

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/RN 32/2021

Before: -

Shameer Janhangeer

Vice-President

Vijay Kumar Mohit

Member

Rabin Gungoo

Member

Ghianeswar Gokhool

Member

In the matter of: -

Private Enterprises Employees Union

Applicant

and

Brink's (Mauritius) Limited

Respondent

In presence of: -

Security Guards and General Workers Union

Co-Respondent

The Applicant Union has submitted an application for an order for recognition of a trade union pursuant to *section 36 (5)* of the *Employment Relations Act* (the “Act”), as amended. The Private Enterprises Employees Union (“PEEU”) is seeking recognition as sole bargaining agent in relation to employees in a bargaining unit at Brink’s (Mauritius) Ltd. The bargaining unit comprises the categories of Cash-in-Transit Officer, Cash Operation Coordinator and Vault Officer. The PEEU contends that it has the support of 66 members as per its application. The Security Guards and General Workers Union (“SGGWU”) is presently recognised by the Employer as sole bargaining agent.

The Applicant Union was represented and assisted by its Negotiator, Mr Reeaz Chuttoo. Whereas, the Respondent Employer was assisted by Counsel Mrs Angélique Desvaux de Marigny, who appeared together with Mr Bhavish Chutturdharry. The Co-Respondent was represented and assisted by its Vice-President, Mr Desiré Guildhary.

The Employer has submitted a Statement of Case setting out its objections to the application on the grounds that the Security Guard and General Workers Union (“SGGWU”) has been recognised by the Employer as the sole bargaining agent for all employees; and that the categories of the bargaining unit applied for do not constitute a distinct bargaining unit. The Co-Respondent Union has also submitted a Statement of Case in support of its objection. The Applicant Union has put in a reply to the Employer’s Statement of Case whereby it contends that it should be recognised as the workers they represent constitute a distinct bargaining unit not represented by the SGGWU.

THE EVIDENCE OF WITNESSES

Mr Reeaz Chuttoo deposed on behalf of the Applicant Union. The PEEU made an application to represent a certain category of employees at Brink’s. They consider these categories as distinct, their job title has changed and their conditions of work are different to usual Security Guards. He referred and produced a recommendation of the National Remuneration Board (“NRB”) of April 2019 (Document A) to show that all workers are not just Security Guards. The Employer has created the categories of Cash-in-Transit Officer, Cash Operation Coordinator and Vault Officer. They are paid more than Security Guards as prescribed in the Remuneration Order and have different job titles. He maintained that they constitute a separate bargaining unit.

Mr Chuttoo also stated that the Employer has mentioned, in its Statement of Case, that it has a total of 1,982 employees and the recognised Union has put forward 75 members in its Statement of Case. He does not therefore understand how the Co-Respondent Union can have sole recognition. Moreover, none of the agreements signed in the interests of the workers, as mentioned in their Statement of Case, are attached. The last Procedure Agreement is dated November 2020, which is after the PEEU’s application for recognition. The workers have a right

to join a union and they constitute a separate bargaining unit. There are no existing Collective Agreements to this day. He therefore considers that the present application is justified for this particular bargaining unit. He did not produce any membership forms.

When questioned by Counsel for the Respondent, Mr Chuttoo notably stated that he does not agree that a bargaining unit must cover a wide group of workers as possible. The conditions of work for the categories applied for are different as is the risk they face; they have more responsibilities and semi-clerical duties, which is not required of a simple Security Guard. The Union meets the legal requirements to represent these categories and the workers approached the PEEU for membership. Other categories may also wish to become members. The other categories do not, at present, satisfy the criteria for recognition although their workers may be members. The application is according to law. He maintained that the categories constitute a bargaining unit. He could not state on what matters he would need to bargain on and can only say so after obtaining recognition. Collective bargaining entails issues of interest and that is why they are asking for recognition. He agreed that all the workers at the company are Security Guards. It is premature to discuss conditions of work at this stage.

Mr Chuttoo also replied to questions from Mr Guildhary of the Co-Respondent Union. He notably stated that he was referring to the last Procedure Agreement signed on 20 November 2020 after the PEEU's application for recognition in June 2020. The Co-Respondent's Statement of Case does not state how many workers they represent and states that they have 75 members.

