

**EMPLOYMENT RELATIONS TRIBUNAL**

**ORDER**

**ERT/ RN 18/21**

**Before**

<b>Indiren Sivaramen</b>	<b>Vice-President</b>
<b>Raffick Hossenbaccus</b>	<b>Member</b>
<b>Karen K. Veerapen</b>	<b>Member</b>
<b>Ghianeswar Gokhool</b>	<b>Member</b>

**In the matter of:-**

**Syndicat des Travailleurs des Etablissements Privés (Applicant)**

**And**

**Li Wan Po & Co. Ltd (Respondent)**

This is an application made by the Applicant union under section 53(5) of the Employment Relations Act, as amended (the “Act”), for an order directing the employer, that is, Respondent to start negotiations with the Applicant union. The Applicant sent a notice under the signature of Mr Atma Shanto, Negotiator, dated 19 February 2021 to the Respondent requesting for negotiations between the Applicant union and Respondent. The bargaining unit was described and issues to be discussed between the parties were laid down in the said notice. There has been no negotiations between the parties as per the notice dated 19 February 2021 and the Applicant union has lodged the present application.

The stand of the Respondent is that the Respondent is agreeable to negotiate with the Applicant union provided the union satisfies the Respondent that it has the support of not less than 20 per cent of the workers in the bargaining unit. The Respondent avers that the Applicant union was recognised under the now repealed Industrial Relations Act (IRA) and that an order under IRA lapsed after two years. Respondent also avers that the Applicant union no longer represents 20% of the employees. The stand of

Respondent is that negotiation can start as soon as Applicant brings evidence that it has the support of not less than 20% of the employees.

The representative of the Applicant deponed before the Tribunal and he stated that the Applicant union is recognised by the Respondent. He stated that recognition was obtained before the then Industrial Relations Commission (IRC) and he produced a copy of the findings of the IRC dated 30 August 2001 and communicated to the union by way of a letter dated 3 September 2001. (Doc A). He stated that there has been no application made to revoke the recognition of the Applicant and that the Applicant union is still recognised as at today. He produced a copy of the notice sent to the Respondent under section 53 of the Act together with a copy of the advice of delivery (Docs B and C respectively) for the Respondent to start negotiations with the union on issues mentioned in the notice. He did not agree that the Applicant union now had to show its representativeness. He stated that there were several agreements reached between the parties before the IRC.

The representative of Applicant then deponed in relation to industrial disputes which were referred to the IRC for conciliation and he produced copies of Conciliation Reports dated 25 August 2003, 27 January 2010, 9 July 2008 and 9 June 2008 (with two reports bearing the same date, that is, 9 June 2008) (Docs D, E, F, G and H respectively). All these disputes involved the Applicant union and the Respondent and the Tribunal allowed the production of these documents after ascertaining that there was no objection on behalf of Respondent to the production thereof. It is apposite to note that the Conciliation Report dated 27 January 2010 (Doc E) emanated from the Commission for Conciliation and Mediation and that the IRC "is deemed to have been established" under the Employment Relations Act (as per section 87 of the Act) and was renamed as the Commission for Conciliation and Mediation.

The representative of Applicant then referred to an application which the Applicant union made in writing on 13 January 2021 to the Respondent to hold a trade union meeting in the mess room at the seat of the company at Riche Terre (Doc I). He stated that access to the workplace was granted by the Respondent even though at the request of the latter the meeting was rescheduled to be held after lunch time as per arrangements made between the parties (Docs J and K). The meeting was held by him in Riche Terre. The representative of Applicant is seeking an order from the Tribunal directing the Respondent to start negotiations with the Applicant. In cross-examination, the representative agreed that from 3 September 2001 up to 27 January 2010 there were negotiations between the parties on only five or six occasions. When queried as to the few negotiations that there had been over a period of some twenty years, he stated that this was normal and that he intervened and advised the members of the union as and when required.

The representative of Applicant did not agree that the Respondent allowed the meeting in 2021 as a gesture of goodwill. He stated that only a recognised trade union can have access to the premises of an employer. He maintained that the Applicant union is still recognised. He also stated that the Applicant union has recognition for the manual grade of workers only.

The representative of Respondent then deponed before the Tribunal and he stated that as far as he recollects over the past twenty years, there had been some four or five interventions or negotiations involving the Applicant union. He stated that the Respondent is agreeable to negotiate with the Applicant union if the latter can show that it has the support of not less than 20% of the workers. He added that according to the check-off list, between 13 to 14% of the employees of the Respondent would be members of the Applicant union.

