes note of paragraph 2 of the SOC.

5. The Respondent takes note of paragraph 3 of the SOC.

6. The Respondent takes note of paragraph 4 of the SOC.

7. The Respondent denies paragraph 5 of the SOC and puts the Applicants to the proof thereof.

8. The Respondent denies paragraph 6 of the SOC and puts the Applicants to the proof thereof.

8.1 The Respondent avers that the following background facts will shed light on the reduction of workforce exercise carried out;

8.2 The Respondent had a contract with the Airport Terminal Operations Ltd [hereinafter referred to as 'ATOL'] for the cleaning of Plaisance Airport and trolley recycling. About 160 employees of the Respondent [including the Applicants] were deployed for the performance on the said contract.

8.3 Following the outbreak of COVID-19, ATOL reduced it requirement of employees of the Respondent on site, from about 160 employees to 30 employees.

8.4 This left the Respondent with no other alternative than to, in good faith, proceed with a reduction of workforce exercise, after having considered alternative solutions.

9. The Respondent strongly denies paragraph 7 of the SOC in its form and tenor and avers as follows:

9.1 The Respondent consulted with the workers' representatives, namely Mrs. Artee Groochurn and Mr. Jean Fabrice Steeven Bonne on the 30th June 2020;

9.2 On the 1st July 2020, as result of negotiations, the following solution was arrived at: payment of compensation by way of settlement.

a. It was agreed that the workers [including the Applicants] would be paid the sum of one month's salary as compensation for termination of employment on grounds of redundancy and this arrangement was recorded in a settlement agreement dated 1st July 2020 and made pursuant to Section 72[3] of the Workers' Rights Act;

b. The above arrangement was made in full and final satisfaction of all claims arising out of the aforesaid termination, be it direct, indirect, contingent and prospective.

9.3 The Respondent therefore avers that Section 72[1] of the Workers' Rights Act has been compiled with.

10. The Respondent denies paragraph 8 of the SOC and avers that as a result of the settlement reached and made pursuant to Section 72[3] of the Workers' Rights Act, there cannot be any breach of Section 72[1A] of the Workers' Rights Act.

11. The Respondent denies paragraph 9 of the SOC and put the Applicants to the proof thereof.

12. The Respondent denies paragraph 10 of the SOC and put the Applications to the proof thereof.

13. The Respondent denies paragraph 11 of the SOC and put the Applicants to the proof thereof.

14. As averred under the Plea in limine Litis, the Respondent further avers that the Redundancy Board has already given a determination dated the 28th August 2020 in case Atics Ltd – RB/RN/137/2020 and ruled that the Applicants were to be reinstated:

14.1 Following, the decision of the Redundancy Board dated 28th August 2020, the Respondent further requested the Applicants to resume duty."

Evidence on behalf of the Applicants

Mr. Samuel Rodney Rose, witness for the Applicants, deponed to the effect that: -

He was a employed as window cleaner at Atics Ltd until he had received a letter from the Respondent informing him that he will receive a compensation for termination of his employment. The witness mentioned that he was not aware of any pending case before the Board and he had not authorised someone to represent him there. There had not been any negotiation for compensation between the Applicants and the Respondent. Within a month after the letter of termination, he had received another letter requesting him to resume duty but he had decided not to do so because he had not received full pay during Covid-19 period and the terms and conditions of his employment had changed to the worse. In **cross-examination**, he stated that he had been moved from one site of work to another -from SSR International Airport to La Chaumière Sector. He denied that he had been paid his salary in full for July 2020, but agreed that he had received full pay for August and September 2020. He was made aware by way of a letter dated 1st of September 2020 from the Respondent, that the Board had ordered that all Applicants were to be reinstated to their previous respective post and as the contract between ATOL and the Respondent had been terminated, they will be redeployed to La Chaumiere Sector as from 5th of September 2020, on same terms and conditions as before, and they would retained their years of service. But he had not resumed duty. A second letter dated the 10th of September 2020 had been addressed to him for failing to resume work together with a notice to resume duty within 24hrs. Again he had failed to do so. He conceded that he had waited until November 2020 to seize the Board for redress because he was not satisfied with the new terms and conditions of his employment. He maintained that he had not authorised someone to represent him previously before the Board despite the fact that on the 5th of August 2020 he had signed a document to that effect. However, he pointed out that at the time of signing the document, he firmly believed that the purpose of which was only to acknowledge receipt of a termination letter. In **re-examination**, the Witness deponed to the effect that he did not remember when he had received his last monthly salary and he had not resumed work because he thought he might not get paid. He further stated that the document he had signed on the 5th of August 2020 bears no heading. To another question from his Counsel, he gave a new version and averred that he did not remember whether he had been paid for the months of July, August and September 2020. He claimed that his monthly salary is credited to his bank account but had not checked his bank balance since the month of July 2020. In regards to changes to his terms and conditions of employment, he declared that he had not raised the issue with the Respondent at all and said that he does not know where the Respondent head office is situated.