Mrs Karen Ross Gangnard, HR Manager at Brink's (Mauritius) Ltd, was also called to adduce evidence. She stated that the company is international existing since 160 years; they are present in Mauritius since 2006 following the acquisition of local companies Securicor and High Security. They employ about 2,300 persons with 1,965 in the Security Guard segment regulated under the *Private Security Service Act 2004*. They are objecting to the present application because of the existence of the SGGWU and secondly, they contest the definition of the PEEU's bargaining unit. The existing Union is representative of all of the categories at Brink's since 40 years. Social relations and social dialogue is very important at Brink's. She produced two Procedure Agreements signed in 2015 (Document B) and in 2020 (Document C). They enjoy an enduring and harmonious relationship with the existing Union. Agreements have been signed since they have been working together.

Mrs Gangnard moreover stated that the three categories applied for do not represent the activity of Security Guard. There are about 1,800 persons in human surveillance on site; 60 persons in transport of funds, where the Cash in Transit operate; 70 persons for setting-off of alarms; and 20 persons in distance surveillance. The three categories applied for fall under human surveillance and transport of funds. A table of employees in the four groups was produced (Document D). There are 23 posts which cover the responsibilities of Security Guards and a table of these posts was produced (Document E). The difference between the posts are their responsibilities and they receive an allowance in relation to same and for certain, the allowance is included in their basic salary. They have the same hours of work, are all recruited as Security Guards and the have the same training. She produced a draft contract for the post of Security Guard (Document F) and an addendum setting out the added responsibilities (Document G).

Mrs Gangnard also stated that the three categories applied for do not represent all the posts linked to Security Guard and this could cause issues of fragmentation, which will complicate managing of employees. The contract of employment includes a mobility clause and it may happen that a group of employees are called to support other activities. The teams must be flexible to allow the company to operate. This will allow for the optimisation of resources and for mobility and flexibility across the different posts. Security Guard is the core of the three categories. Cash in Transit Officers are mobile, Vault Officers guard funds on site and Cash Operations Coordinators manage relations with clients. The bargaining unit is wider, with Cash in Transit Officers corresponding to 73 employees and 13 posts for the 'Cash' activity. She produced a table of the Cash in Transit Staff activities (Document H) and a sub-table for the categories in the transportation of funds (Document J) totalling 74 employees. A check-off agreement exists with the PEEU, of which 6 employees are with both Unions. Six out of the PEEU's membership of 66 are also members of the existing Union.

Upon questions from Mr Chuttoo, Mrs Gangnard notably stated that there has been no Collective Agreement signed with the existing Union that has been registered with the Tribunal, although there have been discussions and negotiations. The pay slip refers to the post and the employee's responsibility. The addendum to the contract of employment refers to the job title. The job title on the pay slip is according to the employee's responsibility. Cash in Transit Officers are paid more. What is put on the pay slip is according to a system of management. She agreed that for the given categories, their salary is more than that of other Security Guards. Other categories also have the allowance included in their basic pay. The company decides the remuneration of the categories based on responsibilities, but this does not mean that they are distinct as they are mobile and can work on other sites being Security Guards. The responsibility

allowance varies according to the post. Their allowance is included in the basic salary and they also receive an additional responsibility allowance. A pay slip dated April 2021 for the post of Vault Officer was produced (Document K).

Mrs Gangnard could not say how many workers with less than a year form part of the bargaining unit. Employees have to go through training, are first and foremost Security Guards and according to their capacity and responsibility, they can take other responsibilities. It may have happened that employees have joined directly as Cash in Transit Officer in emergencies but it is exceptional. If the Applicant Union will represent three categories and, for any reason, the employee has to change responsibility, it will not be conducive to harmonious relations and social dialogue. She does not view the Applicant Union as impeding sound industrial relations. If a Union is recognised, there will be good relations as this is important. All the employees follow the same training when joining Brink's and according to their responsibility, they receive a different training. She agreed that the employees in the given categories have different responsibilities, that their salary is different and that they receive a different training according to their new responsibility. However, they are all Security Guards.

