REDUNDANCY BOARD

RB/RN/20/2023

ORDER

Before:	Fooad F. Nooraully	-	President
	M. Yasheen Aubdool	-	Member
	Narvada Veeramootoo (Mrs.) (Dr.)	-	Member
	L. M. Desiré Antonio	-	Member
	Lutchmeeduth Bullywon	-	Member

Vijay Luxmi Sanuchur
And
Mauritius Sugar Syndicate

In an application dated 26 September 2023, Ms. Vijay Luxmi SANUCHUR, the Employee, hereinafter referred to as the Applicant, is seeking for an Order directing the Respondent, Mauritius Sugar Syndicate, to pay the Applicant severance allowance in accordance with Section 70(1) of the Workers' Rights Act. According to her Statement of Case, her Employer had failed to notify the Redundancy Board of its intention to terminate her employment and negotiate with the workers representatives, elected by the workers as there is no recognised trade union or a trade union having representational status. In its Statement of Defence, the Respondent denied the averments of the Applicant and pleaded that Applicant's employment was terminated by mutual agreement of the Parties under a Compromise Agreement duly vetted by the Ministry of Labour, Human Resource Development and Training.

Although initially represented by legal Counsel, Applicant chose to conduct her case on the day of hearing on 27 February 2026. Mr. Emmanuel Sauzier, Counsel, appeared for the Employer.

In an emotionally charged testimony, the Applicant explained the circumstances which led to the termination of her employment on 30 October 2020. She did not mention the existence of the Compromise Agreement or the Clearance Certificate, documents which she had signed in furtherance of the termination of her employment with the Respondent. Applicant was emphatic about the fact that she should have been compensated by the payment of three months remuneration per year of service. Queried by the Board on the Compromise Agreement which she had averred was invalid in her Statement of Reply to the Statement of Defence of the Respondent, Applicant explained:

"*Zotte ine dire nous si nous pas signé, le peu qui nou pé gagné la aussi, ça aussi nou pa pou gagné. Mo pas ti lé signé moi. J'avais même demandé à être redéployée dans ene autre département. Mo ti demandé tout ça mais l'administration me dit non, we are not in a recruiting mode. Mais j'étais toujours là-bas quand dans BST zot pe emmène bane les autres personnes qui pas ena l'expérience et qui pe travaillent. Et je n'avais pas le choix quand à chaque fois ine arrive la fin l'année. Je suis la seule personne qui travaille, j'ai deux personnes âgées, mo ena ene loan, mo pas ena le choix qui mo besoin signé".*

Applicant did not adduce any evidence that she was misled or forced to sign the Compromise Agreement.

Under cross-examination by Counsel for the Respondent, the Applicant conceded that she signed the Compromise Agreement at the Ministry of Labour on 27 October 2020 followed three days later by the signature of a Clearance Certificate on 30 October 2020. More importantly, she was unable to demonstrate that the Compromise Agreement signed by her at the Ministry of Labour, Human Development and Training was invalid. In these circumstances, the only inference from the testimony of the Applicant was that she signed the Compromise Agreement voluntarily after taking into account her needs and the risks involved in not reaching an agreement with her Employer. She also confirmed having received the sum of Rs. 650 000 as compensation for the termination of her employment in line with the provisions of the Compromise Agreement. The Board noted that she was not convincing when she could not explain satisfactorily the provision contained in the Compromise Agreement that the Respondent would contribute to her SIPF Pension Scheme till she reached the age of 50 years so that she could opt for an early retirement in case she so desired. This was clearly a provision which had been discussed and agreed with the Applicant before it was laid down in the Compromise Agreement.

In support of her case, Applicant called Mr. Miniadee Rengasamy, a former colleague of hers whose employment was also terminated during the same exercise. Unfortunately, he did not bring any element which would have buttressed the averment of the Applicant that the Compromise Agreement vetted by the Ministry of Labour was invalid.

Deponing on behalf of the Respondent, Mrs. Veena Ghurburrun, HR Consultant who was in charge of the project of optimisation of human resources at the Mauritius Sugar Syndicate, explained the process adopted to implement the said project. Her testimony was clear and she gave a convincing recapitulation of the procedure which culminated in the negotiation with the employees who were, according to her report, surplus staff.

