

The Professional Dilemma – To Wield the Stick for Once or to Yield Yet Again : A Case Analysis

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Abstract

This case study discussed how multiple unions in one organization can lead to conflict of interest and make things difficult for the Management. Handling indiscipline and industrial relations is not only about rules and statutes, but requires the ability of HR and IR professionals to be able to foresee and strategize each and every action. To be able to get the desired outcome, it is necessary to have a basket of effective strategies. A workable Plan “A,” Plan “B,” and preferably Plan “C” should be in place. However, the sequence of rolling out either or all of the plans need not be in the alphabetical order. It needs to be situational. When it comes to man management, being tough is a professional requirement, but managing people from the heart with the aim of achieving a win-win situation is probably the best policy.

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The year was 2004. The case pertains to M/s MNC Ltd., a reputed public - sector enterprise in India with around 70 years of glorious service to the nation. Quite evidently, the organization, an industrial behemoth, had been under the administrative control of the British Rulers and thereafter, has seen change of management spanning traditional and orthodox beliefs and practices ; the era of liberalization, privatization, and globalization ; and over to the modern styles of management. M/s MNC Ltd., which is in existence since the 1940s, enjoys monopoly status in a cutting-edge technology-oriented business. However, in the wake of red-ocean and blue-ocean business strategies of Indian as well as foreign companies, M/s MNC Ltd. is poised for competition.

The company has pan-India presence and employs around 35000 employees, approximately 5000 contract labours, and 100 casual labours. Well, in this case analysis, we will not discuss about the routine issues concerning contract and casual labours. Rather, we will deal with a specific case of six contract labours engaged through two different contractors at one of the production units of M/s MNC Ltd. It is hoped that readers will find the case study not only interesting, but quite different from the cases pertaining to contract labour which generally revolves around their demand for regularization or demand for pay and allowances on par with regular employees and so on.

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This case pertains to one of M/s MNC Ltd.'s manufacturing plant located in the Eastern part of the country in a politically sensitive and highly trade unionized work culture. This unit is in existence since the very inception of M/s MNC Ltd. The unit has a total manpower strength of around 350 employees which includes executives, non-executives, and contract labours. The Head of the Unit reports to its headquarters located at Chennai. There is adequate workload for all the employees, and the Unit has never incurred any loss during the past two decades. For M/s MNC Ltd., this unit being the only production facility of the company in Eastern India, enjoys a strategic advantage but, historically, the Unit has not been given due consideration when it came to allocation of new projects or sanctioning of funds or for upgradation and modernization. However, inspite of the old infrastructure and lack of modern machinery, the Unit has had a clean record of meeting the production targets and earning profits consistently. Occasional industrial unrest and friction between the Labour Union and the Management is not uncommon for this Unit. However, there have been no reported incidents of violence or manhandling of staff or disruption of production activities due to industrial unrest.

The Unit has 90 contract labours engaged through various contractors. Around 90% of the contract labours have been continuously engaged for the past 10 years and over the years, they seem to have taken it for granted that irrespective of change of contractors, they will continue to be engaged till they attain the age of retirement. The age of retirement was 60 years at that point of time. The contract labours were engaged in various non-core activities like, cleaning and maintenance of offices, horticulture, canteen services, material and document handling, etc.

Out of the 90 contract labours, a small group of eight contract labours who were engaged since the past nearly 10 years and happened to be quite efficient in their respective areas of work had been taking the lead in various affairs pertaining to contract labours. There were instances wherein the contract labours lead by the eight pseudo leaders resorted to indiscipline not only with the representatives of the Management, but also with the union leaders representing the permanent employees of M/s MNC Ltd. These eight contract labours managed to instigate the other contract labours in resorting to go slow and stoppage of work on flimsy grounds with the sole aim and objective of putting pressure on the Management as well as the employees' union to yield to their demands. The Management, particularly the HR department, had been warning these eight labours to desist from such indiscipline, and on a couple of occasions, the contractors concerned were advised to take disciplinary action against them.

While the Management gradually started being tough in handling these eight contract labours, the contract labours decided to empower themselves. The easy and simple route for drawing strength was to form a union in the first instance and thereafter get affiliated to one of the prominent national level trade unions.

All these developments took place quite fast, and within a span of five months, 90-odd contract labours formed a union under the leadership of the eight pseudo leaders. Ever since the union got registered and was affiliated to one of the national level trade unions, the tone and tenor of majority of the contract labours changed overnight. This was a big set-back to the recognized trade union of the employees of M/s MNC Ltd., who hitherto had been espousing the cause of the contract labours also before the Management.

