



| **HUMAN RESOURCES** |

# HR's Diary

## •Raising Industrial Dispute (Part 2)

NE A Shibly



Options were not many though; Zahid was bent upon finding out an acceptable way out for stabilizing the temporary gain achieved out of the status-quo. Legal battle was mere a process but the ultimate objective behind installing the new high speed machines was not just running those with legal standing. The main goal had been anything but realizing a substantial improvement on the productivity. To have this done ultimately, the engagement of the operatives with their heart and mind was imperative. Zahid knew for sure that without the cooperation from the CBA this could never be done.

While the legal battle continued in full swing at the labour court, Zahid kept his informal parley alive. He kept on talking to the leaders, individually or in group. He became totally obsessed in making them understand the situation - the consequences of not appreciating it from the right perspective. Zahid knew for sure that whatever efforts it took, he needed to continue his dialogue through informal parleys as it kept the door of the communication open otherwise bringing them back to the negotiating table with all the communications shut, would be a disastrous situation. Moreover, the concession that would have to be made just for making them talk again would be enormous. He could relate to all the techniques of collective bargaining negotiation and specially the importance of keeping all the communication channels open during the whole process.

During all these sessions, his main concentration had been to unearth any conceivable indications on CBA's intention to continue with the legal battle or any other actions. It was true that the CBA was also feeling uncomfortable as to the uncertainty of the situation. Zahid could feel that the pressure was mounting every day on both the parties. He could sense that the time was ripe to come up with some new ideas acceptable to both the parties. He got exposed to a new concept known as 'face saver' - which has a strong impact in any negotiating strategy. The indication was in the air for working on something which would turn the IR situation to a different direction. He knew by this time that this 'something' should be tagged with a face saver which would drive the

CBA towards accepting a different solution because they would be able to sell that to the general workers - their members without losing their face.

In an informal discourse he broached the matter to the General Secretary (GS). Although the GS was stiff with his stance on the issue, he was also eager to solve the problem. The GS was fearful about the long drawn legal process with total uncertainty looming over the result at the end. Nothing could be predicted at that stage. To add to that the management could still take them to the Labour Appellate Tribunal if the verdict was awarded against them. Zahid was witty enough to harp on this point. He kept on talking on the 'what if' situation posing himself as a proponent of win-win outcome. Finally, the CBA leaders started to respond to his informal efforts but hinted on a good face saver.



It suddenly occurred to Zahid that he should go back to the previous process that is, continuing with the industrial dispute route as per the labour laws. But this time with one step forward - that is going to the conciliator. Through this, there would lay a face saver for the CBA that is the conciliator - a neutral entity who would mediate the dispute which they could very well sell to their members. At the same time the legal process would not be withdrawn totally to keep up the pressure. The whole thing sounded like a well knitted strategy - at least Zahid felt in that way. The main challenge was to make the management accept his strategy first and then move over to CBA for their acceptance.

He consulted some IR experts who also liked his idea. Zahid looked at section 27-A of The Industrial Relations Ordinance which said,

*"Where the parties to an industrial dispute fail to reach a settlement by negotiation under section 26 (that is bipartite negotiation process), any one 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 in the dispute."*

As their earlier efforts in reaching a settlement through the bi-partite negotiation had failed they had the legal option to go to the Conciliator. This would also preclude the CBA from embarking on the route to the legal strike. He also wanted to know who would be the Conciliator in their case and consulted the previous section that is section 27 which said,

*"The Government shall, by notification in the official Gazette, appoint as many persons as it considers necessary to be Conciliators for the purposes of this Ordinance and shall specify in the notification the area within which, or the class of the establishments or industries in relation to which, each one of them shall perform his functions."*

He found out from the Gazette that the Additional Director of Labour of the Labour Directorate was the appointed Conciliator in the jurisdiction where this MNC was located. Zahid thanked God that he, as a matter of discharging his routine responsibilities, had been maintaining regular contact with this gentleman. He met this person unofficially and wanted to know whether it would be right for them to come for conciliation as they were still in the labour court stuck in a legal battle. Conciliator felt that there was no harm in proceeding for conciliation as the law was not very

specific (gray area) in terms of coming to the Conciliator for the same dispute as there was still no final decision awarded. The status quo was on running the machines but not on the negotiation. After all, the court also recognized any out of the court settlement.



