

Attention  
Honourable Charles Gaetan Xavier-Luc DUVAL,  
Deputy Prime Minister,  
Minister of Tourism and External Communications,  
Level 5, Air Mauritius Bldg,  
Port Louis.

*Date: 28<sup>th</sup> march 2016*

Honourable Minister,

**In Re: Dismissal of Alain Edouard by the Board of the Cargo Handling Corporation Limited**

We write in our capacity as duly elected and appointed Workers Directors of the Board of Cargo Handling Corporation Ltd as per clause 16.1.1.6 of the Rules and Regulation of the CHCL.

As you are surely aware, on the 25<sup>th</sup> of March 2016, a special board meeting was 'convened' by the CHCL.

We, as Directors received an SMS on the night of the 24<sup>th</sup> March at 20.25 with a one item agenda "Disciplinary Committee Report on Case of Alain Edouard".

No formal convocation of the meeting was sent, nor was us being called to collect the official convocation and Board papers.

It was only when on attendance of the meeting that we were presented with the official convocation of the said Board meeting and Special Board Paper No 01/03/16.

After the opening of the meeting by the Chairperson, Mr Robert Pallamy, the Disciplinary Committee Report on Case of Alain Edouard together with the Special Board Paper No 01/03/16" was tabled to all members of the Board.

Having taking cognizance of the above, we as Directors representing the interest of employees of CHCL, took the floor to put the following motion which was in direct relation to the issue on the agenda:

**"It is hereby moved that no decision be taken by the Board of the CHCL pertaining to sanctions upon Mr Alain Edouard following his finding of guilt by a disciplinary committee in as much as:**

1. Pursuant to an affidavit dated 2<sup>nd</sup> March 2016 [ANNEX A], sworn by Mr Alain Edouard, serious allegations which may possibly amount to gross misconduct as well as a criminal offence have been levelled in the said

affidavit against Mr Gassen Dorsamy and Mr Kiran Dahari which is currently subject to police enquiry; and

2. It is proper in the circumstances to wait for the conclusion of police enquiry before any determination in order not to jeopardise same; and
3. In any event, the board should not contemplate dismissal as same might amount to unfair dismissal in as much as:

The CHCL became aware of the charge on the 31<sup>st</sup> of December 2015. As per Section 38 (2) (a) of the Employment rights Act 2008, no employer shall terminate a worker's agreement for reasons related to the worker's misconduct, unless he has within, 10 days of the day on which he becomes aware of the misconduct, notified the worker of the charge made against the worker. Mr Alain Edouard has been notified of the charge on the 12<sup>th</sup> of January 2016, that is, 12 days after the CHCL became aware of the charge. At this stage, termination of the employee's employment would be in breach of Section 38 (2) (a) of the Employment rights Act 2008."

In addition, we moved to table the Supportive Documentation upon which the motion was based, that is the affidavit dated 2<sup>nd</sup> March 2016 [ANNEX A], sworn by Mr Alain Edouard and an extract of the Employment Rights Act Section 38 (2).

We decided to present the above motion, being given that same was important in order for the Board to make an informed decision and to ascertain that the board does not do any action contrary to law.

It was incumbent upon the directors to consider and deliberate on same first before proceeding to take any decision pertaining to Alain Edouard.

However, instead of acting diligently and in the best interest of the CHCL and all its stakeholders, the chairperson of the Board simply disregarded the said motions and refused to even entertain the motions.

Through this arbitrary decision the Chairperson:

- (i) has breached the rights of one key stakeholder of the company, that is the employees of the CHCL, more so that Alain Edouard is also the President of the only recognized union of the company and himself a member of the Board.
- (ii) has acted contrary to the Rules and Regulations of the company
- (iii) has deliberately decided to not make aware of all facts and circumstances to all members of the Board before reaching a decision on the case of Alain Edouard.

- (iv) has put the CHCL in a position to become liable for damages for having unfairly dismissed Mr Alain Edouard
- (v) has posed a serious risk of breach of directors duties as imposed upon by section 143 and 160 of the Companies Act 2001 as directors were not allowed to voice out their opinion freely. The Companies Act 2001 imposes the duties on directors to act in good faith and in the best interests of the company and also to exercise the appropriate degree of care, diligence and skill in the exercise of their duties. (vide section 143 & 160 of the Companies Act 2001).
- (vi) has omitted critical information which have lead public officers from different Ministries of the Government and State institution sitting on the Board of the CHCL into a situation where they have potentially breached of their duties under the Companies Act 2001 in as much as two directors representing employees were refrained from making the above motions.
- (vii) has omitted information which has lead public officers from different Ministries of the Government and State institution sitting on the Board of the CHCL to take decision where they have committed an offence under the Employment Rights Act.

