

**EMPLOYMENT RELATIONS TRIBUNAL**

**ORDER**

**ERT/ RN 21/22**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Rabin Gungoo</b>	<b>Member</b>
<b>Ghianeswar Gokhool</b>	<b>Member</b>

**In the matter of:-**

**Organisation of Hotel, Private Club and Catering Workers Unity (Applicant)**

**And**

**Spa On the Shores 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 Respondent to recognise the Applicant as the bargaining agent in a bargaining unit consisting of workers in the following categories: handyman, carpenter, bartender, storekeeper, stewarding, electrician, supervisor, junior sous chef, security officer, painter, welder, pastry cook, room attendant, minibar attendant, skilled worker, valet des chambres, plumber, kids club hostess, gardener, waiter, cook, cashier, room technician, room maid, public area attendant, room attendant and housekeeping/team leader except managerial grade employed by the Respondent at Shanti Maurice Resort & Spa, Saint Felix Village. The Applicant sent a letter dated 28 March 2022 to the Respondent (copy of document annexed to the application) applying for recognition as bargaining agent for the said bargaining unit. The Respondent replied by way of a letter dated 9 May 2022 whereby the Applicant was informed that the Respondent is “not prepared to recognise *“Organisation of Hotel, Private Club and Catering Workers Unity”* as a Bargaining Agent at Spa on the Shores Ltd for the following reason:

- The required member share is not representative as per figures shared in the above mentioned application.”

The Respondent is resisting the application before the Tribunal but at the same time has averred “*that it has no issues pertaining to the recognition provided that the Applicant supports its contention that it has the required percentage as provided under Section 37(1) of the Employment Relations Act 2008.*” (paragraph 7 of the Statement of Defence of Respondent). Both parties were assisted by counsel before the Tribunal.

The representative of Applicant union deposed before the Tribunal and he declared that the Applicant union has the support of 84 employees in the said bargaining unit at the Respondent. He produced copies of 84 membership forms for the eyes of the Tribunal only.

At that stage, both counsel moved on behalf of the parties that a ballot exercise be carried out in the present matter in the interests of good industrial relations and since the issue was the representativeness of the Applicant. In the light of the Statement of Case and Statement of Defence filed, evidence adduced and the joint motion made by both counsel before the Tribunal, the Tribunal was satisfied that a secret ballot should be held in the interest of good industrial relations and in the interest of justice. The Tribunal thus ordered that a secret ballot be held in the relevant bargaining unit.

The secret ballot was organised and supervised by the Tribunal on the premises of the Respondent at Royal Road, Saint Felix, Chemin Grenier on Wednesday 13 July 2022. One member sitting on the panel informed the Tribunal that she could not attend the secret ballot exercise. When informed of same, the representatives of both parties stated that they had no objection that the Tribunal proceeded with the secret ballot as planned. The Tribunal thus proceeded with the secret ballot exercise with its staff and the panel as presently constituted. The list of employees in the relevant bargaining unit was agreed by both parties. There was a total number of 212 employees in the relevant bargaining unit as agreed by the parties and 117 employees participated in the secret ballot. 109 employees were in favour of the recognition of Applicant as their bargaining agent in the bargaining unit at the Respondent whilst 8 employees were against the recognition of the Applicant as their bargaining agent at the Respondent. There was no void ballot paper. The Applicant thus secured the support of 51.4 per cent of the workers in the bargaining unit.

Section 38(1) of the Act reads as follows:

*“(1) The Tribunal shall, on an application made under section 36(5), determine whether the trade union or group of trade unions, as the case may be, has the support of at least 20 per cent of the workers forming part of the bargaining unit, or where the application is*

*for recognition as a sole bargaining agent, has the support of more than 50 per cent of the workers in the bargaining unit, or otherwise.”*

Section 36(5) of the Act reads as follows:

“(5) *Where –*

*(a) ...;*

*(b) an employer refuses to recognise a trade union or group of trade unions as a bargaining agent;*

*(c) ...*

*(d) ...,*

*the applicant trade union or group of trade unions may apply to the Tribunal for an order directing the employer to recognise the trade union or group of trade unions as a bargaining agent, in accordance with the criteria specified in section 37.”*

Section 37(2)(a) of the Act provides as follows:

*37 (2) Subject to subsection (3) –*

*(a) 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;*

Section 37(3) of the Act is not relevant to the present matter.

Following the secret ballot, the matter was again called before the Tribunal today (still as presently constituted with no objection on the part of the parties). The representative of the Respondent then informed the Tribunal that the Respondent was willing to grant recognition to the Applicant. He also informed the Tribunal that he would not be needing his counsel in the circumstances. Counsel who was replacing counsel for Applicant moved for an order granting sole recognition to the Applicant.

In the light of the results of the secret ballot, the statement made by the representative of Respondent before the Tribunal and as there was no other issue/dispute between the parties, the Tribunal orders that the Respondent is to recognise the Applicant as sole bargaining agent, with sole bargaining rights in the bargaining unit consisting of employees in the following categories: handyman, carpenter, bartender, storekeeper, stewarding, electrician, supervisor, junior sous chef, security officer, painter, welder, pastry cook, room attendant, minibar attendant, skilled worker, valet des chambres,

plumber, kids club hostess, gardener, waiter, cook, cashier, room technician, room maid, public area attendant, room attendant and housekeeping/team leader except managerial grade employed by the Respondent at Shanti Maurice Resort & Spa, Saint Felix Village. The Respondent and the Applicant are to meet at such time and on such occasions as the circumstances may reasonably require, for the purpose of collective bargaining.

By virtue of section 38(15)(b) of the Act, as amended, a copy of this order shall also be submitted to the supervising officer of the Ministry of Labour, Human Resource Development and Training for record purposes.

**SD Indiren Sivaramen**

**Acting President**

**SD Rabin Gungoo**

**Member**

**SD Ghianeswar Gokhool**

**Member**

**15 July 2022**