

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/RN 161/2020

Before:

Shameer Janhangeer	-	Vice-President
Vijay Kumar Mohit	-	Member
Bharuth Kumar Ramdany	-	Member
Ghianeswar Gokhool	-	Member

In the matter of:

Syndicat des Travailleurs des Etablissements Privés

Applicant

and

Impact Production Ltd

Respondent

The Applicant Union has submitted an application for an order for recognition of a trade union under *section 36 (5)* of the *Employment Relations Act* (the 'Act'), as amended. The *Syndicat des Travailleurs des Etablissements Privés* is seeking recognition as a bargaining agent in relation to employees in a bargaining unit at Impact Production Ltd. The bargaining unit comprises the following categories: storekeeper; helper; technician; *chef d'équipe*; supervisor; driver; decorator; welder; electrician; and commercial representative. The Applicant contends that it has the support of 24 members.

Both parties were assisted by Counsel. Mr B. Ramdenee appeared for the Applicant Union whereas Mr A.R. Dayal appeared for the Respondent employer. The Respondent replied to the Union's application via a Statement of Defence objecting to the application.

THE EVIDENCE OF WITNESSES

Mr Manoraj Mungra, Senior Labour and Industrial Officer, was called as a witness on behalf of the Applicant Union. He produced a two-paged list of the workforce at Impact Production Ltd as at 17 November 2020 (Documents A and A₁). The workforce consists 39 workers and there are 3 storekeepers, 5 helpers, 9 technicians, 3 *chefs d'équipe*, 1 driver, 4 decorators and no supervisor, welder, electrician or commercial representative. The highlighted names on the documents produced are workers no longer in employment. Upon questions from Counsel for the Respondent, the witness notably stated that he did not check the contracts of employment of the workforce. The Respondent forms part of the Impact Production Group. The name of the Respondent is on top of the list produced and he assumes that the people therein work for them. He has no documentary evidence to substantiate that the workers are in fact employees of the Respondent.

Mr Atma Shanto was called to depose. He is the Negotiator of the Applicant Union and produced a letter dated 26 December 2020 from the Union's Secretary evidencing same (Document B). He produced a Certificate of Officers of the Union showing the names of the its Managing Committee and his name as negotiator (Document C). The Union, which is registered, wrote to the Respondent on 21 September 2020 for recognition under *section 36* of the *Act* and is now before the Tribunal for the same bargaining unit. As per the application, the Union has 24 members forming the bargaining unit representing not less than 20 per cent and not more than 50 per cent. He produced the application made to the employer with documents annexed (Document D).

Mr Shanto also stated that after the expiry of the delay under the *Act*, there was no response from the Respondent and they had no choice but to make an application before the Tribunal. He also produced a bundle of 24 membership forms (Documents E, E₁ to E₂₃). The forms each mention the name of the member, the identity card number and employer, post occupied and is signed by the member concerned. The category of warehouse assistant is not to be found in the bargaining unit. He is therefore asking for the Union to be recognised for the manual grades and to enable the Union to represent them eventually.

Mr Shanto, upon questioning from the Respondent's Counsel, notably agreed that as per Documents A and A₁, Messrs Henry and Poobarlen are not employees. He is not aware if Messrs Deschamps, Moondah and Twaleb are no longer with the Respondent. He maintained that the workers in the membership forms are employees of the Respondent. He has not seen their contracts of employment. He did not agree that he had no

authorisation to lodge the present application as Negotiator as the authorisation letter is dated 26 December 2020. He did not agree that the aforesaid letter did not mandate him to represent the Applicant Union. Negotiator is an office of the Union and is mentioned in the Union's return to the Registrar of Associations.

Mr Shanto also replied that did not agree that the members should have been before the Tribunal as the employer is not allowed to know their names. He did not agree that the membership forms were erroneous. If a workers wished to join a union, it is not necessary for there to be any industrial issues. It is normal for a worker to join a union for better conditions of work and protection against abuse which may be. He could not comment on the answers of the witness from the Ministry of Labour.