Mrs Aarti Buchanah was called as witness for the Applicants.

The witness deponed to the effect that she was an employee of the Respondent until confinement period. She said that in a letter addressed to her by the Respondent, she was made aware that her employment as cleaner had been terminated. No one had represented her before the Board in the month of July 2020. She further claimed that there had not been negotiation between the Applicants and the Respondent. A month later, she had been requested by the Respondent to resume duty at Curepipe. Her new duties consisted of drains cleaning. In **cross-examination**, she explained that because she had been posted at Curepipe instead of SSR International Airport, she had refused to resume duty. She further added that that her new terms and conditions were not favourable and her employment had already been terminated. She maintained that for the month of July she had not been paid her salary in full. On receiving a letter dated the 28th of August 2020, she had gone to the Labour Office where she had been explained that in the light of an order of the Board, the letter dated 31st July 2020 was considered void and that she would be reinstated in her former employment and that her years of service would be maintained to the full. For more than 3 months, she did not apply to the Board up until November 2020. She confirmed that she had been informed that the Respondent had seized the Board in July 2020 and had been told that two of her colleagues would be present there.

Evidence on behalf of the Respondent

Mr Raj Essoo, Managing Director, was called as witness for the Respondent and deponed as follows:-

He identified and produced the following documents:

A. Letter dated 31st July 2020- Re: Reduction in workforce at Atics Ltd

B. Email dated 31st July 2020- Notification Letter to Redundancy Board

C. Payslips of Applicants for the months of July, August and September 2020

D. Letters dated 01.09.2020-Letters of resumption/Redeployment of Workforce at Atics Ltd

E. Letters dated 10th September 2020- Re: Resume duty on site of Curepipe

F. 3 monthly payslips- Oct, Nov and Dec 2020- Duval Marie Joana Michaella

G. Payslip/End of year bonus 2020 – Duval Marie Joana Michaela

H. Attendance sheet (15/10/20 – 14/11/20 and 15/11/20 – 14/12/20)-Atics Ltd-Atol: BLOT4

J. List of workers – Dept: La Chaumiere- 04.09.2020

K. Airport Attendance – Dept: Curepipe

L. Contract of Employment/ Offer Letter- Mr. Goodoorat Nitesh

M. Appointment of Workers' Representatives-Reduction in workforce-30/06/20

N. Minutes of Proceedings /Redundancy Board – dated-14/08/2020

He deposed that he is the managing director of the Respondent. He agreed that the Respondent had issued a termination letter dated 31st of July 2020 (document A) to all 20 Applicants but the Respondent had not acted on this letter but instead in an email dated 31st July 2020 (document B), sent at 4.41 pm had notified the Board of its intention to reduce its workforce. He stated that the Applicants had been paid their monthly salary partly in July and fully for the months of August and September 2020 (document C). He further stated that the Board had reached a decision on the 28th of August 2020 whereby the Respondent had been ordered to reinstate all employees, including the 20 Applicants. The Respondent in a letter, addressed to all Applicants on the 1st of September 2020 (document D) had requested them to resume their respective duties. The witness explained that the Applicants had been redeployed to another sites occupied by the Respondent (document D), however most of the Applicants had not turned up for duty. He stated that thereafter on the 10th of September 2020 through another letter, a request for resumption of duty had been sent to the Applicants (document E), and again some of them had not reported to work. He maintained that the Respondent did abide by the decision of the Board. He also explained that it was common practice for the Respondent, which is a cleaning company, to send its employees to different sites and this practice has been cited in clause 7.1 of the Applicants' contract of employment (document L). He confirmed that Mrs Gooroochurn and Mons. Bonne had represented the Applicants in a previous matter before the Board (documents M and N). In **cross-examination**, He agreed that the Respondent had notified the Board and at the corresponding time, it had terminated the employment of the Applicants without waiting for its decision. He conceded that the Applicants had been paid in full in August and September but only partly in July. The Witness agreed that the Applicants had not been sent to SSR Airport site. Some of the Applicants had been sent to Curepipe market as refuse collector, some to the beach as cleaner but denied that they had been sent to clean up oil at the Wakashio site. He agreed that some Applicants had decided to quit their job after 2 to 3 days but no complaints in regards to changes in terms and conditions of employment had ever been sent to the Respondent. He could not confirmed whether all of the Applicants were paid their end of year bonus.

