

# EMPLOYMENT RELATIONS TRIBUNAL

## ORDER

ERT/RN 23/2022

*Before:*

<b>Shameer Janhangeer</b>	-	<b>Vice-President</b>
<b>Francis Supparayen</b>	-	<b>Member</b>
<b>Rabin Gungoo</b>	-	<b>Member</b>
<b>Ghianeswar Gokhool</b>	-	<b>Member</b>

*In the matter of:*

**Export and other Enterprises Employees Union**

*Applicant*

and

**World Knits Ltd**

*Respondent*

The Export and other Enterprises Employees Union (the “Union”) has applied for an Order for recognition under *section 36 (5)* of the *Employment Relations Act* (the “Act”) as a bargaining agent in relation to certain employees of World Knits Ltd. The Applicant Union claims to have the support of 171 workers in the bargaining unit, which consists of the following categories:

*Clerk; Driver; Electrician; Mechanic; Packer; Unskilled; Skilled; Supervisor; Gardener; Store Clerk and Technician; except managerial grades.*

The parties were assisted by Counsel. Mr B. Ramdenee appeared for the Applicant Union, whereas Mr H. Bansropun appeared, together with Mr C. K. Ramdass, for the Respondent. It would be pertinent to note that at the outset of the hearing, the Applicant Union’s Counsel stated that the

Union shall not be insisting on recognition for the category of Unskilled as listed in the bargaining unit.

Both parties have submitted their respective Statement of Case. The Respondent has, in its Amended Statement of Reply, notably put forward three grounds upon which it is resisting the present application:

- (a) *The Applicant is not sufficiently representative of the employees of the Respondent;*
- (b) *Recognition of the Applicant would not be conducive to good industrial relations such that recognition is likely to cause friction or even disorder or put workers in a more perilous position that they would otherwise be;*
- (c) *The bargaining unit as defined in evidence at the sitting of 29<sup>th</sup> June 2022 will cause fragmentation and/or proliferation.*

#### *THE EVIDENCE OF WITNESSES*

Mr Heman Kumar Ramphul, Ag. Senior Labour Inspector at the Ministry of Labour, Human Resource Development and Training, was called to depose on behalf of the Applicant Union in relation to the category of workers. He notably stated that there are 21 Clerks in production; 7 Drivers; 1 Electrician; 2 Mechanics; and 3 Packers. As for Skilled, he stated that these are workers who operate machines, supervise or give a helping hand; the worker needs to have an expertise to do something in the enterprise. Under this category, he stated that there were 17 Group Leaders, 17 Machine Operators, 219 Machinists, 25 Quality Assurance (QA), 24 Sample Operators/Sampling Operators and 20 Team Lead. The Group Leaders are Supervisors. There is 1 male Gardener and 4 Store Clerks. According to the Ministry, the Sample Operators already mentioned are Technicians. He inquired at the company on 24 June and counted 636 persons. For the categories mentioned, the number is at 344. He produced 3 documents (bundle marked as Document A) summarising the workers – Block A for production and Block B for administration. He found 636 workers for operations and 108 for administration as per his inquiry.

When questioned by Counsel for the Respondent, Mr Ramphul notably confirmed that Store Attendants are over and above Store Clerks. There are also other Clerks over and above the Clerks he referred to. In administration, there are also Clerks and Drivers. The enterprise is syndicated into

production and administration; it is divided into two. In administration, there are other Clerks related to administrative purposes. There are 24 Clerks in Administration, 1 Gardener and 6 Drivers.

Mr Atma Shanto, Negotiator of the Applicant Union, was called to depose and produced the Certificate of Registration of the Applicant Union (Document B). He stated that the Unskilled category has been removed from the bargaining unit. A request was made to World Knits Ltd as the employer and he produced an application letter dated 10 May 2022 (Document C). The employer replied that they are resisting the application (*vide* letter dated 24 May 2022 produced as Document D) putting forward five reasons, to which he does not agree. Regarding representativeness, they have 172 confirmation forms of the employees who are members of the Applicant Union. He showed the forms to the Tribunal but same were not produced. He stated that this represents more than 20% of the bargaining unit.