Mr Jean Luc Manneback, CEO of Impact Production Ltd, deposed on behalf of the Respondent. He produced a copy of the Respondent's Certificate of Incorporation (Document F). He confirmed that the posts of storekeeper, helpers, and *chefs d'équipe* exist at the company. He also produced a list of employees at the Respondent from October 2020 to December 2020 (Document G). He confirmed that several employees have resigned and others dismissed. Supervisor and *chef d'équipe* are basically the same. The driver has retired. There is a decorator, Reyaz Ahmad, who comes from India. There is no welder. There is an electrician/technician Prithviraj as well as a commercial representative who is Marie Pricilla Rose. There are currently 23 employees at the Respondent.

Mr Manneback also stated that regarding the application, he cannot say when this was made but employees have left. Some departments have stopped completely as there is no work. At least five have left and one has retired. The helpers have left as they were no longer required. With Covid-19, there is no work. Relations between workers and management are cordial. He has no issues with workers seeing a trade union. It is normal and logical. He is not aware of the procedures here. He is not aware how this happens exactly but has no issues with people being members of a union, its obvious. He objects to the application.

When questioned by Counsel for the Applicant Union, Mr Manneback notably stated that he does not object to workers joining a trade union, but he objects to the recognition while following the law. He believes the number of 24 members to be erroneous as he does know as from when this dates. If the law states that the Union has the required support, he has no problem with same.

THE SUBMISSIONS OF COUNSEL

Counsel for the Disputant notably submitted that the Union has the support of at least 20 per cent of the bargaining unit, even when accounting for the 5 workers who have left. Even with the list of 23 employers submitted by the Respondent, the threshold has been met. The Applicant has no objection that a balloting exercise be held. The Applicant Union satisfies the conditions laid down in *sections 37 and 38* of the *Act*. Despite there being no complaints, this is not a prerequisite to be recognised. Mr Shanto, as Negotiator, has produced necessary documents to show that he has the power to on behalf of the Applicant. There is no provision in the law requiring him to produce evidence of authority from his Union.

Counsel for the Respondent, on the other hand, notably submitted on preliminary objections raised in his Statement of Defence. These were convened to be taken on the merits of the present matter. He stated that the Applicant Union does not have any *locus standi* as it has not given any delegated powers to the representative before the Tribunal. Secondly, referring to the definition of '*bargaining agent*' under *section 2* of the *Act*, he submitted that for a bargaining agent to be possible, there has to be a bargaining unit. Can the Tribunal be satisfied that a bargaining unit exists? This cannot be as there is no evidence from the workers themselves. Counsel also stated that the required number in terms of trade union representatives is 30 as per *section 5* of the *Act*. Thus, there cannot be a recognised or a registered trade union for that particular company as the number of employees is less than 30.

Counsel also submitted that it is not disputed that the Applicant has put in a Certificate of Registration and he does not know whether the registration is up to date to suggest that it is a duly registered trade union. Industrial relations, in relation to the third and fourth points of his objections, are cordial. It is not for the mere asking that a trade union can come to the Tribunal with an application for recognition. This does not suit the purpose of the *Act*. It is not the case that the rights of the workers are being infringed. The purpose is to protect workers and at the same, the Tribunal must ensure the law is adhered to. In terms of his preliminary objections, the application is ill founded and cannot stand in law. For a person to make an application before the Tribunal, he must have the requisite mandate. Counsel further submitted in law that a secret ballot is not possible as this applies when two unions are seeking recognition.

PRELIMINARY OBJECTIONS IN LAW

As noted, the Respondent has put in certain preliminary objections in this matter. These read as follows:

1. *The Respondent will submit that the Applicant has no locus standi;*
2. *The Respondent will also submit that the Applicant has not fulfilled the requisite conditions for the present application under the Employment Relations Act;*
3. *The Respondent will further submit that the Applicant has not been able to show why the application is being made at this stage;*
4. *In the circumstances, the Respondent moves that the present application be purely and simply set aside.*

The Respondent has put forward a two-fold argument to contend that the Applicant has no *locus standi* in the present matter. It was first stated that the Applicant's representative before the Tribunal was not given any delegated powers from the Union to represent it before the Tribunal. Regarding this issue, the Tribunal has noted that the Applicant's representative did produce a letter under the signature of the Secretary of the Applicant Union certifying that Mr Shanto is the Negotiator of the Union. It has also been shown, though the Certificate of Officers produced (Document C), that Mr Shanto as Negotiator is an office bearer of the Applicant Union.

