

REDUNDANCY BOARD

RB/RN/15/2023

ORDER

Before:	Rashid Hossen	-	President
	Shirine Jeetoo (Mrs.)	-	Member
	Christ Paddia	-	Member
	Suraj Ray	-	Member
	Saveeta Deerpaal (Ms)	-	Member

**Jobstreet Ltd
and
Mrs. Jennifer Alcindor & 19 (Ors)
(employees to be declared redundant)**

On 10th July 2023, Jobstreet Ltd (Employer), notified the Redundancy Board (Board) that following an Annual General Meeting held on 7th July 2023 and after a thorough review of the performance of the Company for the past 3 years, the Board of Directors, with the consent of the shareholder, have decided to stop all operations as from 10th July 2023 and proceed with the closing of the Company.

In its statement showing cause for the closure, the Employer avers that the decision is also supported by the economic conditions in Europe, especially in France, whereby the company lost market share and contracts. The Company being in financial difficulties for the last 3 years was mainly supported by the shareholder and is therefore not sustainable. The Company has 20 employees who have been notified of the decision.

16 of the employees to be declared redundant were represented by Mrs. Kovilah Bothe, one of the employees. They are

1. Megane Pierney
2. David Chavry
3. Aurelien Martine
4. Sarika Bhurtun
5. Laetitia Labonne
6. Melanie Paul
7. Corinne Mootoosamy
8. Sophie Rose
9. Diane Authony
10. Ornella Kallychurn
11. Melanie Polidor
12. Pauline Rene
13. Rachel Bernard
14. Mariastella Anodin
15. Jorane Louis
16. Beatrice Hoodman

An agreement has been reached between the Employer and Employee Ms Louis Jorane. The 3 remaining employees are Marie-France Rose, Samuel Ramdhony and Jennifer Alcindor.

All the parties stood *Inops Consilii*.

Miss Megane Pierney, representing the Employer, confirmed under oath the contents of the Employer's notification and statement showing cause for closure. She is otherwise not aware of the financial situation of the Company and insisted all along that only the Accountant could explain on this issue. She could not elucidate as to why employees salaries were increased before proceeding to closing down the Company.

Mrs. Kovila Bothe testified to the effect that she cannot agree to the Company closing down after 2 years of positive figures.

Mrs. Jennifer Alcindor also deposed regarding the status of the Company and which, according to her, is not bankrupt.

Section 72 (1) of the Workers' Rights Act 2019, as amended, makes it absolutely clear that an employer who intends to close down his enterprise "*shall notify and negotiate with*

- (a) *the trade, union, where there is a recognized trade union;*
- (b) *the trade union having a representational status, where there is no recognised trade union; or*
- (c) *the workers' representatives, elected by the workers where there is no recognised trade union or a trade union having representational status,*

to explore the possibility of avoiding the reduction of workforce or closing down by means of –

- (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.*

(3) *Where the intended reduction of workforce or closure is the subject of negotiation under subsection (1), the recognised trade union, the trade union having representational status or the workers' representatives may agree with the employer on any of the possibilities specified in subsection (1) or on any alternative solution or on the payment of a compensation by way of a settlement."*

The requirement of consultation and negotiation was broadly analysed in RE: Impact Production Ltd RB/RN/18/2020: "*In matters of reduction of workforce, it was very much appropriate for the Employment Relations Tribunal to determine if the employer had engaged in consultations as required pursuant to section 39B (3)(a) of the Employment Rights Act 2008 (as amended). Indeed, the legislator introduced in the Act an obligation on the Employer to communicate with the workers. It should be noted that in Barclays Bank Mauritius Ltd v The Employment Relations Tribunal [2018 SCJ 145], the Supreme Court held that the Tribunal acted in accordance with the law in enquiring into whether there were consultations.*

The word 'negotiation' has been defined in the Concise Oxford English Dictionary 11th Edition (Revised) as "discussion aimed at reaching an agreement". We have seen that in the repealed 31 Employment Rights Act 2008, 'consultation' under section 39 B was compulsory and failure

to observe same rendered the process of reduction of workforce unjustified. Under the new Workers' Rights Act 2019 (as amended), 'negotiation' under section 72 (1) has not been reduced to a lesser prominence. On the contrary, we view consultation to be an exercise of a lesser degree than that of negotiation, although both carry the same objective, i.e. they should take place with a view to explore the possibility of avoiding the reduction of workforce or closing down by means of – (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..... (2) Where the intended reduction of workforce or closure is the subject of negotiation under subsection (1), the recognised trade union, the trade union having representational status or the workers' representatives may agree with the employer on any of the possibilities specified in subsection (1) or on any alternative solution or on the payment of a compensation by way of a settlement."

*..... "The negotiation process will be considered defective if insufficient weight is given to it
....."*

The Employer has not adduced evidence with regard to compliance with the procedural requirements laid down in Section 72(1) (supra). In that context, the Board finds that the reasons of the notification to be unjustified.

The Board therefore orders the Employer not to close down his enterprise.

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Rashid Hossen
(*President*)

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Shirine Jeetoo (Mrs.)
(*Member*)

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Christ Paddia
(*Member*)

SD

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Suraj Ray
(*Member*)

SD

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Saveeta Deerpaul (Ms)
(*Member*)

Date: 09th August 2023