Submission of Counsel appearing on behalf of the Respondent

"We humbly submit, first of all, the respondent has taken points of law in his Statement of Defence. At this stage I state that those points of law are not being pressed with.

Secondly, it is my humble submission that the application should be set aside for following four reasons. Firstly, the Board in its decision dated the 28th of August 2020 already ordered the respondent to reinstate the 124 employees, within which the 20 employees who are before you do fall and what is important is that the respondent did comply with that decision.

How do we show that the respondent did comply with that decision? Firstly, letters to resume duty have been produced. A first set is dated the 1st September 2020 and a second set is dated the 10th of September 2020.

Secondly, the respondent clearly did not act on its letter dated the 31st of July 2020, this is evidenced by a number of things. Firstly, by the payment of salaries, which payments have been done for the months of July, August and September 2020. It is not disputed and none of the applicants who are before you have denied not receiving those sums, hence it does show that the respondent did not act on this letter and additional evidence to put before the Board is that on the very same date, on 31st of July 2020 at around 1600 hours in the afternoon an application was also lodged before the Board in order to have the stand of the Board as regards the said reduction of workforce.

Thirdly, what is troubling here in my humble view is that the applicants for reasons best known to themselves were clearly aware of the proceedings before the Board, Cause No. 137/2020, they were clearly represented by Mr Bonne and Mrs Gooroochurn. They were clearly aware of the decision of the Board, well for reasons best known to themselves, they did not disclose this in their statement of case.

How can you be further assured that they were aware of this case pending before the Board? We also have to add to the fact that, when the respondent lodged its application before the Board, its application number 137/2020. All 124 employees did sign on a document clearly acknowledging therefore their awareness as to the fact that the case is being lodged before the Board.

Second reason why they were clearly aware of same. An application is lodged in July 2020, they do not seize the Board themselves in August, they do not seize the Industrial Court in September, so for July, August, September, October, there is a complete passivity from their part,that clearly demonstrates that they were well aware that there was a case before the Board. They were well aware that they had to resume duty and the reason why they are before the Board today is clearly this, that they were not satisfied with the terms and conditions with which they had to perform their duties once they were reinstated, which leads me then to my fourth reason why this application should be dismissed.

It is my humble submission that as a matter of law, should they not be satisfied with the terms and conditions of reinstatement, which would be their new terms and conditions, the cause of action was one of constructive dismissal before the Industrial Court. Their cause of action should not have been one again before the Redundancy Board. Le Board a déjà tranché. They should be reinstated. The respondent complied with same, Mr Chair if we take it in its chronology, the chronology reveals, that the only reason why they come before you en November de 2020, is that clearly they were not satisfied with the terms and conditions of employment.

I will just address that point briefly as my fifth point. We denied that their terms and conditions of employment had changed. Mr Raj in any case has demonstrated that relocation to a different site can be done, it is pursuant to Clause 7.1 of their contract. It was not denied at any point in time that it was part of their contract. And secondly, again relocation to a different site was clearly part of the operations of the company which is involved in waste disposal.

Thirdly and importantly, the obvious reason why they could not be redeployed at Plaisance again and that is to be found in Document B in the letter addressed to the Board, is because the respondent's contract with ATOL at Plaisance had been terminated. Therefore, there was no question

of redeployment at the same site because we no longer had the contract for the same site, but yet in good faith, the respondent redeployed them on pay at different sites.