The post of Negotiator of a Union is recognised *inter alia* under *section 14* of the Act and a person is appointed thereto by the Managing Committee of the Union. Having noted that Mr Shanto is officially the Negotiator of the Applicant Union as per the documents produced, the Tribunal cannot find any substance to suggest that Mr Shanto has not been duly mandated to represent to the Union as its Negotiator before it in the present matter in the absence of any evidence to the contrary.

Counsel for the Respondent has also contended that there cannot be a bargaining unit as the required number of members should be 30 and the number of employees is less than this number. It must be noted that the requirement of having at least 30 members is for the Registrar of Association to register a trade union as per *section 5* of the Act. There is

no legal requirement in relation to an application of recognition for the number of workers in a given bargaining unit. Thus, the requirement of 30 members in *section 5* of the *Act* cannot find any application in relation to the present application for recognition under *section 36 (5)* of the *Act*.

The Respondent has also questioned the Certificate of Registration of the Applicant Union. Any application for recognition to an employer must be accompanied by the trade union's Certificate of Registration. If ever the Respondent had any doubts as to the veracity of the union's registration, same should have been substantiated in evidence and the mere sayings of Counsel in submissions cannot suffice. No question was put to the Applicant's representative as to this issue nor was this ever raised by the Respondent's representative in evidence. Once more, the Tribunal cannot find any merit in this argument.

The Respondent has, in relation to the third and fourth limbs of the Preliminary Objections, stated that industrial relations are cordial at the workplace and it is not for the mere asking that the Union can come with an application for recognition. The Tribunal can only note that if such is the case, i.e. that industrial relations are cordial, it would only be conducive to a better relationship between the Union and management.

As per the *Code of Practice*, where a trade union is recognised as a bargaining agent, it shall bargain in good faith with the employer. The absence of industrial friction at the workplace can only favour the element of good faith in the relationship between the two parties. It has also been noted that the Respondent's CEO finds it perfectly normal for his workers to join a trade union despite his objection to the present application. Moreover, the existence of any industrial or workplace issues with management is not a prerequisite to an application for recognition by a trade union under the *Act*.

The Tribunal, after having duly considered same, cannot find any merit in the preliminary objections raised by the Respondent. The objections are therefore accordingly set aside. The Tribunal shall now proceed to consider the present application on its merits.

THE MERITS OF THE APPLICATION

The Applicant Union previously wrote to the Respondent employer on 21 September 2020 applying for recognition as a bargaining agent under *section 36* of the *Act*. The grades

of the bargaining unit were specified and the support of the Union among the employees was stated to be at 24 members. Annexed to the application letter were the application form under the *Fifth Schedule* of the *Act* and a letter from the Registrar of Associations certifying that the Applicant Union is registered since 14 April 1977 under the provision of the *Act*. No reply was received from the Respondent. Thus, an application has been made to the Tribunal on 13 November 2020 for recognition as a bargaining agent under *section 36 (5)* of the *Act*.

Upon an application made for recognition of a trade union as bargaining agent, it is incumbent on the Tribunal to determine whether the union has the support of at least 20 per cent of the workers in the bargaining unit (*vide section 38 (1)* of the *Act*). Evidence has been adduced by the Applicant Union to show that the Respondent has a workforce of 39 employees as at 17 November 2020, with the number of the workforce forming part of the bargaining unit amounting to 25 workers. There are no employees in the categories of supervisor, welder, electrician or commercial representative as per the evidence of the Labour and Industrial Officer.

On the other hand, the Respondent has produced a list of its workforce for the months of October 2020 to December 2020. The December 2020 list reveals a workforce of 23 employees at the Respondent. Given that this is the most recent list on record, the Tribunal shall be relying upon same to determine whether the Applicant Union has the required support among the workers of the bargaining unit.

The Applicant Union has produced 24 membership forms to prove that it has the required support to be recognised as a bargaining agent. A perusal of these forms have revealed that 9 members are technicians; 7 are helpers; 1 is a commercial representative; 3 are storekeepers; and a member each in the grades of supervisor, *chef d'équipe* and driver. One member is a warehouse assistant, which is a grade that does not form part of the bargaining unit applied for. The grades of the bargaining unit not present among the membership forms produced are that of decorator, welder and electrician.