However, as per the provisions of the Trade Unions Act, 1926, the formation of the contract labours union was not in contravention. However, from the perspective of maintaining harmonious industrial relations, the presence of multiple trade unions in one organization, and more so when the contract labours, who are employees of the contractor as immediate employer form a trade union, is not in the best interests of any of the stakeholders.

Gradually, the contract labours union started insisting upon the Management to hold discussions with them. The Management made it very clear that they need to take up their issues, grievances, etc. with their immediate employer. All the while, the employees' trade union had been maintaining a very neutral stand and observing the dynamics between the Management and the contract labours union.

Interaction with a couple of representatives of the employees' trade union revealed that the union had a mixed feeling on the ongoing activities. On the one hand, they were apprehensive of the fact that formation of the contract labours union would undermine their role with respect to championing the cause of the contract labours,

and on the contrary, they wanted to take the Management into confidence and exert pressure on the contract labours union to dissolve their union whereby they would regain their status as the sole bargaining agent with respect to the regular workmen as well as the contract labours.

The IR manager was privy to this tacit understanding. After all, it was a win-win situation for the Management and the employees' union to have one union in existence. The eight pseudo leaders had gradually established themselves as prominent union leaders, and it had become an almost daily affair on their part to refuse to work and instead demand for higher wages, benefits, etc. directly from the Management.

One fine day in the month of July 2005, six out of the eight contract labours entered into a heated argument with the maintenance manager in whose department they were engaged. The incident happened at around 1245 hours, which was the lunch time for M/s MNC Ltd. The maintenance manager was alone in the department while all other staff of his department had left for lunch. As per the complaint filed by the maintenance manager and as per the circumstantial evidences, six contract labours out of the eight leaders abused and manhandled the maintenance manager, leading to minor injuries and damage to office furniture. The maintenance manager was hospitalized and kept under medical observation.

On receipt of the incident report, the IR manager summoned the concerned contractors and advised them to immediately discontinue the six contract labours from working in the premises of M/s MNC Ltd. and initiate appropriate disciplinary action. The maintenance manager filed police complaints against the six contract labours. The real case started unfolding hereafter. All the six union leaders were in the age group of 30 - 40 years, were married, had children, and few of them had parents who were also dependent on them. Quite obviously, the loss of livelihood and the stigma attached on being dismissed from service and consequently being rendered jobless weighed heavily on their minds. However, they were reluctant to seek any job elsewhere, instead went all out, to ensure that they were re-instated in M/s MNC Ltd. They wanted to present themselves before various authorities like the police, labour enforcement authorities, Management of M/s MNC Ltd., and their contractors that owing to their dismissal from their engagement at M/s MNC Ltd., they had lost their livelihood and their family was starving.

There was no support from the remaining office bearers of their union who were suffering from leadership crisis and were apprehensive of stern action by the Management against them for the misdeeds of their colleagues. Recommendations started pouring in before the Management to allow the contractors to reinstate all the six contract labours. The employees' union adopted a very tight-rope stand, and to appease the workmen community as well as the contract labours, kept pleading with the Management to allow all the six contract labours to resume their work. However, there appeared to be a lack of conviction and sincerity in their approach towards the Management in the instant case.

Out of the six contracts labours involved in the incident were the President, Vice President, and General Secretary of the union. After about a month of their removal from service, the six contract labours raised an industrial dispute before the Regional Labour Commissioner (Central) wherein the Management of M/s MNC Ltd. was a party along with the two contractors who had engaged them. The Management of M/s MNC Ltd. refused to attend the joint discussions before the Asst. Labour Commissioner (Central) stating that all the six contract labours were employees of the two contractors being their immediate employers. They also requested the Asst. Labour Commissioner (Central) not to entertain the case which pertained to matters of discipline and more so because all the six contract labours had a record of indiscipline and were in the habit of misleading the contract labours to resort to go-slow and other forms of coercion. Records of incidents which took place in the past wherein the Management of M/s MNC Ltd. had reported instances of indiscipline to the concerned contractors were also submitted to the Asst. Labour Commissioner (Central) for his reference. Political interferences continued unabated to permit the six contract labours to be permitted to work in the premises of M/s MNC Ltd. The Management of M/s MNC Ltd. made it clear that they were the contractors' employees, and it was up to the contractors to engage them at any other establishment, if they so desired.

Questions for the Readers - I

(Q1) What is your opinion regarding the stand of the Management ?

(Q2) What should have been the role of the contractors concerned ?

(Q3) How should have the CIRM Officials, that is, the Asst. Labour Commissioner (Central) dealt with the case ?