Now addressing the arguments raised by my learned friend, the first point which my learned friend raised is that, despite the fact that the application was before the Board, the respondent proceeded with terminating their employment. I hope that I have addressed this point sufficiently, but briefly it is twofold. First on the very same day those letters are issued, the respondent does seize the Redundancy Board. Secondly, the respondent does not act on this letter. How? Because they are all paid their salaries which leads me to my second point. The argument taken by my learned friend is wait a minute, they were paid half their salary for the month of July. To that point, I invite the Board to take into its assessment of this case the following facts. For the months of August and September 2020, those employees were paid fully their salaries. As a matter of chronology, the decision of the Board is only dated the 28th of August 2020. So, as at the 28th of August 2020, since they were paid their salaries for August and for September, there cannot be non-compliance of the Order for alleged non-payment of their salary in full for July 2020.

But most importantly even if there is now, is that they were not paid their full salary for the month of July 2020, again their cause of action is one of non-payment of salary, the right forum again would be the Industrial Court, Labour Officers prosecute those cases on a daily basis, non-payment of salary, the right forum again is the Industrial Court.

I will end with the Statement of Defence then of my learned friend, Statement of Case. In fact, and in truth in law there are only two contentions now of my learned friend. Let us take them in turn. Firstly, allegedly the respondent acted in breach of Section 72 (1)(a) of the Workers' Rights Act coupled with Workers' Rights prescribed period Regulations 2020 by termination of employment between 1st of June 2020 to the 31st of December 2020. This provision has not been made out. It is clearly, there has not been any termination on the 31st of July 2020 if we again look at this case in its chorological order. The board gives the decision on the 28th August 2020. The respondent in good faith has complies with that decision, reinstate everyone and yet employees decide not to come back to work and the reason why they don't come back to work is not because somehow they deemed themselves to be terminated, that is the crucial point not one person said here that we don't resume work because we deemed to be terminated. We have it under oath and even under cross examination the line of argument of my friend is they stopped coming to work because they are not satisfied with the terms and conditions. If they are not satisfied with the terms and conditions, in law that is the case of dismissal and the appropriate forum again will be the industrial court. Second point, my learned friend relies under the Section 120 Subsection 1(F) item 2 of the Workers' Rights Act and which reads as follows: that allegedly the respondent company by its acts and doings committed a criminal offence by not complying with an order of the Redundancy Board. First, again I am of the humble view that this Board respectfully has no jurisdiction to ascertain whether a criminal offence has been committed under the Section 120 because under Section 120 and… Mr. Chairperson you will find this in the subparts it is the court and not the redundancy board which have jurisdiction to determine whether there has been a criminal offence. We may add to that for one to determine whether there has been a criminal offence the threshold would have been different. Secondly would have to speak of beyond reasonable doubt, there would have to be an information, there would have to be a prosecution and then as a matter of sentence there would have to be fines. All this to say

that Section 123 in my humble view the Board cannot decide that on itself that there has been a criminal offence in the non-obligation of its own order. Section 120 provides that it is for the court to decide that. With the usual safeguard of the representation by counsel, right to silence, all this to say that even the alleged non-compliance of the Section 120 (1F) which speak of the criminal offence do not find its obligation, which then lead to my last point. We have to go back then to the basic, this Board is rightly constituted to consider the reduction of workforce exercise and close look at this file will reveal that there is not an evidence, an aetat of evidence, of reduction of workforce exercise. There is none. Secondly, my learned friend again relies only on one letter of termination dated le 31 juillet 2020. Again, that letter is excruciated in the right chorology, letter of termination, application lodged before the Board none obligation of the letter of termination, the Board giving its decision, the respondent reinstating everyone, everyone not coming, they are not coming because they are not happy with the terms and conditions. If one does not look at this letter of termination in isolation but in the context in which it was issued and the acts afterwards that clearly reveals that there is no termination. So that the single point is this in my point of view, at the end of the day there is no matter which even warrant of the decision of the Board in this case as a matter of law. Could simply what you have before you is this, twenty employees who were unhappy with the terms and conditions who for reasons best known to themselves knock the door of the Board when the Board had no jurisdiction under such parts. As a matter of law, again the industrial court is the right forum either as an issue of criminal offence under Section 123 or as a matter of constructive dismissal as the cause of action for the change of terms and conditions. Therefore, for all good reasons, humbly pray that all twenty cases be set aside."

