# REDUNDANCY BOARD

**RB/RN/65/2025**

**ORDER**

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| **Before:** | Fooad F. Nooraully | - | President |
| | S. Deerpaul (Ms.) | - | Member |
| | N. Veeramootoo (Mrs.) | - | Member |

**Mr. Mahadeo SONATUN**

***APPLICANT (EMPLOYEE)***

**And**

**M. F. M. CONFECTIONS Ltée**

***RESPONDENT (EMPLOYER)***

The Applicant, Mr. Mahadeo SONATUN, is seeking for an order directing the Respondent, M.F.M Confections Ltée, to pay the Applicant severance allowance at the rate specified in Section 70 (1) of the Workers' Rights Act (WRA) for having terminated his employment in breach of Section 72 (8) of the said Act.

Throughout the procedure and for the purposes of the hearing, both Parties chose to represent themselves. Mindful of its duties towards unrepresented litigants, the Board spelt out the procedure for the hearing to both parties since even unrepresented parties are subject to rules which cannot always be routinely bypass.

The undisputed facts are:-

(a) The Respondent was employing not less than 15 employees at the time of the termination of employment of the Applicant;

(b) The Applicant was in continuous employment with the Respondent from 10.02.2022 to 12.04.2025.

(c) Both Parties signed an acknowledgement of full and final settlement *(the acknowledgement)* (oftentimes referred to as *a reçu pour solde de tout compte)* on 30 April 2025 and read as follows:-

*"Please find enclosed your severance allowance payment amounting to Rs 45,874.04 paid by cheque.*

*This payment represents the full and final settlement for the specified transaction. No further claims or obligations shall be made after this process*. (*underlining is ours)"*

(d) The above correspondence was preceded by another written communication dated 11/03/2025 from the Respondent to the Applicant informing him of the decision to terminate his employment due to the fact that the Respondent was *"going through major restructuring"*.

In its reply to the Applicant's statement of case, the Respondent raised a Preliminary Objection which is reproduced below:

*"The Respondent outright moves that the Application be set aside in as much as this is an application for severance allowance and such payment has been done through mutual verbal agreement between the Applicant and Respondent and has already been paid on the agreed compensation of 15 days per year of service"*

As a first step, it was incumbent on the Board to determine if the *acknowledgement* signed by both Parties on 30 April 2025 gave the Respondent an absolute discharge and dispensed it from notifying the Redundancy Board of its intention to proceed with the redundancy of the Applicant in conformity with Section 72(5) of the Workers' Rights Act 2019 (WRA). It is to be noted that whilst the preliminary objection refers to a mutual verbal agreement, the facts demonstrated that in fact an acknowledgement document had been duly signed by both parties.

In the Board's opinion, the determination of this issue will dispose of the matter. The question to be determined is whether the agreement *(acknowledgement)* discharged the Employer from notifying the Redundancy Board before declaring Applicant redundant.

In order to decide this issue, the starting point is *Section 16* of the *WRA*, as amended.

**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 advisor was a party to the matter for the Employer"*

*(emphasis is ours)*

This section is couched with mandatory terms using the words "*notwithstanding any provision to the contrary…*" in sub-section (1) and "*shall not be valid"* in sub-section (2). In its interpretation of this provision, the Board is mindful of the guidance given by

*section 5(8)* of the *Interpretation and General Clauses Act* that in the interpretation of enactments, effects shall be given to each enactment according to its true intent, meaning and spirit.

It follows from the above that where an employee and an employer agree to resolve a dispute concerning termination of employment, they "***shall*** *enter into a compromise agreement."* In the present situation this meant that Mr. Mahadeo Sonatun and M. F. M. Manufacturers Ltée were required to enter into an agreement in order to negate the necessity for the Employer to give notice to the Redundancy Board of its intention to terminate the employment of the employee. Irrespective of whether it is called *Compromise Agreement, acknowledgement or mutual verbal agreement,* what was important was whether the agreement satisfied the requirements enumerated in section 16(2) of the WRA.

In his testimony the Applicant said the following which leaves no doubt that the document signed between the Parties did not comply with section 16(2) of WRA.

*President: … did you seek legal advice or independent advice before you signed that document?*

*Mr. M. Sonatun : No Sir. I didn't because I was under very terrible stress from my illness…*

*…*

*President: … Quand ou fine alle signe ça document A(2)(severance allowance), ou ine dire ou pa ti alle guette personne, ou pa ti conné qui ou ti pou gagne droit alle guette quicaine ?*

*Mr. Sonatun : Mo pa ti conné, mo pa cone la loi comment été.*

In her testimony before the Board, the Representative of the Employer does not dispute this and states *" … quand Monsieur Sonatun était au bureau le 30, moi-même personnellement, je l'ai reçu, je lui ai expliqué, je lui est demandé, est-ce que vous êtes d'accord, il m'a dit oui, il a signé, il a pris et il a touché le cheque juste après."* In concluding her testimony, Mrs. V. Menon added: *"Alors pour nous le cas est straight forward. Monsieur Sonatun a accepté le paiement, il a signé qu'il était d'accord avec le paiement et pour nous, it is straight forward*."

It is therefore clear from the evidence before the Board that the *acknowledgement* signed does not comply with section 16 (2) of the WRA.

