



| **HUMAN RESOURCES** |

HR's Diary

•Raising Industrial Dispute (Part 1)

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Going had been quite tough for Zahid no doubt. Nevertheless, he managed a good start with the industrial relations part having possessed the right temperament. He could somehow comprehend the inherent issues which helped him in dealing with the occurrences effectively. He also grasped fast the basic elements of the negotiation process being pushed into it, just like that.

The interesting part was that he started liking his new job - all of it; the intricacies and excitements involved at every level. He did not know why but he did not look at his HR role just as dealing with human beings rather at nurturing effective ways of maximizing their contributions. The events kept pouring in one after another as though those were planned for him as part of his on-the-job training program. Those events were actually the very natural flows gushing into the HR arena - like day-in and day-out affairs for a HR professional. The stage was set for the next scene - this time it ended up not only in a legal battle with the CBA but later in a tripartite conciliation outside the court.

Tension mounted as regards the setting of the manning level of the new state-of-the-art high speed machines installed in the branch. Added with the headache was the noticeable go-slow creeping into the production floor. Zahid saw the repetition of the ostrich syndrome of the management - hiding the fact to the CBA as if they would never know as to the intention of the management in terms of rationalizing extra people. Or from another perspective, denying of the fact that the management would have to share with the CBA the decision as regards the manning. The same old story set into the industrial relations scene - management's right of setting manning level versus CBA's inherent right (constitutional right) of talking about employment and non-

employment of any person in the establishment.

Poor Zahid watched again the development of IR scenario which could have easily been averted if the CBA had been kept in good humor by sharing the obvious thing besides improving the product quality which was rationalization of the people being redundant after installing the new high speed machines. Of course, the management's fear of getting obstructed in installing the high speed machines at the very outset was also a genuine factor. Taking advantage of his new grown acceptance to the CBA, Zahid asked the CBA unofficially why they had to obstruct each and everything relating to people which ultimately aimed at bringing improvement of the profitability of the company. Union's answer was straightforward which was a paradox - they believed that the company would have to modernize and increase productivity but at the same time they also would not be able to allow reduction of employment which was fundamental to their existence in union politics. Both the parties became absolutely oxymoronic in their attitude in dealing with each and every issue relating to people productivity. The very phenomenon 'right' bred all sorts of misgivings.

As the CBA became suspicious of management intention as regards rationalization, they started openly talking negative about it in the production floor mobilizing support of the workers. On the other hand management also initiated its own campaign of counseling people informally as to the requirement of having new machines installed for the sake of modernizing in the wake of growing competition in the market. Zahid's role became strained again in broaching the topic to the CBA though informally at this stage. As feared, CBA became very reactive having heard the management intention of setting manning level which would ultimately reduce people. New high speed machines definitely would replace the old ones having the ratio of three is to one in terms of capacity. Along with came the question of resultant reduction of the number of operatives - which was the most difficult part to start dialoguing on.

Zahid's role was very much at the line of fire and no leeway was at sight but to officially brief the CBA about the setting of the manning level of the new machines. He opened the dialogue on reducing the number of people but as expected a vehement opposition arose from the CBA side. As briefed by the management, he tried the strategy of not getting anything in writing from CBA in terms of dispute at this stage which would result in stagnation. But it was too late to change the direction of the prevailing IR wind. After the first sitting, Zahid received a written letter from the CBA disputing the management decision on reducing the number. Zahid initially was disturbed by the contention how the CBA could challenge the management decision on the manning - which he thought was very much the right of the management to manage the business which inter alia gave the right to set the manning level.

He studied the labor laws in existence and concentrated on Industrial Relations Ordinance (IRO) 1969. The whole thing became quite clear to him by studying the relevant sections. He also saw the court cases and the verdicts on 'employment' and 'dispute' related issues. He read again and again Section 2 (xiii) which stated,

"Industrial Dispute means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or the terms of employment or the conditions of work of any person".

Now he knew exactly what it was coming from - reduction of manning would mean 'non-employment' of people. He also saw Section 26 (1) which talks about negotiating to industrial dispute

"If, at any time, an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and any of the workmen, the employer or, as the case may be, the collective bargaining agent shall communicate his or its views in writing to the other party."

This also made him clear about the rationale behind receiving the letter from the CBA - he

miscomprehended 'raising dispute' as 'getting challenged'.

Zahid consulted the management on the next steps to be taken from their side. He pointed at Section 26 (2) of the IRO which stated,

"Within 10 days of the receipt of the communication under sub-section (1), the party receiving it shall, in consultation with the representatives of other party arrange a meeting with the representatives of the other party, for collective bargaining of the issues raised in the communication with t a view to reaching an agreement thereon through the procedure of a dialogue."

So, with the consent of the management he wrote the CBA back inviting them to the negotiation on the disputes of manning that they had raised. The whole episode now took a legalistic shape. Zahid along with the management now feared a long winding process that would definitely hamper the speed of modernization which was a crying need of the day to stay on the competition in the product market and take the intended lead.