Zahid also wanted to be sure about the stipulation on the timeframe of such conciliation process. He knew by this time that when the bi-partite negotiations had failed, any party could go with the request to the appointed Conciliator to conciliate the dispute. Upon such request, it would be obligatory for the Conciliator to start the conciliation. Only ten days were allowed for him for this purpose as specified in section 28. If he failed, the parties were free to serve a notice of strike or lock-out. This ten days' time frame put Zahid in discomfort as he was sure that the settlement could never be reached within ten days. But again he knew that by putting request mutually to the Conciliator, the time frame could be extended for the sake of progressing with the conciliation.

After having been sure on the legalities, Zahid convened a meeting with the management. He took quite a preparation having studied the whole process again and again looking at all the pros and cons. He prepared all the answers for the probable questions he would be volleyed with by the management. It was also another kind of influencing process - he later tallied this effort with another skill which was known as "managing your boss". Initially he found he was alone talking about this route. Management was not keen at all to take a departure from the legal encounter when the situation was going in their favour. Gaining of 'status quo' gave them the kind of confidence which Zahid found nothing but 'complacency'. He had to put quite a bit of reasoning that the status-quo would never solve their problems as he could very well sense steep resistance at the production floor on running those machines with status quo laying on their favour as it would be propagated differently by the CBA. Moreover, the whole scenario stood a risk of getting changed any moment with the next decision by the court - so it would be a total disaster for the management. Why take risk by wasting time in between. Rather, the existing situation gave them the upper hand in the negotiation process - which they could exploit as the strength to dictate the terms if they could play smartly. Although reluctant at the initial stage, the management got thoroughly convinced about this approach. However, Zahid was at the tip of the iceberg - if only the result turned otherwise. The production head showed his utter disappointment as his whole plan on productivity improvement was put on hold, short of landing in jeopardy. Although not put in any words, the fingers were towards the HR for such development. More disappointment was on the concession that they would have to make now for reaching the mutual settlement although through the conciliation. This made Zahid more adamant in his approach in making the management understand the probable cost and risk of not doing it (reconciliation) at this stage.

Zahid by this time with his continuous confabs had gained a tacit understanding with the CBA in favour of going to the Conciliator. However, he approached them formally now. No wonder, they went through the process of whole drill of negating first (stage show) and then taking it seriously. However, every time Zahid studied their process with lot of interest - came to know by then their set tactics frame by frame. The CBA was very careful about their steps - as they knew for sure their opposition was eyeing on them quite vigilantly. CBA called a general meeting and asked for the opinion in favour of the conciliation process. Before going into the general meeting, they had their own campaign with the opinion mongers just like what Zahid did with the top management.

Zahid also knew the proceedings of such general meetings. After having explained the situation

and their stand on the issue in hand CBA always asked for the assent of the members in favour of their decision by raising their hands. This would actually give the CBA moral strength to decide whatever they thought was right - so that later no one could oppose their decision or raise fingers at them. Such meetings also risked volatility if the CBA did not do their ground work meticulously. Zahid was amazed to see their professionalism in such union matters. In fact, at times he found them more prepared with facts and figures than the management while facing any negotiation on IR matters. In such events, HR people were also kept quite vigilant as to the development. If the situation ran out of control the environment in the factory floor could turn rowdy leading to untoward occurrences. Before moving further, Zahid held a one-on-one session with the GS of the CBA. He basically tried to fathom out the seriousness of the CBA for reaching a settlement. The GS sounded genuine in his intention.

For the next couple of days Zahid worked out the strategy for the conciliation. He also learnt about having an 'exit route' in the event of failure. Among other things, a separate comprehensive briefing (locus standi) to the Conciliator was important. He held a pre-session meeting with the Conciliator and briefed him in detail the status, the management and the CBA's standpoints on the issues. Over the last few months he developed a good professional relationship with the Additional Director (Conciliator) which came as a God sent thing at this crucial moment. Because of this relationship he could discuss with him frankly the issues and the intention of the management in solving the IR problems.