Mr Shanto also stated that the categories in the bargaining unit have common interests such as conditions of employment, amalgamation of conditions of employment, wages and other conditions of employment. Regarding industrial relations at the company, he stated that he is also negotiating with a sister company of World Knits Ltd and in this enterprise, there has never been any disruption of industrial relations. He also stated that freedom of association exists in Mauritius and they are promoting workers to join the union. They do not agree that the employees cannot be members of a union. All the workers who have signed the confirmation forms still work at World Knits Ltd. The Union is asking that it be recognised and to negotiate as management is negotiating conditions of employment with all the workers in a hall; it would be more interesting and legal for union representatives at the workplace and the employer's representatives to sit and discuss in the interest of the company and the employees.

When questioned by Counsel for the Respondent, Mr Shanto notably replied that he first applied in February. He could not answer regarding employees who have left the enterprise. He never visited the factory to see the production process and has only listened to the workers. The bargaining unit is according to the rules and regulations of the Union and they cannot include categories which do not form part of the rules and regulations. The bargaining unit does not only comprise of workers in production. He agreed that production is divided into support service and actual production workers. He has not excluded categories that are in production; those included are those who have joined the Union.

Mr Shanto moreover agreed that the categories of Bundling/Sorting, Cartoning, Checking, Colourist, Helper Cook, Counter, Helper, Fusing, Graphic Designer, Officer, Loader on Machine,

Loading, Maintenance Attendant, Layerer, Mattress RIB Mesh, Needle Detector, Security, Screen Maker, Tagging, Ticketer/Bundler, Trim/Trick Film, Export Helper, Unloader Panels and Washing are not included in the bargaining unit. He also stated that the categories that have been mentioned are not in the *Remuneration Regulation* that governs the sector. These categories of workers have been named by the employer. He cannot say if their conditions of work are the same to the ones in the bargaining unit as he has not entered the factory to see the conditions of work. He does not agree that in leaving out the aforementioned categories, this would create fragmentation or proliferation of the bargaining unit.

Mrs Prity Cowlessur, Factory Manager at World Knits Ltd, adduced evidence on behalf of the Respondent. She notably stated that there are 627 employees at the factory, of which 396 form part of the bargaining unit and 231 are excluded. In explaining the stages of production, she stated that cloth is received; there is Cutting; then the Value Added Department called Printing and Embroidery; then Sewing; then Checking; Pressing; Packaging, which includes Washing, Tagging Packers, Folders and Cartoning; then there is the Inspection Department and Export. There is also the Value Added Departments like Drivers, Gardeners, Security, Administration of production and Storage. The Support Service for production is the Store, Maintenance, Drivers, Gardener and Security. The Administration Service of production includes Clerk, HR, Export, Transport, Procurement, Planning and Health and Safety. They all report to her as Factory Manager.

Mrs Cowlessur further stated that all these categories should be in the bargaining unit as they all fall under production. A list of the categories of workers and a highlighted version showing which category is in or out of the bargaining unit was produced (Documents E and E<sub>1</sub>). It is unfair for the categories excluded to be left outside the bargaining unit and this opens the door to proliferation and causes problems for management in relation to collective bargaining. The Floor Workers start at 7h30 and finish at 17 hours and do overtime depending on production. Flat Pay Workers start at the same time and are not paid when asked to do overtime. The general conditions of work are the same. Floor Workers have a transport allowance, attendance bonus and productivity bonus, whereas Flat Pay Workers do not have the attendance and productivity bonus. A comparative table showing the different conditions of work at World Kinits Ltd was produced (Document F).

