REDUNDANCY BOARD

RB/RN/23/2026

RULING

Before:	Fooad F. Nooraully	-	President
	Yashwinee Chooraman (Ms.)	-	Member
	Ganga Devi Imrit (Mrs.)	-	Member

MR. BRUCE MAWERE

Applicant [Employee]

And

ETC MANAGEMENT SERVICES LIMITED (MAURITIUS)

Respondent [Employer]

On 14 May 2026, Mr. Bruce Mawere (hereiafter referred to as "the Applicant") filed a request for an Order directing his Employer, ETC Management Services Limited (Mauritius), to pay him severance allowance at the rate specified in Section 70(1) of the ***Workers Rights Act 2019 (as amended)*** **(WRA)** following the termination of his employment**.** An amended version of the referral from the Employee was filed before the Board on 11 June 2026 without objection from the Respondent.

Mr. Z. Mohamed, of Counsel, appeared for the Applicant. Mr. S. Dabee, of Counsel, assisted by Ms. L. Tannoo, of Counsel, appeared for the Respondent.

Applicant's referral to the Board is made in respect of the Respondent's *intention to terminate* his employment *on economic and organizational grounds in circumstances amounting to a retrenchment within the meaning of the Workers Rights Act 2019*.

In support of his case, Applicant avers, inter-alia, that discussions took place between the Parties on or about February 2026 and an offer was made then by his employer for a mutual separation on an agreed settlement package. According to the Applicant, there was no follow-up on the discussions save and except that as per paragraph 6A.1, "*subsequent to the initiation of discussions regarding a purported "mutual separation", the Respondent has sought to raise allegations of poor performance and/or incompetence as a basis for the termination of the Applicant's employment*."

The Applicant further avers that " *In these circumstances, the Applicant respectfully submits that the alleged performance concerns are pretextual in nature and do not constitute the genuine operative reason for the termination. Applicant maintains that the true basis for the* *termination remains the restructuring of the Respondent's operations and the resulting redundancy of his position.*"

In his reply, the Respondent raised three preliminary objections (reproduced *verbatim* below) raising jurisdictional issues :-

1. *Firstly, the Respondent is advised that the Board lacks territorial jurisdiction to entertain the present referral. The Applicant's employment was at all material times performed entirely outside Mauritius, and the proper connecting factors for jurisdiction, in the absence of a jurisdiction clause in the contract of employment, point to Zimbabwe, inasmuch as:*

    a. *The Applicant is, and has at all material times been, physically employed and performing his duties at the Respondent's offices in Zimbabwe;*

    b. *The Applicant is a Zimbabwean national who lives and resides in Zimbabwe;*

    c. *The place of work has always been Zimbabwe with regular travel to Malawi;*

    d. *A disciplinary process - where the Applicant has appeared before a disciplinary committee constituted in Zimbabwe for a preliminary hearing and a case management hearing on or about 5 June 2026 - has started in Zimbabwe after allegations of poor performance were raised against the Applicant in accordance with Zimbabwean employment law and practice;*

    e. *The proper connecting factors for jurisdiction - namely the location of work, the nationality of the employee, and the place of performance of the employment - all point to Zimbabwe as the appropriate jurisdiction. A governing law clause in the employment contract does not, without more, vest a statutory tribunal with territorial jurisdiction over an alleged dispute arising from an employment relationship performed entirely outside Mauritius and exclusively in Zimbabwe. The proper forum for the determination of any dispute between the parties is therefore, before the appropriate body in Zimbabwe.*