Consequently, the next issue to be decided by the Board was to determine whether the Parties were at liberty to bypass the legal requirements of the WRA by mutual consent. It is well settled in law that in line with Article 6 of the Code Civil, "*On ne peut déroger par des conventions particulières aux lois qui intéressent l'ordre public et les bonnes moeurs*." In ***Atchia S.O. v Air Mauritius 2021 SCJ 206,*** the Court of Civil Appeal cited in approval an extract of ***Introduction au droit du travail mauricien 1/Les Relations Individuelles de Travail,*** **Dr D. Fok Kan, 2ème édition (2009),** page 5 re-affirming the principle that: '… ***Les législations du travail sont ainsi à ce titre des législations d'ordre public'.***

This stand was re-affirmed in ***P.A.P.O.L.C.S Limited v Louis Georgy Roussety 2026 SCJ 44*** on the predecessor to the WRA, the Employment Rights Act. On appeal the Supreme Court held that *"It follows from all the above that the Employment Rights Act is 'd'ordre public' and learned Senior Counsel for the appellant therefore correctly conceded on this point before the trial court. The statutory retirement age set to 65 years under the legislation being 'd'ordre*

*public', **it must prevail over any agreement with an employer, the terms of which are less favourable to the worker**. (emphasis is ours) We say so, based on the following extract from* ***Juris Classeur Travail Traité Première publication : 28 juin 2023 Dernière mise à jour : 23 octobre 2024 Laurent Drai Professeur de droit privé - Université catholique de Lille,***

***§ 82 Ordre public***

***Les règles d'ordre public sont celles auxquelles nul ne peut déroger parce qu'elles répondent à des impératifs liés à l'organisation de la vie en société (C. civ., art. 6) (V. F. Gaudu, L'ordre public en droit du travail : Études Ghestin, LGDJ-Montchrestien, 2001, p. 363. - N. Mayer, L'ordre public en droit du travail : LGDJ, Bibl. dr. privé, t. 461, 2006. - F. Canut, L'ordre public en droit du travail : LGDJ, Bibl. de l'Institut A. Tunc, t. 14, 2007).***

***Nombreuses sont les règles du droit du travail qui présentent ce caractère d'ordre public en ce qu'elles garantissent aux travailleurs des droits minimaux qui ne peuvent être ni supprimés, ni réduits.***

*Dans un avis du 22 mars 1973, le Conseil d'État a rappelé le caractère d'ordre public des règles de droit du travail en estimant qu'***"une convention collective ne saurait légalement déroger, ni aux dispositions qui, par les termes mêmes, présentent un caractère impératif, ni aux principes fondamentaux énoncés dans la Constitution ou aux règles de droit interne - ou, le cas échéant, international -, lorsque ces principes ou règles débordent le domaine du droit du travail ou intéressent des avantages ou garanties échappant, par leur nature, aux rapports conventionnels"** *(CE, avis, 22 mars 1973 : Dr. ouvrier 1973, p. 190 ; Dr. soc. 1973, p. 514). La Cour de cassation a suivi la même voie (Cass. soc., 23 sept. 2020, n° 18-23.474 JurisData n° 2020-014743 ; JCP S 2020, 3047, note P. Larroque-Daran et H. Rohou).*

The Board is of the view that the WRA is a legislation *d'ordre public* and it must *prevail over any agreement with an employer, the terms of which are less favourable to the worker*. Therefore, the second paragraph of the acknowledgement saying that "*This payment represents the full and final settlement for the specified transaction. No further claims or obligations shall be made after this process*" cannot override the specific statutory provision of section 16 of WRA. The **Court of Civil Appeal** has endorsed this approach in **J Wong Hee & B Wong Hee V The Mauritius Development Investment Trust Company Ltd 2026 SCJ 1**:

*" It is a cardinal principle of statutory interpretation that a provision of a general nature cannot override specific statutory provisions which have been expressly enacted to deal with a particular situation which is embodied in the principle "generalia specialibus non derogant". A defaulting company cannot, by the mere inclusion of a generic clause such as 4.1.2 in the DOCA, override the whole scheme of the Act and defeat the rights of the creditors to recover his debt from the guarantors as expressly provided by law."*

Although in that case, the issue related to provisions of the Insolvency Act, it is the Board view that the same approach would be applicable to section 16 Workers Rights Act. We are comforted in our approach by the fact that in ***Introduction au droit du travail mauricien (supra)*** the author explains " *Si en droit privé, la loi a normalement seulement pour but de prévoir un cadre à l'intérieur duquel c'est aux parties elles-mêmes d'organiser leurs affaires, le droit du*

*travail lui par contre à une finalité précise, celle de " la protection du faible contre le fort "* . Additionally, in France a "*reçu pour solde de tout compte"* can be denounced within a delay of six months from its signature without the necessity to ascribe a reason for the denunciation (*C. trav., art. L., 1234-20, al. 2*). This faculty to denounce without reason *"n'est contraire ni au principe de sécurité juridique ni à celui d'égalité devant la loi (Cass. Soc., 18 sept. 2013, n$^0$ 13-40.042, QPC, RJS 12/13, n$^0$ 814)"*.

In as much as the agreement reached by the parties failed to satisfy the requirements of section 16 of WRA in that it was not vetted by an independent adviser and the Applicant had not, prior to entering into the said agreement received advice from a relevant independent adviser regarding the terms of the agreement and its effect on his claim, the Board has come to the inescapable conclusion that the *acknowledgement* could not and did not dispense the Respondent from notifying the Redundancy Board of its intention to make the Applicant redundant.

Having breached section 72 (5) of the WRA, the Respondent must pay the Applicant severance allowance at the rate specified in Section 70(1) of the WRA.

The Board orders accordingly.

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

**…….SD**
**Saveetah Deerpaul (Ms.)**
*(Member)*

**…….SD**
**Narvadha Veeramootoo (Mrs.) (Dr.)**
*(Member)*

**Date: 29 April 2026**