The Tribunal has also noted that most of the membership forms are dated 26 August 2020 and two of them dated 18 August 2020. Given the date of the forms, it could be that certain members of the Union are no longer in the workforce as per the list of December 2020 produced by the employer.

The December 2020 list shows that 6 workers have resigned from the Respondent Company of which 5 are Union members. This includes the category of driver, which comprised a sole Union member. Moreover, the members in the categories of commercial representative, *chef d'équipe* and (pyro) technician as per the membership forms do not appear in the employer's December 2020 list. As previously noted, there was only a member each in the two former categories.

Thus, after having accounted for the Union members no longer appearing on the December 2020 list as well as the warehouse assistant member, the Tribunal has found there to be 15 members among the workforce of 23 workers at the Respondent Company. These workers are in the categories of technician, helper, supervisor, and storekeeper. The categories not represented on the list of employees are that of commercial representative, *chef d'équipe*, decorator, electrician and welder.

The Respondent's representative and CEO, Mr Manneback, confirmed that the Driver has retired from the company. He also stated that there is a decorator, Mr Reyaz Ahmad, who is from India; the commercial representative is Ms Marie Pricilla Rose; whereas one Pritiviraj is an electrician/technician. The Tribunal has found that as per the membership forms, the sole decorator is not a member of the Union nor is the sole commercial representative. Although, the aforementioned electrician/technician is a member, he has described himself as AV Technician on his membership form.

The Tribunal therefore finds that the Applicant Union has no support in the following categories of the bargaining unit applied for: commercial representative, *chef d'équipe*, decorator, driver, electrician, and welder. It would be apposite note what was stated by the Supreme Court in *Private Enterprises Employees' Union v Industrial Relations Commission and Mauritius and New Zealand Dairy Enterprises Ltd* [1985 MR 219] in relation to a case of recognition under the then *Industrial Relations Act*:

It follows that, bearing in mind the fact that the provisions of the Code of Practice are meant for guidance only, while it would not be proper for the Commission to adopt, as a general principle applicable to all cases, a yardstick that recognition will never be granted unless the union has at least x% of employees on its books, there is nothing to prevent the Commission from saying, in a given situation, that a union which has only 18 members out of 63 workers in an enterprise and has no member at all in 4 out of 6 grades cannot qualify for full recognition under section 58 (4) (b) of the Act.

Moreover, the importance of a bargaining unit in an application for recognition cannot be underestimated. The following may be noted from *Dr D. Fok Kan in Introduction to Mauritian Labour Law 2/ The Law of Industrial Relations (2000), p.52*:

Recognition involves the determination not only of the bargaining agent but also of the bargaining unit.

Thus, in view of the above, the Tribunal cannot find that the Applicant Union would be entitled to recognition in relation to the following categories of the bargaining unit: commercial representative, *chef d'équipe*, decorator, driver, electrician, and welder.

The Tribunal has also noted that the Respondent's Counsel has also questioned whether the Union Negotiator had seen the contract of employment of his members to confirm if they really work at Respondent. Same was also asked of the first witness in the matter. Although no contracts were seen by the two witnesses, it can be clearly perceived that most of the names of the Union members do appear in the list provided by the Respondent's representative himself. Moreover, Mr Manneback never disputed that the members are not part of his workforce despite the fact that several employees have left.

The Tribunal, having notably perused the membership forms as well as the list of workers of December 2020, finds that the Applicant Union has a membership of 15 workers in the following categories of the bargaining unit applied for: helper, storekeeper, supervisor and technician. This figure equates to a percentage of 65.2 in relation to the workforce of 23 employees at the Respondent company. As the number of workers in the bargaining unit is only a proportion of the total workforce and cannot exceed same, the Tribunal is satisfied that the Applicant Union has over 50 per cent support in the bargaining unit.

Bearing in mind that a trade union which has the support of more than 50 per cent of the workers in the bargaining unit in an enterprise shall be entitled to sole recognition, the Tribunal therefore makes an order granting the *Syndicat des Travailleurs des Etablissements Privés* recognition as sole bargaining agent by Impact Production Ltd in respect of the bargaining unit composed of the grades of helper, storekeeper, supervisor and technician.

Moreover, the Applicant Union and the employer 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 Vijay Kumar Mohit
(Member)

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SD Bharuth Kumar Ramdany
(Member)

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SD Ghianeswar Gokhool
(Member)

Date: 5th February 2021