2. *Secondly, should the Board determine that it has territorial jurisdiction, the Respondent is advised that the Applicant's referral does not fall within the statutory mandate of the Board for the following reasons:*

    a. *The Board's statutory jurisdiction is defined and delimited by* ***<u>sections 72, 73 and 74 of the Workers' Rights Act 2019 (as amended)</u>*** *(the* ***"WRA"****) and is confined to cases of reduction of workforce and closure of enterprises for economic, financial, structural, technological or any other similar reasons;*

    b. *The Board has jurisdiction to deal with all cases referred to it under* ***<u>section 72 of the WRA</u>****, which is in turn engaged where "an employer who <u>intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise</u>" has undertaken the prescribed negotiation and notification process and an agreement was not reached, or where there has been no such negotiation;*

c. *The Board's jurisdiction is therefore, strictly limited to cases where: (i) an employer employing not less than 15 workers in an undertaking, or an undertaking having an annual turnover of at least 25 million rupees, intends to reduce its workforce or close down its enterprise; (ii) the reduction or closure is for economic, financial, structural, technological or similar reasons; and (iii) the statutory notification and negotiation process under* ***<u>sections 72(1) and (5) of the WRA</u>*** *has been engaged;*

d. *None of these preconditions is satisfied in the present case. The factual position is as follows:*

    i. *The Applicant has not been made redundant and no notice of termination on such grounds has been issued;*

    ii. *Disciplinary proceedings against the Applicant for poor performance have commenced in Zimbabwe in accordance with Zimbabwean employment law and practice. <u>The Applicant, assisted by his lawyers, appeared before the disciplinary committee on or about 5 June 2026 for the preliminary hearing</u>;*

    iii. *Any changes to individual business units in which the Applicant was involved were a direct consequence of the Applicant's poor performance in managing those units. For instance, the closure of the Grains & Oilseeds trading line was attributable to the Applicant's mismanagement; the transfer of the fast-moving consumer goods business to ETG Parrogate was a response to the Applicant's poor performance in that area; and the Applicant's persistent failure to meet set objectives in other substantial business units under his oversight such as ETG Curechem and the fertiliser business led to discussions and the Applicant expressing a desire to leave, following which the parties engaged in discussions towards a mutual separation which did not result in agreement. The Respondent thereafter initiated disciplinary action for poor performance;*

    iv. *None of these business changes was attributable to economic, structural or organisational reasons requiring workforce reduction; they were solely a consequence of the Applicant's own performance failures. The question of redundancy has never arisen, especially when the business in Zimbabwe is only expanding;*

e. *The Applicant's characterisation of the Respondent's actions as an "intended intention to terminate…on economic and organisational grounds amounting to retrenchment" is factually incorrect and amounts to an attempt to artificially invoke the Board's jurisdiction;*

f. *The Applicant's referral is also misconceived insofar as it simultaneously avers an "intended" termination and also alleges that the Respondent has "through conduct" already brought the employment relationship to an end - these positions are mutually inconsistent. In any event, neither is capable of founding the Board's jurisdiction in circumstances where no redundancy situation exists on economical and/or* *organisational grounds and where the Applicant's employment difficulties arise solely from his poor performance.*

3. *Thirdly, the Applicant has not averred that his employment has been terminated as a result of the Respondent reducing its workforce, which would entitle the latter to seek the Board intervention. The Board therefore, further lacks jurisdiction on the following basis:*

   a. ***Section 72(8) of the WRA*** *provides that a worker may apply to the Board for an order "where the employment of a worker is terminated in breach of subsection (1), (1A), (5), (5A) or (6)." This presupposes a termination that has already occurred at the instance of the Respondent, or at the very least a notification by the employer to the Board of an intended reduction under* ***section 72(5)****;*

   b. *In the present circumstances, neither condition has been met inasmuch as:*

      i. *The Applicant's employment has not been terminated following a restructuring exercise. This matter was referred to the Board on 14 May 2026, and in his initial Statement of Case dated 14 May 2026, the Applicant maintained the language of a "proposed termination" and "intended termination," expressly averring that the referral was made in respect of the Respondent's intention to terminate. At no point did the Applicant aver that he considered his employment to have been terminated;*

      ii. *No termination at the instance of the Respondent has occurred to date;*

      iii. *No notification of an intended reduction of workforce applies in the present circumstances; the Respondent's engagement with the Applicant concerns solely issues of poor performance - a matter being dealt with through disciplinary proceedings in Zimbabwe - and not redundancy;*

      iv. *To the extent the Applicant seeks to rely on any discussions regarding a mutual termination, the Respondent avers that the Applicant's expressed desire to leave his employment and settlement discussions which ensued do not constitute or give rise to a redundancy situation, nor do they empower the Board to exercise its jurisdiction under sections 72 to 74.*

Written submissions were filed by both Parties in support of their oral submissions. The Board wishes to place on record its appreciation for the thorough effort put by both Parties to support their arguments.