Zahid then on a mechanical pace sat with the CBA and embarked on the negotiating process. His negotiation experience on two earlier occasions gave him the confidence alright but this event looked quite different than the others. This one had an impact involving legalistic ramifications. He was much more careful this time as he knew for sure that there was no scope left for him to act like a novice. In other words, he could not afford to make any mistakes at any of the forthcoming steps now. With mutual understanding, he continued the discussions with the CBA extending the negotiating period in writing. He found the negotiation was taking him nowhere excepting the time lingering beyond acceptance. Management was getting restive with every day passing by leading to uncertainty. He, side by side with the help of other management staff, embarked on informal parley outside the negotiating table. Nothing seemed fruitful. The situation was getting onto his nerve seeing no light at the end of the tunnel.



As per the legal steps he had limited options. The natural step was Section 27-A which was on conciliation. It said,

"Where the parties to an industrial dispute fail to reach a settlement by negotiation under section 26, any of them may report to the Conciliator that the negotiations have failed and request him in writing to conciliate in the dispute and the Conciliator shall, on receipt of such request, proceed to conciliate the dispute."

As the impasse became quite evident, Zahid briefed the management on this natural step. But like the management he was also skeptical in his mind about reaching an acceptable solution quickly. The standoff was - management wouldn't budge an inch regarding not gaining the people productivity having spent so much on new high speed machines; on the other hand, CBA could not move an inch having compromised on reducing employment scope. The informal parleys also did not produce any result as the whole process was exposed to all.

Under the circumstances while opining for a compromised solution, Zahid was refuted by a senior management staff saying 'over my dead body'. To management, compromise on manning right would be viewed as digging own grave as to the right of all the future manning. A very wrong

precedence would so be created, everyone felt. Similarly to CBA this was a strong chance to curb management's absolute right on manning and establish their right of being consulted before taking any step on manning. A catch-22 situation popped up indeed.

Zahid consulted the legal experts to find out whether there were any other options available to the management for reaching any solution fast. Legal experts came up with an interesting approach independent of the conciliation proceeding or any long winding follow-up actions to the negotiation process. The two years' Long Term Agreement (LTA) that had been reached with the CBA as the settlement on their last charter of demands was still in force. A clearly defined clause at the very last of the said LTA spelled out that 'the management would continue to enjoy the right of manning and the CBA would cooperate to implement'. The legal experts interpreted that raising the dispute on the manning of new machines by the CBA could be taken as infringement on the management right guaranteed by this LTA. A redress can be sought from the labor court on this infringement under the relevant clause of the law. Zahid studied Section 34 of IRO 1969 on application to labor court which stated,

"Any collective bargaining agent or any employer or workman may apply to Labour Court for the enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement."

This was an interesting section which convinced Zahid about its applicability. The management also gave consent to this approach. More so, at least a time frame could be found in this approach as Section 37 (1A) stated that,

"An award or decision of a Labour Court shall, in every case, be delivered, unless the parties give their consent in writing to extend the time limit within sixty days following the date of filing of the case."

As a matter of strategy an injunction was sought at the time of filing the case. The Labor Court awarded status quo on running the machine pending the decision, meaning the CBA could not stop the management on running these new machines.

Zahid along with the management got the relief from uncertainty at least on running of the new machines. However, the CBA was very unhappy about the status-quo imposed by the Labor Court and started planning for a show-down although this was not a permanent award or decision delivered by the Labor Court.

Company's legal retainers kept on pursuing the case in the Labor Court in favor of the management. While the CBA also engaged lawyers on their part to fight the case. Zahid was not sure as to what would be Court's final decision but he knew Section 37(3) which stated, "Any party aggrieved by an award given under sub-section (1), may prefer an appeal to labour appellate tribunal within 30 days of the delivery thereof and the decision of the tribunal in such appeal shall be final."

If the decision was not in their favor, the company would still have a route to take to appellate tribunal for withstanding the unfavorable decision.

Zahid felt that the status quo was simply a temporary gain for the management. This gave the comfort that at least the production would not be hampered for the time being. But he sensed that the CBA was taking all out preparation for a massive showdown when the management would try to resume production of these new machines on the basis of status-quo. He also gathered that the CBA was campaigning for gaining support of the local political stalwarts in favor of their showdown. Zahid sensed an ominous sign of volatility beyond control.

So long Zahid was deeply engrossed in gaining the legal battle and put his full efforts and concentration into that. But it seemed to him now that the legal award on status-quo alone might not produce all the results that the management was expecting. He became quite sure of the fact that, to run these newly installed machines with status-quo, he would still have to do other things.

He guessed, he would need to have some lateral thinkings to work out the effective route, but till then he was not sure as to what that really needed to be!

(This is sequence 12: to be continued. Soliciting feedback at shibly@proedge-asso.com)

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