

EMPLOYMENT RELATIONS TRIBUNAL

RULING

ERT/ RN 78/20

Before

Indiren Sivaramen	Vice-President
Vijay Kumar Mohit	Member
Rabin Gungoo	Member
Kevin C. Lukeeram	Member

In the matter of:-

Rodrigues Private Industries and Allied Workers Union (Applicant)

And

Mammouth Trading Co. Ltd (Respondent)

The present matter is an application made by the Applicant union under section 36(5) of the Employment Relations Act, as amended (the "Act"), for an order directing the employer to recognise the Applicant as the sole bargaining agent in a bargaining unit "***consisting of all the categories of workers excluding management, under employment at Mammouth Trading Co. Ltd (Rodrigues Branch).***" Ex facie, the application, the Applicant sent a letter dated 10 October 2019 to the Respondent (copy is at Annexure A to the application) seeking for sole recognition for the said bargaining unit. Ex facie the application, the Respondent replied to the Applicant by way of a letter dated 15 November 2019 (copy annexed as Annexure B to the application) whereby the Respondent informed Applicant that the Respondent refuses that Applicant "***be granted recognition for the branch situated in Rodrigues, in as much as, inter alia Rodrigues Private Industries and Allied Workers Union has not the support of not less than 20% of the workers in the bargaining unit of Mammouth Trading Co Ltd.***" The Respondent is

objecting to the recognition of the Applicant union and has raised a preliminary objection which reads as follows:

“2. The present application for recognition should not be entertained inasmuch as, inter alia:

2.1. The application is made for an order to recognise the trade union at Mammouth Trading Co. Ltd (Rodrigues Branch), which does not exist (sic), is not a legal entity and is not a bargaining unit in an enterprise.

2.2. The claim for recognition is based on, inter alia, discrimination as to national extraction and place of work, in breach of Article 97 of the Code of Practice under the 4th Schedule of the Employment Relations Act 2008.”

Both parties were assisted by Counsel and both Counsel offered arguments on the objections taken. The Tribunal has examined carefully the arguments of both Counsel.

It is apposite to note that the preliminary objection is being taken only under paragraph 2 of the Statement of Case of the Respondent after that the Respondent has at paragraph 1 of the same document objected to the recognition of the Applicant union. Be that as it may, the Tribunal will first deal with paragraph 2.1 of the preliminary objection taken. The Respondent has, in his letter dated 15 November 2019, clearly refused that the Applicant be granted recognition for the branch situated in Rodrigues. A trade union may under section 36(1) of the Act apply in writing to an employer for recognition as a sole bargaining agent for a bargaining unit. Section 37(2)(a) of the Act provides that subject to subsection (3) (not relevant in the present matter), *“a trade union which has the support of more than 50 per cent of the workers in a bargaining unit in an enterprise, an industry or a cluster shall be entitled to recognition as the sole bargaining agent of the bargaining unit of the enterprise, an industry or a cluster”*. “Enterprise” is defined in the interpretation section (section 2) of the Act as including a unit of production.

Thus, there is no requirement for a bargaining unit, as opposed to an employer, to be *stricto sensu* a legal entity. Thus, “bargaining unit” is also defined in section 2 of the Act as *“workers or classes of workers, whether or not employed by the same employer, on whose behalf a collective agreement may be made.”* The Tribunal finds nothing wrong for the Applicant to have described the bargaining unit as the abovementioned categories of workers under employment at Mammouth Trading Co. Ltd (Rodrigues Branch) which Respondent clearly understood to stand for the branch situated in Rodrigues. The Tribunal, however, cannot consider the last part of the objection under paragraph 2.1 since this has not been addressed by the parties and no evidence has been adduced in relation to same, that is, whether the branch at Rodrigues can properly constitute in the present matter a bargaining unit in an enterprise. This is something

which will have to be determined on the merits of the case if there is still disagreement between the parties on this issue. For the reasons given above, the Tribunal finds that the objection taken under paragraph 2.1 above cannot stand, and is at best premature under the last limb, and is set aside.

As regards the objection under paragraph 2.2 above, that the claim for recognition is based on, *inter alia*, discrimination as to national extraction and place of work, the Tribunal has not been favoured with any evidence suggesting that in this particular case the claim for recognition is in fact based on discrimination as to national extraction or place of work. Counsel for Respondent has simply left open the question whether workers coming from another branch will be allowed to join as members the Applicant union. The Tribunal will simply highlight that it is for the worker to decide whether to join a trade union and which trade union to join in the light of the worker's constitutional right to freedom of assembly and association and sections 29(1) and 29(1A) of the Act. Also, it is worth noting that as per Article 92 of the same Code of Practice, 'the organisation and location of the work' is considered as a relevant factor which shall be taken into account in establishing a bargaining unit.

For the reasons given above, the Tribunal finds that the objection under paragraph 2.2 above is at best premature and the objection is set aside. The case will thus proceed on its merits and stands fixed for Continuation on Friday 25 September 2020 at 2 p.m.

SD Indiren Sivaramen

Vice-President

SD Vijay Kumar Mohit

Member

SD Rabin Gungoo

Member

SD Kevin C. Lukeeram

Member

18 September 2020