"On les a rencontrés en deux fois dans le board room du Syndicat des Sucres. Et ce qui s'est passé le process, comment ça va se passer etc., personne n'a refusé, ils voulaient simplement savoir quel était le package qu'ils auraient. Et à la deuxième réunion, les gens m'ont expliqué que vu qu'ils ont différents benefits avantages, ils auraient préféré que la négociation se fasse individuellement. De là, j'ai rencontré chaque personne individuellement, pour savoir ce qu'ils voulaient, leur expectations et tout. Et ça a pris quelques semaines encore avec chacun de négocier. Et quand on est arrivé à un agreement, à ce moment là, ça devait passer au Board, le Board a approuvé et du moment que c'était agreed, chacun avait un montant, le CEO a appelé chaque personne, le CEO a personnellement appelé chaque

personne pour remettre les documents qu'il fallait. Et ils ont été accompagnés à ce moment là au bureau du travail, au ministère, pour s'assurer que le compromise agreement est bien validé. Et quand c'était validé, c'était signé et stampé, à ce moment là, on a fait le paiement".

The Board accepts her testimony as a truthful recollection of how events unfolded leading to the signature of a Compromise Agreement with the Applicant.

Mrs. Ghurburrun produced a copy of the Compromise Agreement containing signatures of Applicant, Respondent and an Officer of the Ministry of Labour and confirmed that the said Agreement had been vetted by the Ministry of Labour. The Clearance Certificate signed by the Applicant was also produced. The version of the witness remained largely unchallenged during cross examination by the Applicant.

VALIDITY OF THE COMPROMISE AGREEMENT

In the light of the testimonies of the witnesses of both Parties and the documents produced, the Board can only conclude that the Compromise Agreement signed with all three Parties was not invalid and amounted to a *transaction* between Employer and Employee. True it is the Employee may not have been happy about the amount paid to her but there was no compulsion or force exercised against her in order to make her sign the Compromise Agreement. Her signature was voluntary resulting from a choice made by her in the circumstances which she related in her testimony before the Board and the Respondent was not guilty of any misrepresentation.

It is worth noting that at the time of the termination of employment of the Applicant, section 16 of the Workers' Rights Act read as follows:-

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

It was only in 2021 and 2022, that is, after the termination of the employment of the Applicant that this section was amended to read now as follows:

"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".

It is therefore clear that at the time of the termination of employment of the Applicant the provisions of the ***Code Civil Mauricien*** applied, which provisions became the law of the Parties. **In Leymunlall Nandrame and others (Appellants) v. Lomas Ramsaran (Respondent) (Mauritius) 2015 UKPC20**, the Law Lords explained that:

" 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, vol 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 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 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.

Having failed to establish that the Compromise Agreement signed was invalid, the Board is of the view that compliance with section 72 of the ***Workers' Rights Act*** by the Respondent was neither required nor necessary. This approach was explained in **Nazim Minotte and Mauritius Sugar Syndicate RB/RN/25/2023:-**

"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 the negotiation. This agreement typically indicates that both sides have come to an amicable resolution, thereby negating the need for further negotiation".

The evidence has shown that not only did the Applicant voluntarily signed a Compromise Agreement and a Clearance Certificate, but had also accepted as compensation the sum of Rs. 650 000 and agreed that the Employer would continue to contribute to her pension until she reached the age of 50 with a view to avoid her losing her pension rights. The only logical conclusion for the Board is that Applicant was trying to have another bite at the cherry. The Board cannot condone this approach.

Applicant had also laid emphasis in her testimony on the fact that no redundancy could have taken place during the prescribed Covid period. In that respect, the Board reiterates its stand which was expressed **in Iswarduth Boodhun and Medine Ltd RB/RN/154/2020** and quoted in approval in **Denis Pin and Mauritius Sugar Syndicate RB/RN/18/2023**:

"*It would be awkward, if not absurd, if a worker wished 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 prohibition regulation*".

This application is therefore set aside.

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Fooad F. Nooraully

(President)

…… SD

M. Yasheen Aubdool

(Member)

…….... SD

Narvada Veeramootoo (Mrs.) (Dr.)

(Member)

…….... SD

L. M. Desiré Antonio

(Member)

…… SD

Lutchmeeduth Bullywon

(Member)

Date: 23 March 2026