There are numerous pronouncements of the Supreme Court on the procedure to be followed when in presence of preliminary objections, often termed as *plea in limine litis*. In **Avigo Capital Managers PVT Ltd v Avigo Venture Investments Limited (In Liquidation) 2019 SCJ 158**, the Court of Civil Appeal explained that:

"*Points which are more appropriately raised* ***in limine*** *are those which, by reliance on the pleadings only and without having recourse to the production of evidence, or by the production of a significantly limited amount of evidence in relation to the point raised*

in limine*, could dispose of the case and avoid protracted hearing of the whole evidence in the case*." See also **Thevenau v Veeraragoo & Anor 2026 SCJ 351**.

The issue regarding ***plea in limine*** was also addressed in **E Achkar v Arie Capital Investment (ACBM) Limited 2026 SCJ 189** where it was held that :

"*It is also settled than an objection in law as to jurisdiction of the Court (an* ***exception d'incompétence****) may be taken by the defendant ex-facie the plaint at the very outset of the case, whether as a preliminary objection or as a plea* ***in limine****, without the defendant having to join issue on the merits (see, for example,* **Hewlett-Packard International Trade BV v Happy World Ltd 2017 SCJ 324** *and* **Dr Ramgoolam v State of Mauritius 2020 SCJ 91.**)."

As laid down in **State of Mauritius v D Indiana 2026 SCJ 308, "***It is trite law that whenever a plea in limine is raised, the defendant is deemed to have accepted all the averments in the plaint with summons vide* ***Rama v Vacoas Transport Co. Ltd (1958) MR 184.****"*

The Board will therefore, restrict itself to the averments of the Applicant to determine whether, even if undisputed, the case of the Applicant would still fall outside its mandate. For the purposes of this ruling, the Board is concerned only with the third limb of the preliminary objections of the Respondent. The conclusion reached on this limb is sufficient to dispose of this referral.

The case of the Applicant rests on the following grounds :

(i) The intention of his employer to terminate his employment following discussions on or about February 2026;

(ii) Non-payment of salary for the month of April 2026 and

(iii) Unfounded allegations of poor performance and/or incompetence from the Employer against him.

The Employee has averred in *paragraph 1.3* of its referral as follows :-

This referral is made in respect of the Respondent's ***intention to terminate*** *the Applicant's employment on economic and organisational grounds in circumstances amounting to a retrenchment within the meaning of the Workers Rights Act 2019*. (underlining is ours).

In addition, the Applicant has admitted that he did not receive any termination notification from his employer and has averred at *paragraph 5.8* of its referral that "*notwithstanding the absence of a formal termination letter, the Respondent has* ***through its conduct****, effectively brought the employment relationship to an end*." (underlining is ours).

At *paragraph 6.3* of the referral, Applicant states that *the* ***proposed termination*** *accordingly constitutes a termination on economic grounds*. (underlining is ours).

It is therefore, abundantly clear from his own averments that the Applicant accepts that there has been no formal termination of his employment by the Respondent so far but, rather, he has elected, in his own judgment, to treat the consultation process initiated in or about February 2026 in Johannesburg as a termination of employment by the Employer. In support of his election to treat his contract as having been terminated, Applicant avers at paragraph 4.3 that following significant restructuring of the group to which his employer belongs, "*..changes had the effect of removing a substantial portion"* of his functions "*thereby rendering his position redundant in economic terms."* Further, at paragraph 5.7, he avers that the "*Respondent has failed and/or refused to pay his salary for the month of April 2026, despite the Applicant having remained willing and available to perform his duties during that period*."