She also stated that the categories left out of the bargaining unit relate to production, except for Clerks and Officers, and are not in support. A list of all 627 workers at the factory was produced (Document G). The bargaining unit as defined does not represent the employees of the factory. Recognition of the Union would not lead to good industrial relations as they have a Workers' Council, the factory is WRAP certified, they are audited by their clients every year, leaves are refunded, sick leaves are banked, working hours are according to the law and there is a good entente between

employees and management. A document titled '*Practices at World Knits*' was produced to this effect (Document H). She is asking that the application be rejected for the three reasons put forward.

Upon questions by Counsel for the Applicant Union, Mrs Cowlessur notably stated that the information from the documents she produced are available to her as Factory Manager and are not available to the Union for the moment. She agreed that the Union would not know of the categories that she has mentioned and that they can only rely on their rules. She agreed that the Union can only obtain information from its members and that the Union is not aware of the other categories. She agreed that the bargaining unit represents more than half of the employees of the enterprise, about 63%, and that it is not a small group. The existence of the Council and audits performed by clients do not affect the recognition of the Union. She is aware that the right to join a union is a Constitutional right and that the employer cannot interfere in the relationship between the members and the union.

When being re-examined, Mrs Cowlessur notably stated that if the Union had asked from the workers about the categories of employees, they would have known. The number of employees outside the bargaining unit is significant and that is why she suggested that there is the possibility of fragmentation or of proliferation.

#### *THE SUBMISSIONS OF COUNSEL*

Counsel for the Applicant Union has notably submitted that the ballot exercise has shown that the Union has more than 50% support in the bargaining unit. Regarding the issue of fragmentation and proliferation, he stated that the bargaining unit itself is very broad. A bargaining unit should be as broad as possible and we are not dealing with a small fragment or a small group of workers. The Union had no means of knowing about the other group of workers at World Knits and it is bound by its rules and regulations. Its membership is decided by employees who actually come to them and the bargaining unit is accordingly established. It cannot represent employees who are not members of the Union. The employer cannot interfere in the relationship between the Union and the employees and this is provided in the *Code of Practice*. The matter of the Work Councils and other facilities is irrelevant to the present application. There is no issue of the workers' interests being different. The Union cannot know of their terms and conditions before especially that they are yet to be recognised.

Counsel for the Respondent has, on the other hand, submitted as to whether the bargaining unit, as defined by the Union, is appropriate referring to *paragraph 90* of the *Code of Practice*. He accepts that the workers are broadly represented and that there is a little more than half of the workforce in the bargaining unit. Counsel went to cite the decisions of the Tribunal in *Private Sector Employees Union and Fibre Marine Limited (ERT/RN/192/2015)*, *Private Enterprises Employees Union and Supercash Ltd (ERT/RN/131/2015)* and *Rodrigues Private Industries and Allied Workers Union and Mammouth Trading Co. Ltd (ERT/RN/78/20)*. He laid emphasis on the matter of *Cable and Wireless Services UK Ltd [2008] EWHC 115 (admin)* referred to in *Supercash Ltd* regarding fragmentation which would leave the opportunity for other units to exist and be detrimental to effective management. About 200 employees, who are all concerned with production, have been left out. They have broadly the same working conditions and working hours. Their conditions of work are generally the same. They should have been placed in the same basket. It would be open for other trade unions to form a bargaining unit out of those who are not represented.

Counsel moreover submitted that employees represented by the trade union will negotiate and have a collective agreement, whereas their immediate neighbours on the production floor will have different conditions of employment. Although the lunch box is a rather big one, it is not the complete basket. In the decision of *Mammouth Trading Co. Ltd (supra)*, the Tribunal found no reason to depart from *Supercash Ltd (supra)*. It is *un cas d'école* for fragmentation. In the case of *Fibre Marine Limited (supra)*, people on the same production floor were not all represented by the trade union. Although in *Supercash Ltd (supra)* and *Mammouth Trading Co. Ltd (supra)* the bargaining unit was in Rodrigues, a distinction can be made. However, at World Knits, the workers are on the same floor, concerned with the same production and reporting line.