The contract labours had exhausted all resources at their command to prevail upon the Management to allow them to work in their premises. Left with no other alternative, they requested Mr. Akash Kumar, All India General Secretary of the Central Trade Union to which the contract labours union was affiliated to meet the Management representatives. The HR manager and IR manager were waiting for this opportunity. They agreed for a one on one meeting. An interesting aspect of the contract labours trade union was that they were affiliated to a Central Trade Union which differed widely with the ideology of the employees' trade union of M/s MNC Ltd. This fact was discussed by the IR manager with Mr. Akash Kumar. With his vast experience and maturity in trade unionism for over two decades, Mr. Kumar immediately understood the dynamics between the two trade unions and appreciated the Management of M/s MNC Ltd. in analyzing and assessing the same. The IR manager also made it clear that multiple unions are a hindrance in maintaining harmonious industrial relations and a healthy work culture.

Mr. Akash Kumar put across his case for reinstatement of the six union leaders and tried to convince and assure the Management of M/s MNC Ltd. that, given a chance, the men would amend their attitude. The Management was very clear in its stand that the experience of the past several years was quite bitter, and the situation had worsened ever since the contract labours formed a separate union and got affiliation. Mr. Kumar kept silent for a few moments and requested the Management for one more round of discussions within the next 2-3 days. The Management agreed, but made it clear that the second meeting would be the last and final meeting on this issue.

The plight of the six contract labours and their family members was published in the local newspapers, and the Management was constantly getting updates on their efforts to get reinstated. Nearly 5 months had passed since the incident occurred. Having failed to get any relief from any corner, primarily because of the serious acts of misconduct committed by them, they started feeling helpless. This was evident from the fact that Mr. Akash Kumar himself came down from Mumbai to discuss the matter with the Management representatives. From the temperament and tone of Mr. Kumar, the Management sensed that he knew that the only way to cut ice with the Management was by admitting the guilt unconditionally and plead for one chance.

The second meeting was held after 3 days from the first meeting. Mr. Kumar did not lose any time and put forth a straight question before the IR manager – “what assurance or pre-condition would you like to put forth to take back my men ?”

Questions to the Readers - II

(Q1) Should the Management stick to their stand of not taking back the contract labours ?

(Q2) Had you been in place of the IR manager, what pre-condition would you put across, keeping in mind the larger interests of M/s MNC Ltd.?

The IR manager, who had done his homework quite well and had the Management's clear mandate to deal with the situation in its right earnest, advised Mr. Kumar to take two actions. Firstly, the contract labours union should be dissolved unconditionally, and secondly, the six contract labours should execute a “good-conduct” bond giving

an undertaking that in the event their contractors decide to re-engage them in the premises of M/s MNC Ltd., they shall not ask for any back wages or consequential benefits for the period they were not engaged at M/s MNC Ltd. The IR manager made it clear to Mr. Kumar that, subject to fulfilment of these conditions, the Management of M/s MNC Ltd. shall inform the contractors concerned to engage the contract labours with new employee identity card and new service terms and conditions. Mr. Kumar, with all his wisdom and experience of a veteran trade union leader, requested the IR manager to allow him to discuss the Management's proposal with the concerned officials and revert. Mr. Kumar reverted after a week with the six contract labours with him and handed over the letter from the contract labours executive committee duly endorsed by the President and National General Secretary of the affiliated Central Trade Union along with the bond documents as suggested by the IR manager. The IR manager honoured his commitment and informed the contractors concerned to re-engage all the six contract labours.

Findings

This case study primarily focuses on the importance of ensuring discipline in the industry. The contract labours union had been operating as a parallel trade union to the recognized employees' union of M/s MNC Ltd. The IR manager did an appreciably good job by trading-off the re-engagement of the six contract labours against dissolution of the contract labours union. On enquiring with the authorities of M/s MNC Ltd., it was learnt that the recognized union was also representing the contract labours. The six contract labours are still in service and have mellowed down and in fact are functioning as Supervisors for the remaining contract labours.

Managerial Implications

(1) Managing a business with the help of contract labours is the order of the day. It is incumbent upon the Management as principal employer to ensure that, applicable minimum wages along with associated social security benefits like PF, ESI, etc. are being provided by the immediate employers, that is, the contractors.

(2) Discipline in the industry is as important as the core activity for which the business is being run. Maintaining discipline at the work place does not necessarily happen with the help of punishments. Proper systems and procedures should be put in place and employees must be made aware about what is expected from them. Communication plays an important role in this case.