Submission of Counsel appearing on behalf of the Applicants

"Yes, Chair, it has come to light, that the application, the notification to the Board was made simultaneously with the letter send to the employees informing them that their employment would be terminated in the 31st of July 2020. Now it my submission that the respondent has acted in bad faith by sending the letter although it was at the same time informing notifying the Board that it had an intention to reduce its workforce. Then, from the 27th of July to the 31st of July, although the case was before this board the respondent did not find it proper to inform the applicants that the letter had no effect any more. The respondent waited until the 28th of August 2020 when the board gave its decision to reinstate to inform the applicants that they were now to resume duty. So, from the 27th of July to the 28th of August, the respondent did not inform the applicants that letter dated the 31st of July 2020 was no longer valid. It is also my submission that reinstatement means reinstatement on the same, on exactly the same terms and conditions. From the cross examination of the Managing Director, it has come to light that ever since the applicants were hired by Atics ltd, they have been working at the airport and their duty was to clean the airport and maintain it in a sanitary condition. Now after, 28th of August, the respondent chooses to deploy the applicants to other sites where they had to work on Camion Saleté. They had to clean the bazar of Curepipe. So, it is clearly a major, a consequent change in the conditions of employment. Although they were ordered by the board to reinstate, reinstatement which means reinstatement under the same terms and conditions of employment. So, there is clearly… they clearly flouted the order of the board since they never reinstated on the same terms and conditions and this out of bad faith again... Now of course,

by flouting that said order, they committed an offence and as such, applicants are entitled to severance allowance at the punitive rate and since they never left work on their own instead respondent flouted the order they are also entitled to the end of year bonus. That sums up my…

Just one last point. Regarding the non-payment of their salary for the month of July, it was my learned friend's submission that, by paying their salary for July, August and September the Board can imply that the applicants were never dismissed, but it has come to light during cross-examination that their salary for July was never paid in full. So there seems to be some kind of discrepancy here and that would be all Chair."

Analysis

The Board records that the Respondent did not intend to press on the Plea *in Limine Litis.*

The Redundancy Board is established with restricted jurisdiction and the purpose of which is detailed in **Section 73 of the Workers' Rights Act 2019 (as amended)** where it is stated that:

> *"There shall be a Redundancy Board which shall deal with all cases of reduction of workforce and closure of enterprises for economic, financial, structural, technological or any other similar reasons."*

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

> *"Subject to paragraph (b), an employer shall, during such period as may be prescribed, not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers."*

The prescribed period as provided in **the Workers' Rights (Prescribed Period) Regulations 2020** which has now been extended to 30th June 2021 **(Government Notice 312 of 2020)**. At the time the applications were entered, it covered the period starting on the 1st June 2020 and ending on 31st December 2020.

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)."*

The Board notes that:

1. The Respondent had issued a termination letter dated 31st of July 2020 to each Applicant. (Document A)

2. The Respondent had notified the Board via email for reduction of workforce on the 31st of July 2020. (Document B)
3. On the 28th of August 2020, the notification before the Board was set aside on grounds of lack of jurisdiction. **(is not to be construed as an order for reinstatement)**. (Document N)
4. The Respondent had sent a letter dated 1st September 2020 to all Applicants requesting them to resume duty on another site but some of the Applicants had not turned up for work. (Document D)
5. A second urgent request dated 10th September 2020 had been addressed to the Applicants to resume duty together with a warning for failure to attend to the said request. Some of the Applicants had resumed but had left few days later because they alleged that the terms and conditions of employment had changed and were not favourable. They further complained that for the whole duration of their employment with the Respondent, it was only for the month of July 2020 that they had partly been paid otherwise they had been paid fully. (Document E)
6. As the Applicants had failed to attend duty on request, the Respondent had considered the Applicants' acts and doings as abandonment of work and had stopped payment of their salary for the month ending October 2020.
7. The Applicants are now claiming that the termination of their employment were unjustified and praying the Board for an Order for severance allowance.

Termination of the Applicants' contract of employment

The Board must determine whether the Applicants had been made redundant by the Respondent contrary to **Section 72(1A) (a) of the Workers' Rights Act 2019 (as amended**) or whether the Applicants are to be blamed for not having resumed duty following two requests from the Respondent.