#### *THE MERITS OF THE APPLICATION*

The Tribunal, in relation to the present application for recognition as a bargaining agent, must determine whether the Applicant Union has the support of at least 20 percent of workers forming part of the bargaining unit. It is also incumbent on the Tribunal to consider the validity of the objections raised by the Respondent.

During the hearing of the matter, the Negotiator of the Applicant Union notably contended that the Union had a membership of 172 workers in the bargaining unit applied for. He showed the Tribunal, although some were not produced, the membership forms pertaining to Union's members working at World Knits Ltd.

The Tribunal moreover proceeded to supervise and organise a secret ballot exercise in the present matter. A list of 396 workers in the various categories of the bargaining unit was agreed upon by both parties. The secret ballot exercise revealed that the Applicant Union had the support of 64.9% of the workers in the bargaining unit. Despite the outcome of the balloting exercise and that the results thereof were not being disputed, the Respondent has maintained its objections to the present application.

The first ground of objection put forward by the Respondent is that the Applicant Union is not sufficiently representative of the employees of the Respondent. This ground, at the outset, appears to be misconceived inasmuch as it is incumbent on the Applicant Union to demonstrate that it has the required percentage of representativeness of the workers forming part of the bargaining unit (*vide section 38 (1) of the Act*) and not of the whole of the employees at World Knits Ltd. In this respect, the secret balloting exercise has revealed that the Applicant Union enjoys well over 50% support of the workers comprising the bargaining unit. The Tribunal cannot therefore find this particular ground of objection to be valid.

The Respondent is also contending, under its second ground of objection, that recognition would not be conducive to good industrial relations such that it would cause friction or even disorder or put workers in a more perilous position than they would otherwise be. The Tribunal is always entitled to have regard to the principles and practices of good employment relations (*vide section 97 of the Act*). The *Code of Practice*, which is meant for practical guidance for the promotion of good industrial relations, is notably founded on the following principles:

- (a) *the employer and his workers have a common interest in the success of the undertaking;*
- (b) *good employment relations are the joint responsibility of management and workers and the trade unions representing them;*
- (c) *collective bargaining, carried out in a reasonable and constructive manner between employers and strong representative trade unions, is the best method of conducting employment relations;*
- (d) *good human relations between employers and workers are essential to good employment relations.*

(The underlining is ours.)

It is clear that the trade unions representing workers have a joint responsibility for good employment relations and it has been aptly stated in the *Code of Practice* that trade unions share the responsibility of good employment relations with management. Moreover, it cannot be overlooked that the interests of workers are best served by strong and effective trade unions (*vide paragraph 94 of the Code of Practice*).

The Tribunal has also noted that the Respondent's witness notably stated that recognition of the trade union would not lead to good industrial relations as they have a Workers' Council, the factory is WRAP certified, they are audited by their clients annually, leaves are refunded, sick leaves are banked, working hours are in accordance with the law and there is a good entente between employees and management. A document was even produced to this effect.

Although the ongoing employment practices at World Knits Ltd are laudable, they cannot constitute a valid ground to oppose an order for the recognition of a trade union. This was moreover admitted by the Respondent's witness when she was questioned by the Applicant Union's Counsel. It should also be noted that the witness' evidence on this issue departs from the actual wordings of this particular ground of objection, which speaks of friction or disorder and that workers may be in a more perilous position than before. It would also be apposite to note that the actual reasons set in the ground of objection have not been substantiated in evidence.

The Respondent has laid much emphasis on the third ground of objection, which is to the effect that the bargaining unit as defined in the sitting of 29<sup>th</sup> June 2022 will cause fragmentation and/or proliferation. It should be noted that a representative of the Ministry of Labour was called on behalf of the Applicant Union to expound on the bargaining unit at the aforesaid sitting of the Tribunal.