While we, as Directors representing the interest of employees, were prevented from presenting any motion, the Management, through the HR Manager M. H. Dahari, (himself being subject to police inquiry) was allowed (through Special Board Paper No 01/03/16) to present erroneous information to the Board, thus misleading the Board to dismiss Mr. Alain Edouard.

- (a) The Management mislead the Board in stating that *“In fact it is the 3<sup>rd</sup> time within a period of one year, that the latter has been found guilty”*, when at no point in time Mr. Alain Edouard was “found guilty” by any independent body as prescribed under law, prior to the Disciplinary Report tabled .
- (b) The Management mislead the Board by presenting unilateral ‘warnings’ by Mr Dorsamy as being “found guilty’
- (c) The Management omitted to inform Board Members that the Union, in which Alain Edouard is the President, vehemently challenged the mentioned warnings and use of warnings against trade union leaders acting in such capacity.
  - The two mentioned ‘warnings’ of Alain Edouard was directly related to issues and circumstances related to his trade union capacity.
  - The union protests and challenged to the use of ‘warnings’ can be confirmed by the letters of the PLMEA sent to Board members. In letter dated 29<sup>th</sup> March 2015, the PLMEA conveyed to the Board the following: *“the 80% employees of the CHCL, through the PLMEA, urge the Board to take immediate actions against some shady manoeuvres underway at the CHCL against the President of*

*PLMEA and Board Director, so as to ultimately dismiss him as employee of the CHCL. Employees of the CHCL view these maneuvers as a direct attack against trade union rights and in particular the PLMEA President's stand and activities as a trade unionist."*

- In a letter dated 30 April 2015, the PLMEA re-informed the Chairperson of the matter. We quote: *"First, the General Manager has continued to use disciplinary procedures as a mean to stifle the right of office bearers and delegates of the union in the exercise of their function, as duly guaranteed under law. The Treasurer of the PLMEA and a delegate of the PLMEA are under threats of Disciplinary actions and abusive 'warning'. We call on the Board to intervene to immediately stop all anti-union's actions instigated by the General Manager presently underway.*
- (d) The Management omitted to inform the Board that the issue of 'warning' as a mean to undermine Mr Alain Edouard in his capacity as President of the PLMEA and Board Director was subject to complaint to the Ministry of Labour and Industrial Relations. Representatives of the Ministry can testify on this issue.
- (e) The Management omitted to inform the Board that the 'warnings' issued was not in accordance with the Code of Practice 158 & 159 of the Employment Relations Act, which stipulates that:
  - a. *"Management may have recourse to a written warning for more serious infringement. The worker shall be informed of the reason for the warning and notified that a final warning would be given if there is no improvement after 6 months. He shall be informed of his right of appeal. The warning shall be disregarded after 6 months if the worker improves his conduct or performance."*
  - b. *Management may have recourse to a final written warning where there has been no improvement despite previous warnings or where the infringement is sufficiently serious that management has no alternative than to issue a final warning. The worker shall be informed of the reason for the warning and of his right of appeal and of the possibility that failure on his part to improve his conduct or performance may lead to his dismissal. The warning shall be disregarded after 12 months if the worker has improved his conduct or his performance.*

Thus, the Board was misguided or made to believe that the first 'warning' issued was a Noticed of final warning under section 158 and the second 'warning' was a final warning.

In light of the above, and given that:

- (i) the Board was not properly convened and the Representative of Employees on the Board were not provided with Board Papers in accordance with Rules and Regulations of the CHCL.
- (ii) the Representative of Employees on the Board were denied of their right to table a motion during the Board meeting
- (iii) Board members were not provided proper information prior to make an informed decision on the case of Alain Edouard
- (iv) there exists serious ground to contemplate that Board members and public officers have breached the Companies Act and Employment Rights Act;

We as duly elected representatives of the employees, call on to you as Minister responsible of the Cargo Handling Corporation Ltd to:

- (i) request the Chairperson of the CHCL to convene an urgent Special CHCL Board meeting to:
  - a. review its decision to dismiss Alain Edouard and to re-instate him with all his rights.
  - b. to put a motion to suspend Mr. Gassen Dorsamy and Mr. Dahari pending the CCID and Ministry of Labour inquiries on serious complaints made by Alain Edouard for criminal offences under the Employment Relations Act and Employment Rights Act.

Given the critical importance of the issues raised in this letter we are copying this communication to the Prime Minister and all members of the Board of the CHCL.

Yours faithfully,

Mr Mohunlall Bhundoo & Mr Sada Kistnen  
Board members of CHCL

CC: 1. The Honourable Prime Minister, Sir Anerood Jugnauth  
2. The Chairman of CHCL, Mr Robert Pallamy  
3. Board Members – Mr C. Dorsamy, Mr K. Balgobin, Mr O.K. Dabidin, Mr S. Goburdhone, Mr D. Cally, Mr A.K. Utchanah, Mr A. Edouard, Mrs V. Pareatumbee, Mr S. Suntah and Mr Cyril Rene