In cross-examination, the representative of Respondent stated that the IRC recommended the recognition of Applicant and the company has in good faith recognised the Applicant union. He conceded that there was no application to revoke the recognition of the Applicant but he added that at the same time there was no application for an order for recognition. He averred that from 2010 up to 2021, there would have been no intervention at all from the Applicant union. He stated that the negotiator was granted access to the workplace in good faith to allow the latter to talk to the workers.

The Tribunal has examined all the evidence on record including the documents produced and the submissions of both Counsel. Since the Applicant union is averring that it is a recognised trade union, it is for the latter to satisfy the Tribunal that this is the case. The Respondent is not challenging that the Applicant union was indeed recognised in 2001 and that there were interventions of the Applicant union on some four or five occasions. The stand of the Respondent however is that as from 2010 to 2021 there would have been no intervention, at all, of the Applicant union in relation to the Respondent. Irrespective of the state of the law under the then Industrial Relations Act, and which the Tribunal has nevertheless duly considered, the Tribunal finds that recognition of a trade union is not to be confined to a mere recommendation or order for recognition. Recognition of a trade union by an employer can be manifested in the manner an employer deals with or continues to deal with a trade union.

The Act has brought several changes as compared to the repealed Industrial Relations Act and one of such changes is that orders for recognition of trade unions now do not provide for the duration of such orders. Also, with the amendments brought to the Employment Relations Act by Act No. 21 of 2019, an employer who now recognises a trade union shall issue a certificate of recognition to the trade union and submit a copy of same to the supervising officer of the Ministry of Labour, Human Resource

Development and Training. This ensures that there is no dispute as to whether a trade union is recognised or not by an employer. In the present case, it is not disputed that the Applicant union was recognised by the Respondent, and suggestions have instead been made on behalf of the Respondent that the recognition may have lapsed or that the Applicant may no longer enjoy the support of no less than 20% of the workers.

After a careful analysis of the evidence and documents produced and more particularly Docs A, D, E, F, G and H, the Tribunal has no hesitation in finding that there is ample evidence to show that the Applicant union was a recognised trade union by the Respondent until at least 27 January 2010. Also, the evidence adduced on behalf of the Applicant union that the recognition of the union was for manual grade of workers has remained unrebutted and the Tribunal has no reason not to believe same.

With the enactment of the Employment Relations Act 2008 which came into force on 2 February 2009 and which at the same time repealed the Industrial Relations Act, there were a series of transitional provisions. The Tribunal will refer to section 108(3) (as it was then prior to the amendment brought by Act No. 21 of 2019) of the Act which read as follows:

*“Any trade union of workers which had recognition immediately before the commencement of this Act shall be deemed to have obtained recognition under this Act.”*

The Tribunal has no hesitation in finding that the Applicant union had recognition immediately before the commencement of the Employment Relations Act so that it shall be deemed to have obtained recognition under the said Act. Thus, in the absence of any evidence that the recognition of the Applicant union has been revoked or varied (under section 39 of the Act), the Applicant union is for all purposes still a recognised trade union in relation to the relevant bargaining unit at the Respondent.

The application made by the Applicant union to the Respondent on 13 January 2021 to hold a trade union meeting in the mess room at the seat of the Respondent at Riche Terre coupled with the access granted to the union to the workplace only support the findings of the Tribunal above (Docs I, J and K). Moreover, the Applicant union in its email dated 13 January 2021 to the Respondent (Doc I) clearly mentioned beneath the name of the trade union the following: “(Recognised Trade Union)”.

The evidence in relation to the Notice served on the Respondent under section 53 of the Act has not been challenged at all before us. There is no averment or evidence that the Notice was not served on the Respondent or that it was not in order. A copy of the advice of delivery for the said Notice has been produced (Doc C). For all the reasons given above, the Tribunal finds that the Respondent was under a duty to start negotiations with the Applicant within the delay specified in section 53 of the Act.

The Tribunal thus orders that the Respondent is to start negotiations forthwith with the Applicant as per the present order and the Notice served on the Respondent (Doc B).

**SD Indiren Sivaramen**

**Vice-President**

**SD Raffick Hossenbaccus**

**Member**

**SD Karen K. Veerapen**

**Member**

**SD Ghianeswar Gokhool**

**Member**

**29 June 2021**