As guided by the Conciliator, he wrote a formal request letter to the Conciliator on behalf of the management to take up the conciliation process. Reply came to him and the CBA for being present at the conciliation proceeding in accordance with section 30 (1) of IRO which said,

*"The Conciliator shall as soon as possible, call a meeting of the parties to the dispute for the purpose of bringing about a settlement."*

As per section 30 (2), he was authorised by the management to enter into negotiation through conciliation representing the Company. The section said,

*"The parties to the dispute shall appear before the Conciliator in person or shall be represented before him by persons, nominated by them and authorized to negotiate and enter into an agreement binding on the parties."*

The Conciliator started performing his functions as per the set procedure. Zahid so far had heard about the conciliation proceedings but got the real life exposure through this incident. Each and every step taken by the Conciliator grew interest in him. The Conciliator was composed in his utterings and did not give any scope for thinking otherwise meaning siding with either of the parties. He listened to both the parties and tried out with his reasons for reaching an amicable solution.

The conciliation continued for a couple of weeks. However, with all his efforts the Conciliator did not see much light at the end of the tunnel. At times it also became quite frustrating for Zahid. However, Zahid could sense that CBA was buying time with all sorts of silly arguments for some specific reasons. After some time the reasons for doing such became quite clear to Zahid. CBA was trying to show to the workers that a very hard bargaining was going on. As assumed a pressure started building up at the factory floor for reaching a quick solution - the CBA might have had waited for this so that it became easier for them to reach a settlement.

The Conciliator was getting irritated at this delay dally tactics played by the CBA. It became quite clear to Zahid that whatever could be the theory and the laws behind conciliation, it would be very hard for the outsiders to negotiate on internal issues unless the parties in dispute genuinely wanted that. The Conciliator tried out different things like convincing both the parties on concessions or modifications in the demand for promoting an amicable settlement of the dispute. Nothing seemed

to work initially.

Zahid held a separate meeting with the GS and tried to find out what was the main reason for the delay or was their tacit understanding (before coming to the conciliation) got totally wiped away with the show-down played by the CBA. He was assured that it was only a game that the CBA was playing so that their opposition did not get any scope to get into this. Having continued with this for some time, the CBA leaders suggested to the Conciliator letting them have separate sessions with the management representative that is, Zahid. They assured that the main reason for this was to reach an understanding fast and then come back to the Conciliator for the final settlement. The Conciliator merrily agreed to this and gave them the place where the CBA and the management reps could continue with their own negotiations.

It did not take much time to reach an amicable understanding between the CBA and the management represented by Zahid. With the permission from the management the concession was just to increase one more person per two machines over the manning that management set for the new machines. So, finally the settlement of the dispute arrived through the conciliation proceedings and a memorandum was signed accordingly. Both the parties came back with a win-win situation and the new machines became operable with the manning level set through the settlement. The conciliation was indeed a 'face saver' for the CBA which facilitated them to go back to the factory and say loudly that they did put up a very strong resistance which compelled the management to go for the conciliation leaving court proceedings. When the management was not prepared for moving an inch even, they compelled them through conciliation to increase one more person for every two new machines.

This added another feather in his cap; Zahid felt more confident in dealing with IR matters. At the end, the management was also happy as they were prepared for more concessions (concession up to one more person per every new machine). After all these years Zahid still finds the whole process as unique as they tried both the routes together - going to the labour court and also to the Conciliator. Although they were left with another option had the conciliation failed, that was going for the arbitration as per section 31 of IRO. Of course, the worst part could be serving the notice for strike or lock-out on failure of the conciliation. All these legal provisions of Industrial Relations Ordinance, 1969 have been merged now into Chapter XIV of Bangladesh Labour Act, 2006.

The learning on settling industrial disputes had been great for Zahid!

*(This is sequence 13: to be continued Soliciting feedback at [shibly@proedge-asso.com](mailto:shibly@proedge-asso.com))*

N E A Shibly is CEO & Chief Consultant, pro-edge associates.

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