REDUNDANCY BOARD

RB/RN/22/2023

ORDER

Before:	Rashid Hossen	-	President
	Saveeta Deerpaul (Ms)	-	Member
	Shirine Jeetoo (Mrs)	-	Member
	Yashwinee Chooraman (Ms)	-	Member
	Christ Paddia	-	Member

Mr. Seeven Yetty

and

Mauritius Sugar Syndicate

The Applicant, Mr. Seeven Yetty, is seeking for an Order directing the Respondent, Mauritius Sugar Syndicate, to pay the Applicant severance allowance for having terminated his employment without complying with section 72 of the Workers' Rights Act 2019, as amended.

Mr. Joy Beeharry, Counsel, appeared for the Applicant. Mr. Emmanuel Sauzier, Counsel, appeared for the Employer.

In his application, the Applicant avers that:-

- he was in continuous employment of Respondent as Quality Surveyor in Charge since 01.08.1990;
- Respondent is an employer of not less than 15 persons;
- Respondent terminated his employment on 30th October 2020;
- Respondent failed to notify the Redundancy Board of its intention to terminate his employment and negotiate with the workers representatives, elected by the workers as there is no recognized trade union or a trade union having representational status;
- the termination of his employment is deemed to be unjustified;
- Applicant is therefore praying the Redundancy Board for an order directing Respondent to pay severance allowance in accordance with Section 70(1) of the Workers' Rights Act.

The Respondent, while admitting that Applicant was in its employment up to 30th October 2020 and that it is an Employer of not less than 15 persons, denied that the termination of Applicant's employment contract took place according to Applicant's version. Respondent avers that:-

- with a view to implement a restructuring exercise it started discussions and negotiations with the Applicant whose post has been identified as redundant;
- the Applicant's employment was terminated by mutual agreement of the parties under a Compromise Agreement dated, and signed on 30th October 2020 and duly vetted by the Ministry of Labour, Human Resource Development and Training;
- in consideration of the sum of Rs. 600,000 paid as compensation under the Compromise Agreement, and upon receipt of the compensation amount paid to the Applicant, the latter signed a Clearance Certificate on 30th October 2020 thereby giving full and valid discharge in respect of his employment with the Respondent, and the termination thereof; and
- the Applicant is therefore, debarred from making the present Application for severance allowance.
- it was under no obligation to notify the Redundancy Board of its intention to negotiate.
- negotiations were held with the Applicant and resulted in a fully valid and enforceable Compromise Agreement, as vetted by the Ministry of Labour, Human Resource Development and Training;
- the termination was made by mutual consent, and that the Applicant is bound by the terms of the Compromise Agreement and Clearance Certificate;
- the Applicant is not entitled to severance allowance since the termination was mutually agreed;
- by letter dated 11th August 2022, it was informed that representations had been made by the Applicant, amongst others, to the Ministry of Labour, Human Resource Development and Training to the effect that the latter had allegedly been forced to go on early retirement;
- on 30th August 2022, a meeting was held at the Ministry in presence of ex-employees' representatives as well as representatives of the Mauritius Cane Industry Authority (MCIA) and a request was made to the Respondent to compensate the Applicant over and above the compensation already paid under the Compromise Agreement;
- by letter dated 09th September 2022, the Respondent informed the Ministry as follows, inter alia:

"After consultation with our Executive Committee on 2 September 2022, I also wish to inform you that the MSS is not ready to consider a new proposal for compensation. The ex-employees reached and signed a Compromise Agreement in line with Section 16 of the Workers' Rights Act. The Agreement was signed at the Ministry of Labour where an officer

of the said Ministry approved and countersigned the Agreement. I confirm that no one was forced to sign the Agreement."

- there was no further action taken by the Ministry after the letter dated 09th September 2022 sent by the Respondent;
- the Applicant cannot now, in view of the above, claim severance allowance.