Mr Ramphul notably stated that there are 21 Clerks in production; 7 Drivers; 1 Electrician; 2 Mechanics; and 3 Packers. Under the category of Skilled, he stated that there were 17 Group Leaders, 17 Machine Operators, 219 Machinists, 25 QA, 24 Sample Operators/Sampling Operators and 20 Team Lead. He reckoned the Group Leaders to be Supervisors and the Sample Operators to be Technicians. He added that there is 1 Gardener and 4 Store Clerks. He also confirmed that Store Clerks are over and above Store Attendants.

The Respondent is mainly contending that the bargaining unit would cause fragmentation and/or proliferation as there are other categories involved in the production process which have not



been included in the bargaining unit. These categories have been highlighted in Document E<sub>1</sub> and are as follows: Cutter, Presser, Bundling/Sorting, Cartoning, Checking, Colourist, Cook/Helper Cook, Counter, Helper, Fusing, Graphic Designer, Officer, Lectra, Loader on Machine, Loading, Maintenance Attendant, Layerer, Mattress RIB, Needle Detector, Security, Screen Maker, Tagging, Ticketer/Bundler, Trim/Trick Film, Unloader Panels, Export Helper and Washing. The number of workers in these categories amount to 231.

It is trite that a trade union can only constitute a bargaining unit according to the workers who have joined the union and the bargaining unit is accordingly grouped according to the categories of its members. Workers who are not members of the union and whose categories do not fall within the constituted bargaining unit would not be part of the bargaining unit. It also stands to reason that the Union would not normally be aware of other categories of workers if the workers in those particular categories have not approached them for membership.

Could it therefore be said that the 27 categories, comprising a total of 231 workers at the workplace, not included in the bargaining unit will cause fragmentation and/or proliferation? It has been contended that these workers are on the same floor concerned with the same production and reporting line and generally enjoy the same conditions of work as the employees falling within the bargaining unit.

It has not been disputed that the bargaining unit, which consists of 396 employees, represents about 63% of the workforce of 627 at World Knits Ltd. This is quite a significant number as recognised by the Respondent's witness herself when being cross-examined, who also stated that this is not a small group. This is moreover consistent with *paragraph 90 of the Code of Practice*, which notably provides that a bargaining unit shall cover as wide a group of workers as practicable.

Although other categories do not form part of the bargaining unit, it cannot be disputed that the bargaining unit has been well defined and the Tribunal has even proceeded to conduct a secret balloting exercise in the bargaining unit. If the bargaining unit was not certain or its composition was in issue, it could have been problematic for the parties to agree on same and for the Tribunal to proceed to organise and supervise the balloting exercise to determine the Applicant Union's support in the bargaining unit. The bargaining unit in itself comprises 10 categories of workers, with the category of Skilled further divided into 6. It cannot therefore be said that the bargaining unit is fragmented within itself.

Although the Respondent is contending that the bargaining unit is not complete as other categories have been left out, it cannot be excluded that the workers in these categories may also opt to be unionised with the Applicant Union or any other trade union, as their choice may be, for the protection of their interests in the future. It is well recognised that the right to join a trade union is a fundamental right under the Constitution.

The decisions of the Tribunal in *Supercash Ltd (supra)* and *Mammouth Trading Co. Ltd. (supra)*, which have been relied upon by the Respondent, can be distinguished from the present matter. In the two cases, the then applicant trade union was seeking recognition in respect of workers in Rodrigues contending that these workers were distinct from their counterparts in Mauritius. The issue of fragmentation was in relation to workers in the same categories of the bargaining unit but having different locations. This is different to the present matter where the Respondent is contending that other categories should also form part of the bargaining unit.