Mr Desiré Guildhary, Vice-President of the SGGWU, adduced evidence on behalf of the Co-Respondent Union. He notably stated that he does not know about the Applicant's representativeness but his Union represents all the category of workers, including Cash in Transit Officers. Annex 2 to his Statement of Case show his members other than Security Guards having other responsibilities with their given job titles. They have been negotiating over several years and have signed many agreements despite some not having been registered. They negotiated for the arm allowance for Cash in Transit Officers to be included in the basic salary.

Upon questions by Mr Chuttoo, Mr Guildhary notably stated that they are the sole recognised union representing all the category of employees. They are in the process of signing an agreement but are awaiting the present application for recognition. The arm allowance issue was discussed with Securicor, who did not accept same, and discussions continued when Brink's took over. Workers have the right to join any union they wish. He is aware of the new provision of the law regarding representational status and that the PEEU will have to meet with them on issues of right. They have also met in other forums. He could not say that the rights of the workers will be affected if the PEEU is recognised.

THE MERITS OF THE DISPUTE

It is incumbent on the Tribunal, pursuant to an application made under *section 36 (5)* of the Act, to determine whether the Applicant Union has the support of at least 50 percent of the workers forming part of the bargaining unit inasmuch as the PEEU is seeking to be recognised as sole bargaining agent.

The criteria for recognition as a sole bargaining agent is set out in *section 37 (2)* of the Act. The Tribunal is entitled to require the Applicant Union to produce evidence that it fulfils the criteria for recognition as specified under *section 37*. The PEEU's representativeness has been borne out in its application to the Tribunal. Therein, it has averred that it has 66 members in the bargaining unit consisting of 68 employees at Brink's (Mauritius) Ltd. The bargaining unit comprises the categories of Cash in Transit Officer, Cash Operation Coordinator and Vault Officer.

In adducing evidence in support of the application, the Tribunal has noted that the Applicant's Negotiator has not produced any evidence in support of its membership within the bargaining unit. When Mr Chuttoo was queried by the Tribunal on whether he would be producing any membership forms, he stated that he would not be doing so. The Tribunal has also noted that there were no membership forms submitted with the Applicant's Statement of Case put in reply to the Respondent's Statement of Case.

Although the Tribunal has noted that the Employer has not contested the Applicant Union's representativeness in relation to the bargaining unit, the burden of proof is on the Applicant Union to support its membership figures, the more so that there is already a recognised sole bargaining agent, namely the SGGWU, for all categories of workers with the Employer. The Tribunal, at the very outset of the present application, cannot therefore be certain of the Applicant Union's support in the bargaining unit applied for.

Although, the law provides that a secret balloting exercise may be held in the bargaining unit to determine which trade union the workers would prefer as their bargaining agent, the Tribunal must first be satisfied that the Applicant Union has produced evidence that it is eligible for recognition in accordance with *section 37* of the Act.

The Tribunal shall now consider the ground of objection put forward by the Employer contesting the bargaining unit upon which sole recognition is being presently sought. As noted, the bargaining unit comprises 3 categories. As per the Respondent's evidence, there are a total of 23 categories of employees employed by them. It is clear that the 3 categories are but a fraction of the total number of posts existing within the Respondent's organisational structure.

Moreover, the number of employees in the 3 categories amount to 74, whereas the total number of employees at the company is 1,965 across the 23 posts. The number of employees in the 3 categories are a very small percentage of the total number of Security Guards employed at Brink's and can therefore be considered to be a small bargaining unit.

It would be apposite to note what has been stated in the *Code of Practice*, to be found at the *Fourth Schedule* to the *Act*, in relation to the constitution of a bargaining unit:

90. A bargaining unit shall cover as wide a group of workers as practicable. Too many small units make it difficult to ensure that related groups of workers are treated consistently. The number of separate units can often be reduced by the formation of a joint negotiating panel representing a number of trade unions.