In reply to Respondent's statement of case, the Applicant avers:-

- by making the Applicant redundant, the Employer has acted unlawfully, in breach of section 72(1A) of the Workers' Rights Act, the more so that it has obtained financial assistance from the State;
- no discussions and negotiations took place between the Respondent and the Applicant inasmuch as an alleged Compromise Agreement was imposed on the Applicant;
- the Applicant's employment was terminated unilaterally by the Respondent on 30th October 2020 inasmuch as the alleged Compromise Agreement was invalid due to the fact that the Applicant did not receive independent legal advice prior to signing the alleged Compromise Agreement;
- the alleged independent adviser, Mrs. Z. Cassoomally-Pankan, acted on behalf of the employer, the existence of whom, the Applicant never knew prior to signing the alleged Compromise Agreement;
- the Respondent did not follow the procedure for redundancy as set out under the Workers' Rights Act 2019 inasmuch as the latter did not notify and negotiate with a recognized trade union or a trade union having a representational status or the workers' elected representatives. Hence, the redundancy is ab initio unlawful as well as any alleged Compromise Agreement;
- the Respondent was under an obligation to give a written notice to the Redundancy Board together with a statement showing cause for the reduction or closure at least 30 days before the intended reduction, which is 30th October 2020;
- no negotiations were held between the Respondent and the Applicant;
- the alleged Compromise Agreement is invalid;
- the Applicant avers he is not bound by the terms of the alleged Compromise Agreement and alleged Clearance Certificate inasmuch as the alleged Compromise Agreement is invalid;
- the Applicant avers he is entitled to severance allowance inasmuch as the termination of the Applicant's employment is unjustified;
- no meeting was held at the Ministry in the presence of the ex-employees' representatives inasmuch as the ex-employees had not elected any representatives;

- the alleged Compromise Agreement is not in line with section 16 of the Workers' Rights Act, hence rendering the alleged Compromise Agreement invalid.
- the Applicant avers that he may claim severance allowance as per the law.

The Applicant testified to the effect that he had been working at the Employer Syndicate since 1990 as messenger. He was offered a sum of money in consideration of the termination of his contract of employment which he turned down. He was called by management on 30th October 2020 with regard to an increase of the initial offer of Rs. 100,000, totaling of Rs. 600,000. He refused to sign the agreement and was told that he could go ahead according to his wish. He could not do otherwise and felt that he had to sign. Both the Compromise Agreement and the Clearance Certificate were signed on the same day. He added that he was duped by his employer into signing the agreement. He denied having received the advice of an independent officer. He agreed having collected the sum of Rs. 600,000 as compensation and that he was told that by signing the Compromise Agreement, his employment contract would be terminated.

Mr. Chetanand Dookhony stated under oath that he was requested by management of employment to accompany the Applicant to the ministry in a spirit of helping his ex-colleagues.

Mrs. Z. Cassoomally-Pankan, Labour and Industrial Officer confirmed that she vetted the Compromise Agreement on the 30th October 2020 regarding the Applicant. She produced a statement whereby the Applicant signed and confirmed having been explained the content and effect of the Compromise Agreement. Although the witness may not understand the meaning of being an independent adviser, she did maintain she is an officer of the ministry. She denied having exercised any force for the signing of the Compromise Agreement.

Counsel for the Respondent submitted that once the Compromise Agreement has been signed and vetted by the Ministry of Labour, an ex-employee cannot come and claim several allowance before the Redundancy Board.

Counsel for the employee submitted that the employer had no right to dismiss during that time and furthermore Applicant did not obtain any independent legal advice prior to accepting the offer. Also, there was no negotiation before the parties.

Board's Considerations

The application is based substantially on two grounds:-

(i) failure to negotiate and
(ii) absence of independent legal advice.

The Applicant has claimed that the Employer did not engage in negotiations prior to the termination of his employment contract. However, it is essential to clarify that the issue of negotiation would only be relevant if no settlement had been reached between both parties. In this particular case, a Compromise Agreement was signed by all parties involved, which signifies that a mutual understanding was achieved regarding the terms of termination. This agreement typically indicates that both sides have come to an amicable resolution, thereby negating the need for further negotiation. According to Applicant, he did not have a choice when being requested to sign the agreement, a claim that suggests a level of duress or disagreement at the time of signing. If indeed there was reservation or objection expressed, an expectation to find records or communications reflecting this sentiment would be legitimate. The representations that had been made to the Ministry of Labour, Human Resource Development and Training some two years after the signing of the Compromise Agreement regarding an allegation of duress had not resulted in any conclusive outcome. There is nothing that substantiates that any kind of duress was exercised upon him. He has admitted having received the compensation of Rs. 600,000.

Section 16 of the Workers' Rights Act 2019, as amended, reads:

"16. Compromise Agreement

(1) Notwithstanding any provision to the contrary in the Code Civil Mauricien and any other enactment, where a worker and an employer agree to resolve a dispute concerning termination of employment or non-payment or short payment of remuneration, the worker and the employer shall enter into a compromise agreement.