Moreover, the ratio in the English judgment of *Cable & Wireless Services UK Ltd (supra)* as cited in *Supercash Ltd (supra)* on the notion of fragmentation must be considered in its proper context. The concept of fragmentation is not mentioned in the Act nor is it akin to Mauritian law. It cannot be overlooked that the criteria for determination of an appropriate bargaining unit in England is based on English statutory provisions (*vide Fibre Marine Limited (supra)*) and it would be wrong for the Tribunal to stray away from binding Mauritian statutory law as is applicable to this matter. In this regard, the Tribunal takes note of the following observation of the Supreme Court in *Periag v International Beverages Ltd [1983 MR 108]*:

*Nevertheless since the matter, in our view, is governed by our own specific Labour law, it is best to look to our own law and the cases decided in the context of that law in order to find precise solutions.*

As regards the decision in *Fibre Marie Limited (supra)*, the then Tribunal noted that the applicant was not representative in all of the categories of the bargaining unit applied for; that the application was vague as to the class of workers the trade union was seeking recognition; and that the trade union had not applied on behalf of the whole class of manual workers at the company. Besides, the issue of fragmentation and/or proliferation has not been referred to in the aforesaid decision. In contrast, in the present matter, there is no issue as to the certainty of the bargaining unit applied for, which, as noted, has been well defined. The only issue the Respondent has with the bargaining unit is that it does not include other categories of workers at World Knits Ltd.

The Tribunal can surmise that the contention of the Respondent regarding fragmentation would be that the workforce would be fragmented between those in the bargaining unit and those who are not. Whether the bargaining unit in itself is fragmented is not an issue. It must however be noted the law clearly provides that a trade union is entitled to recognition as a bargaining/sole bargaining agent by the employer if it has the required support in the bargaining unit applied for (*vide section 37 (1) & (2)(a) of the Act*).

As noted above, it is open for workers who are not included in the bargaining unit to join the Applicant Union or any other trade union if they so wish in view of their fundamental right to belong to a trade union for the protection of their interests. Although they not presently part of the bargaining unit, it would be unfair for the substantial number of workers who have shown their support (64.9%) in favour of the Applicant Union being recognised to be penalised because of the workers not forming part of the bargaining unit.

The Tribunal cannot therefore accept the Respondent's argument in relation to fragmentation and/or proliferation inasmuch as the bargaining unit is well defined; the workers excluded from the bargaining unit always have the choice of joining a trade union of their own choosing; it would be unfair for the workers who are in favour of recognition of the Applicant Union to see the present application fail by reason of the workers in categories not included in the bargaining unit; and the concept of fragmentation is not part of our statutory provisions governing recognition nor is it to be found in the *Code of Practice*.

The Tribunal, as previously noted, has found that the Applicant Union enjoys the support of 64.9% of workers in the bargaining unit applied for. This would therefore entitle the Applicant Union to recognition as sole bargaining agent (*vide sections 37 (2)(a) and 38 (13) of the Act*) in respect of the categories of the bargaining unit.

The Tribunal therefore orders that the Export and Other Enterprises Employees Union be recognised as sole bargaining agent by World Knits Ltd in respect of the workers in the following categories of the bargaining unit:

*Clerk (in production); Driver; Electrician; Mechanic; Packer; Skilled; Supervisor; Gardener; and Store Clerk/Store Attendant; except managerial grades.*

As per the evidence adduced, it should also be noted that the category of Skilled has been divided as follows:

*Group Leaders; Machine Operators; Machinist; Quality Assurance (QA); Sample Operators/Sampling Operators; and Team Lead.*

Moreover, the Export and Other Enterprises Employees Union and World Knits Ltd are to meet at specified intervals or at such time and on such occasions as the circumstances may reasonably require for the purpose of collective bargaining.

The Tribunal orders accordingly.

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**SD Shameer Janhangeer**  
**(Vice-President)**

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**SD Francis Supparayen**  
**(Member)**

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**SD Rabin Gungoo**  
**(Member)**

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**SD Ghianeswar Gokhool**  
**(Member)**

**Date: 4<sup>th</sup> August 2022**