The evidence in the present matter has borne out that the employees at Brink's are initially recruited as Security Guards, are trained and some are then given other responsibilities and further training in relation thereto. It has not been disputed that they are, at the core, Security Guards. Moreover, they also have the same hours of work. The additional responsibilities they are assigned to are reflected in the addendum to their contract of employment.

The contract of employment also provides for a mobility clause, which means that a worker in a given post may be transferred to another post depending on the Employer's operational requirements. Although, it has been agreed that the employees in the given 3 categories are paid more, have different responsibilities and receive a different training, there are not the only ones who benefit from same and are, at the base, Security Guards.

Despite the Applicant Union's contention that it only has the required support to apply for recognition in relation to these 3 categories, the argument that recognition of an unduly small

bargaining unit would result in fragmentation is a very strong one and cannot be taken lightly. As can be noted from *paragraph 90* of the *Code of Practice*, small units make it difficult to ensure that related group of workers are treated consistently. This would not therefore be in the interests of the persons immediately concerned and may also affect good employment relations at the workplace.

At this juncture, it would be appropriate to 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 SCJ 219]*, which was decided under then applicable provisions of the *Industrial Relations Act*:

Learned counsel for the applicant first submitted that the Commission had no power to refuse recognition on the ground that it would not be conducive to good industrial relations. We cannot subscribe to such a proposition. The first of the principles laid down in section 47 of the Act to which the Commission (and other bodies) shall have regard is "the interests of the persons immediately concerned and the community as a whole". It necessarily follows from this that the Commission should be able to refuse recognition if it has cause to believe that such recognition is likely to cause friction or even disorder, or to put the workers in a more perilous position than they would otherwise be.

The *Code of Practice* is meant to provide practical guidance for the promotion of good employment relations and the grant of negotiating rights. The *Code* has furthermore suggested that separate bargaining units can be reduced by trade unions forming a joint negotiation panel. Indeed, same is encouraged when dealing with claims for recognition as may gleaned from the following paragraphs:

102. *Where 2 or more trade unions seek recognition in respect of the same category of workers in an industry, those unions shall examine the possibilities of an amalgamation, or of the formation of a joint negotiating panel, or of some other appropriate variation in the trade union structure in the industry in question.*
103. *The responsibility to avoid disputes on recognition matters between trade unions rests principally with the trade unions themselves. Employers shall endeavour to observe a position of neutrality where rival claims are concerned, and a position of neutrality must include the honouring of all existing collective bargaining commitments.*

104. *The responsibility of a trade union for the failure of an existing joint negotiating panel, or for the failure of a proposed panel to gain acceptance, shall weigh heavily against any claim by that trade union for individual recognition.*

The hearing of the present matter has given no indication, from either the Applicant Union or the presently recognised Co-Respondent, as to whether they would be agreeable to form a joint negotiation panel or whether proposals have been made in this direction. As noted from *paragraph 104*, the lack of consideration for a joint negotiating panel must weigh heavily against the Applicant Union's claim for sole recognition. The *Code of Practice* does not provide that the formation of a joint negotiating panel should come after the trade union is recognised.

The Applicant Union has also contended that the existing recognised trade union does not represent the categories of workers in the bargaining unit applied for. As per the evidence adduced, both the Employer and the SGGWU were adamant that the latter represents all categories of workers employed at Brink's. The list of 75 workers annexed to the Co-Respondent's Statement of Case show its membership in posts other than that of Security Guard and does not amount to the whole of its membership among the various employees. In fact, it should be noted that there are 1,484 employees in the category of Security Guard alone.

Having notably considered the Applicant Union's failure to substantiate its actual support in the bargaining unit applied for as well as whether it would be practical for a small bargaining unit to be recognised by the Employer *vis-à-vis* the Applicant Union, the Tribunal cannot find that the PEEU should be recognised as sole bargaining agent for the categories of Cash in Transit Officer, Cash Operation Coordinator and Vault Officer as applied for.

The present application is therefore set aside.

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SD Shameer Janhangeer
(Vice-President)

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SD Vijay Kumar Mohit
(Member)

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SD Rabin Gungoo
(Member)

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SD Ghianeswar Gokhool
(Member)

Date: 1st October 2021