The jurisdiction of the Redundancy Board is clear. It deals with all cases of reduction of workforce and closure of enterprises *for economic, financial, structural, technological or any other similar reasons* according to *section 73 (1)* of the **WRA**. In so far as an application by an employee for severance allowance is concerned, the Board's jurisdiction comes into play at section *72(8)* of the **WRA** when the employment of a worker <u>*is terminated*</u> *in breach of section 1, 1(A), 5, 5(A) or 6 or where an employer has failed to comply with an order of the Board under subsection (9).* In the present case, Applicant himself agrees that his Employer has the *intention to terminate* his employment. <u>*Intention to terminate*</u> and *termination* are two different concepts. *Termination* is a positive act, usually evidenced by correspondence to that effect. *Intention to do* is the opposite of doing something. For instance, when one adopts a *wait and see* situation resulting in no decision taken.

In view of the clear provision of this section, the Board considers that it does not have jurisdiction in cases of where an employee alleges that his employer has the intention to terminate his employment. To hold otherwise would lead to absurd situations such that whenever an employer engages in the process of consultation prior to possible redundancies on ground of economic, financial, structural, technological or any other similar reasons, any employee would be able to *jump the gun* and come before the Redundancy Board before the process initiated by an employer is completed. This is definitely not what was intended by the legislator when the WRA was amended to create the Redundancy Board and to replace the right of employers to hire and fire at will by a mandatory redundancy process. The Board is guided in that interpretation by the words of Lord Wilberforce in **Royal College of Nursing of the United Kingdom v Department of Health and Social Security (1981) AC 800** where he stated the following :-

In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs."

This approach was endorsed in **Barclays Mercantile Business Finance Ltd v Mawson 2004 UKHL 51, (2005)1 AC 684** where it was held that :

"*the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose*."

In the light of the above, the Board has come to the inescapable conclusion that the Applicant's interpretation of the conduct of his employer in initiating a possible process of retrenchment as constituting a termination of employment by the Employer would defeat the whole purpose of mandatory retrenchment procedures laid down in the **WRA**. As held in **Eco-Sud and Ors v Minister of Environment, Solid Waste and Climate Change and Anors [2024] UKPC 19**,

" *… Courts should seek to avoid a construction that produces an absurd result, since it is unlikely to have been intended by the legistlature In that respect absurdity is given a very wide meaning, covering, amongst other things, unworkability, impracticality, inconvenience, anomaly or illogicality."*

The Board considers that the averments of the Applicant are more in line with situations of constructive dismissals . As aptly summed by the Privy Council in **Grewals (Mauritius) Ltd v Koo Seen Lin [2016] UKPC 11 :**

"*When constructive dismissal is in question, the acid test is not whether the employer intended to dismiss; it is whether he has by his conduct objectively judged, repudiated the contract. If he has, the employee is entitled, by accepting the repudiation to treat the conduct as constructive dismissal". (underlining is ours)*

Similarly, in **Wadham Stringle Commercials (London) Ltd v Brown (1983) IRLR 46,** Lord Denning explained that :

"*An employee would be entitled to consider that his employer has committed a fundamental breach of contract leading to the discharge of his duties if the employer's conduct is of such a serious and intolerable nature that he cannot reasonably continue working for that employer, or that it has affected him mentally or physically.*"

For instance, a situation of non-payment of salary as averred by the Applicant would amount to a fundamental breach of contract enabling an employee to ask for severance allowance at the rate specified at section 70 (1) of **WRA**. However, the Redundancy Board has no mandate to determine cases of alleged constructive dismissal as its jurisdiction extends only to cases of reduction of workforce and closure of enterprises for economic, financial, structural, technological or any other similar reasons. There are other forums **available** to an employee who alleges that, by his conduct, an employer has constructively dismissed him.

In light of the above, the preliminary objection is upheld. Consequently, there is no need for the Board to address the other limbs of the Respondent's preliminary objections.

This **application** is therefore, **set aside.**

REDUNDANCY BOARD

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……………………………**SD**
Fooad F. Nooraully
(President)

……………………………**SD**
Yashwinee Chooraman (Ms.)
(Member)

……………………………**SD**
Ganga Devi Imrit (Mrs.)
(Member)

Date: 24 August 2026