(3) In the face of a crisis situation, HR and IR professionals get tempted to go in for quick fix solutions resulting in “buying” peace with a short term vision. This tendency is counter-productive and tends to precipitate matters, which over a period of time snowballs into a major crisis. In this case study, the IR manager could have “managed” the situation, yet again, by asking the contractors to impose some minor punishment on the contract labours and ask for an apology letter from them.

(4) While handling industrial relations, at times, it is important to take a firm decision and stand by the same, irrespective of pressures and compelling situations. What matters is the conviction with which a firm decision is taken and the ability to convince the other stakeholders regarding the reason behind the same. In this case study, the involvement of Mr. Akash Kumar, All India General Secretary of the Central Trade Union and the manner in which the IR manager could explain and convince him about the state of affairs with regard to the contract labours and their high-handedness is noteworthy.

Teaching Notes

(1) Teaching Objectives

- (i) To share practical experience of the serious implications of failure to enforce discipline in the workplace.
- (ii) To highlight the prerogative of the HR department to take a tough stand against all odds.
- (iii) The old saying goes “when wealth is lost, nothing is lost, when health is lost, something is lost, when character is lost, everything is lost.” can be applied in the case of an organization also - “when discipline is lost, business is lost.”

(2) Potential Audience : HR managers, IR managers, line managers, as well as business heads. Students of HR and freshers also would benefit from this case study.

(3) Number of Teaching Sessions Required : 04-05 sessions of 45 minutes each. The first session would be a thorough discussion on the Trade Union Act, 1926. The second session on Industrial Disputes Act, 1947. The third session on the case. The fourth session on the Industrial Employment (Standing Orders) Act, 1946 and the Certified Standing Orders / Service Rules of any Company. The fifth and final session would be a discussion on the five questions.

(4) Authors' Analysis of Questions – I :

Ques. (1) What is your opinion regarding the stand of the Management ?

Ans. (1) The Management had allowed matters to precipitate over a period of time. Matters of indiscipline should be dealt in an appropriate manner at the very inception. However, the following three aspects need to be considered :-

- (i) M/s MNC Ltd. is a very old manufacturing unit (70 years in existence).
- (ii) The plant is located in the Eastern part of the country, which is politically sensitive with highly trade unionized work culture.
- (iii) The individuals who committed the misconduct are not on the rolls of M/s MNC Ltd.

Ques. (2) What should have been the role of the contractors concerned?

Ans. (2) The contractors are the immediate employers and the disciplinary authority for their respective contract labours. It was an implicit understanding between the principal employer and the immediate employer, that is, the contractors to engage the available set of contract labours. Hence, the contractors were “legally” supervising their employees, but the real control and supervision vested with the Management of M/s MNC Ltd.

Ques. (3) How should the CIRM Officials, that is, the Asst. Labour Commissioner (Central) deal with the case?

Ans. (3) The Asst. Labour Commissioner (Central), on receipt of the industrial dispute raised by the contract labours, will call the contractors concerned as well as the complainants, that is, the six contract labours. In all probability, the contract labours would accuse the Management of M/s MNC Ltd. for their termination. In order to understand the case in its entirety, and since it is a universal feature that, in India, contractors keep changing while

the contract labours continue to be engaged in the premises of the principal employer, the ALC(C) would call the representatives of M/s MNC Ltd. to attend the joint discussions and present their case. Since the matter pertains to discipline at the workplace, the only scope of intervention by the ALC(C) would be to ascertain whether the Principles of Natural Justice were followed in terminating the contract labours. In case there is any lapse in following proper procedure leading to the termination, the ALC(C) can intervene and pass orders against the contractors to reinstate his employees.

(5) Authors' Analysis of Questions – II :

Ques. (1) Should the Management stick to their stand of not taking back the contract labours?

Ans. (1) The nature of misconduct is serious in nature. The persons involved have been a cause of long standing nuisance for the Management of M/s MNC Ltd. Hence, professionally, the Management should not allow them to be reinstated in their premises.

Ques. (2) Had you been in place of the IR manager, what pre-condition(s) would you put across keeping in mind the larger interests of M/s MNC Ltd.? : This question is to be attempted by the readers/students.

Suggestions for Further Readings

- (1)** Industrial Employment (Standing Orders) Act, 1946.
- (2)** Industrial Disputes Act, 1947.
- (3)** Trade Unions Act, 1926.
- (4)** Certified Standing Orders.
- (5)** Service and Conduct Rules of Government Organizations.

Disclaimer

This case was prepared by the authors for the sole purpose of aiding classroom discussion. Cases are not intended to serve as endorsements, or sources of data, or illustrations of effective or ineffective management. Certain names and information could have been disguised to maintain confidentiality.

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