(2) A compromise agreement shall not be valid where-

(a) the compromise agreement was not vetted by an independent adviser;

(aa) the worker has not, prior to entering into the compromise agreement, received advice from a relevant independent adviser regarding the terms of the agreement and the effect of that agreement on his claim; or

(b) the independent adviser was a party to the matter for the employer".

The above section was subject to amendments in 2021 and 2022 respectively. We need to look at the law prevailing at the time the employment contract was terminated. Section 16 then read:

"16. Compromise Agreement

(1) A worker may make a compromise agreement with his employer in resolution of a dispute concerning his termination of employment or short payment or non-payment of wages where the worker has received advice from a relevant independent adviser as to the terms of the agreement and its effect on the claim of the worker to be sued in Court.

(2) A compromise agreement shall not be valid where-

(a) the relevant agreement was not vetted by an independent advisor; or
(b) the independent adviser was a party to the matter for the employer".

We know that indeed at the time the employment contract was terminated, the provisions governing *transaction* under the Code Civil Mauricien were still effective with regard to this type of agreement.

The Board dealt extensively with the above provisions in **Iswarduth Boodhun And Medine Ltd RB/RN/154/2020,** part of which we reproduce here:

"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**) **".***

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"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 o 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,vo 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, vo 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 extensively from ***Dalloz, Répertoire de droit civil, v o Transaction, notes 429 and 431*** *which read as follows:*

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… "

It is common ground that the Compromise Agreement was signed by the parties after being vetted by the Labour Officer, Mrs. Z. Cassoomally-Pankan. The latter inserted the following in that document: "*The Employee has been explained the provision of the law*."

The provision governing a Compromise Agreement has been introduced in our law to bring more protection to workers who may be easily duped by unscrupulous employers into signing a settlement agreement. The law makes its validity questionable in the following three circumstances:-

(i) the agreement has to be vetted by an independent adviser;

(ii) the worker has not, prior to entering the agreement, received advice from a relevant independent adviser regarding the terms of the agreement and the effect of that agreement on his claim; or

(iii) the independent adviser is a party to the matter for the employer.

The Applicant in the present case has failed to establish the invalidity of the agreement.

Article 1116 of our Code Civil provides:-

"*Le dol est une cause de nullité de la convention lorsque les manoeuvres pratiquées par l'une des parties sont telles, qu'il est évident que sans ses manoeuvres l'autre partie n'aurait pas contracté. Il ne se présume pas et doit être prouvé."*

It is pertinent to note that on 11.08.2022 (underlining is ours), the Ministry of Labour, Human Resources Development and Training wrote to the Employer and requested it to attend a conciliation meeting regarding forceful early retirement of Applicant and other workers, to which Applicant and the workers were not agreeable. By letter dated 09th September 2022, the Employer informed the Ministry that it could not reconsider the proposal and no further action was taken by the Ministry. The volte-face on the part of the Employee appeared to have taken place some two years after the Compromise Agreement was signed. We cannot but conclude that Applicant was attempting to enjoy another bite at the cake after collecting his cheque of Rs. 600,000. To our mind, the transaction has "*l'autorité de la chose jugé en dernier ressort*." There has been no evidence purporting to establish "*any error as to the identity of parties or the subject matter of the dispute, or fraud or violence*." An afterthought of mere allegations cannot invalidate the Compromise Agreement.

With regard to the point raised that no redundancy can take place during the prescribed period, we reiterate what the Board had to say in **Iswarduth Boodhun And Medine Ltd** (Supra):

"It would be awkward, if not absurd, if a worker wishes to leave an enterprise and he is legally prevented to do so. Reduction of workforce in the Workers' Rights Act 2019 is initially a unilateral decision by the employer. Any accord or assent of the worker regarding termination of his employment contract would fall out from the application of the prohibition regulation."

For the reasons given above, we set aside this frivolous application for severance allowance.

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Rashid Hossen

(President)

…… SD

Saveeta Deerpaul (Ms.)

(Member)

…….. SD

Yashwinee Chooraman (Ms.)

(Member)

…….. SD

Christ Paddia

(Member)

…… SD

S. Jeetoo (Mrs.)

(Member)

Date: 03 September 2025