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

> *"Secondly, in acting as he did, the respondent was simply using the rights which the law accorded to him as an employee who had been given due notice of his employer's intention to terminate his employment. In particular, although, as the Board discussed in Mauvilac Industries v Ragoobeer [2007] UKPC 43, at para 10, dismissal is a unilateral act which does not require any action by the person who is dismissed, nevertheless, once notice has been given, the employer cannot withdraw it without the consent of the employee. The employee can therefore take advantage of any rights accruing to him as a result of the notice of dismissal. In particular, he is quite free to refuse any offer of re-employment made by the employer. See, for instance, G H Camerlynck, Traité de droit du travail, vol. 1 Le contrat de travail (1968), p 273:7*
>
> *"Enfin le salarié peut refuser la réintegration offerte par le patron responsable de la rupture et conserver ses prérogatives notamment le bénéfice du préavis."*

The author cites the decision of the Chambre Sociale of the Cour de Cassation of 11 March 1954, Bull civ IV 131. In addition, see the decisions, also of the Chambre Sociale, of 17 January 1990, D 1990 Somm 38 - cited with approval by the Supreme Court in S B Seethiah v Cie de Beau Vallon Ltée 16 July 1991 - and of 11 December 1991, JCP Ed E 1992 320. The law is stated to the same effect in D Fokkan, Introduction au droit du travail mauricien, vol 1, Les relations individuelles de travail (1995), p 248. Their Lordships therefore respectfully agree with the Supreme Court when it said that, in the present case, the notice given by the directors in the letter of 31 March 2001 "in any event could not be revoked unilaterally."

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

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

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

Similar finding in the case of **Les Frais de L'Artiganio Ltd (2020) RB/RN/38/2020**, where the Board concluded that:

"[T]he Worker is nowhere accountable for the unilateral act of the Employer to put an end to his contract of employment. The Letter dated 4th of June 2020 (Doc E) is to be construed as the final nail in the coffin, which clearly put an end to the contract of employment. We therefore find that the Employer had undoubtedly made the Worker redundant without awaiting for the determination of the Board hence contrary to section 72(6) of the Workers' Rights Act 2019 (as amended)".

It can be inferred, after judicious assessment of the evidence on record, that the termination letter dated 31st of July 2020 (Document A) is strong proof that Respondent had put an end to the Applicants' employment even though the Respondent had subsequently addressed two requests to

the Applicants to resume duty. One must bear in mind that the Respondent has no right to withdraw the termination letter without the Applicants' consent, who were under no obligation to abide by the request to resume work and therefore, the Respondent was the only one to be blamed for the termination of their contract of employment.

Although the Applicants had been credited with their monthly salaries, it remains that they had made clear their intention to the Respondent that they had no plan to resume their duty. There is nothing oral, in writing or in their conduct for the Board to conclude that the Applicants intended to return to work. Not making a decision when the Applicants have to, is a decision in itself. Instead, they had been to the Labour office and to their lawyer for advice and they had gone further by initiating an action before the Board for breach of **Section 72(1A) (a) of the Workers' Rights Act 2019 (as amended).** An Employer cannot preserve a right to dismiss and recall simply by crediting a worker's bank account. A worker is not at the whims and caprices of his employer. It is a right that belongs to the worker ever since the letter of termination is sent. The Board therefore concludes that the letter of termination date 31st July 2020 had severed their contract of employment and that the termination had fallen squarely within the prescribed period.

The Board does not intend to adjudicate on the changes to the terms and conditions of the Applicants' contract inasmuch as the Applicants' employment had been brought to an end on the 31st July 2020 well before the changes had occurred.

Conclusion

For the reasons given above, the Board finds that an order for the Respondent to pay the Applicants severance allowance for termination of their contract of employment is most warranted inasmuch as it has been established on a balance of probabilities that the Respondent had, on the 31st of July 2020, acted in breach **Section 72(1A) (a) of the Workers' Rights Act 2019 (as amended)** by terminating the Applicants' employment during the prescribed period. The termination of the Applicants' employment is therefore unjustified. Money already advanced to the Applicants by way of salaries for the months of August and September 2020 should be deducted from the severance allowance claimed. The Board orders accordingly.

(SD)

Bernard C. MARIE
(Vice-President)

(SD)

Ms. Chandrani Devi Gopaul
(Member)

(SD)

Mr Abdool Feroze Acharauz
(Member)

(SD)

Mrs Amrita Imrith
(Member)

(SD)

Mr Suraj Ray
(Member)

(SD)

Ms. S. Deerpaul
(Member)

09 April 2021