EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/ RN 52/21

Before

Indiren Sivaramen	**Vice-President**
Francis Supparayen	**Member**
Karen K. Veerapen	**Member**
Parmeshwar Burosee	**Member**

In the matter of:-

PORT LOUIS HARBOUR AND DOCKS WORKERS UNION (Applicant)

AND

1. **PORT LOUIS MARITIME EMPLOYEES ASSOCIATION (Respondent No. 1)**
2. **THE CARGO HANDLING CORPORATION LTD (Respondent No. 2)**

I.P.O:

1. THE MARITIME TRANSPORT AND PORT EMPLOYEES UNION

2. THE STEVEDORING AND MARINE STAFF EMPLOYEES ASSOCIATION

3. THE DOCKS AND WHARVES STAFF EMPLOYEES ASSOCIATION

(Co-Respondents Nos. 1, 2 and 3 respectively)

The present matter is an application made by the Applicant union under section 39(1) of the Employment Relations Act, as amended (the "Act"), for an order "to revoke the Tribunal's Order in the case bearing number ERT/RN 08/14 granting on 7 March 2014 sole recognition to the Respondent No. 1 to represent the workers in the bargaining unit comprising of manual employees and staff employees excluding top management at the

CHCL" (that is at Respondent No. 2). The Applicant union is averring that there has been a change in representativeness which would warrant the Tribunal to grant the order prayed for. Respondent No. 1 is resisting the application whilst the Co-Respondents agree with the application made by the Applicant union. The representative of Respondent No. 2 has informed the Tribunal that Respondent No. 2 will adopt a neutral position in the present matter. All parties were assisted by Counsel except for Co-Respondent No 2, and all parties except Co-Respondent No 2 have filed a Statement of Case in the matter. The Tribunal proceeded to hear the matter.

The President of the Applicant deposed before the Tribunal and he swore as to the correctness of the contents of the Statement of Case of the Applicant. He stated that as at 9 November 2021 they had received 313 application forms from workers to join the Applicant union. He stated that they received the forms during the month of October and beginning of November 2021 and they then made the present application. He suggested that this would be as a result of the frustration of workers with their conditions of work and rights which would not be respected. He averred that the said workers were not agreeable to pay fees to a trade union which was not listening to their grievances and representing them. The representative suggested that the workers as per the application forms expressed their wish to join the Applicant union and relinquish their membership with any other trade unions at the Respondent No. 2.

The representative of Applicant stated that they did not send the forms as they feared that the forms might be tampered with or that information might be leaked as to the forms. Applicant dispatched the forms only after having lodged the case before the Tribunal. The representative of Applicant suggested that there are other workers who approached them but since the case was before the Tribunal the Applicant did not concentrate on collecting additional forms. He however added that the Applicant thereafter had to issue a newsletter to explain the move of the Applicant union when they learned of talks at Respondent No. 2 that pressure was allegedly being exercised on workers. The aim of the case, according to him, was to put all trade unions at the same table to negotiate with Respondent No. 2. He stated that the Applicant union has 565 workers at Respondent No. 2 as members of the Applicant union.

In cross-examination, the representative of Applicant accepted that as per the Statement of Case of Applicant it is averred that out of the 313 new members who joined Applicant union, 296 <u>are members</u> (underlining is ours) of Respondent No. 1. He stated that he did not have with him forms to show that the relevant workers had withdrawn from Respondent No. 1. He stated that there is double membership at Respondent No. 2 and that is why their forms include the provision that the joining member is relinquishing his membership in other trade unions. He could not say who had filled in the relevant 296 application forms. He agreed that on 31 October 2021, Respondent No. 1 had 830 members. He did not agree that the application of Applicant

was not in order. He conceded that the figures provided in the Statement of Case of Applicant at paragraph 4(iii) when compared to figures mentioned in the Statement of Case of Respondent No. 2 were not the same. He also conceded that a worker could not join as a member two trade unions at Respondent No. 2.

The representative of Applicant agreed that he was relying on figures and documents submitted by Respondent No. 2 to show the change in representativeness. In re-examination, the representative of Applicant stated that he received the forms from workers and remitted them to management on 11 November 2021 and that these have been processed by management independently of the Applicant union.

The secretary of Respondent No 1 then deposed before the Tribunal and he produced a copy of the rules of Respondent No 1. He stated that a member has to inform the union in writing of his intention to withdraw from the union. He stated that up to then he had not received any letter from members of Respondent No 1 that they wanted to withdraw from Respondent No 1. However, he stated that there were several members of Respondent No 1 who made complaints that there was harassment for them to sign forms of other trade unions. He stated that there were complaints from a few members that they had not signed any document and that yet their contributions in favour of Respondent No 1 had stopped as from November.

In cross-examination, the representative of Respondent No 1 was referred to paragraph 27 of the rules of Respondent No. 1.

A witness called on behalf of Respondent No. 1 then deposed and he stated that he is a member of Respondent No. 1 since 2013 and that his check-off in favour of Respondent No. 1 was cut for the month of October. However, for the month of November, check-off was deducted for membership of the Applicant union. He stated that he never gave any authorization to the Applicant union to effect any check-off from his salary.

In cross-examination, he stated that he obtained his pay slip one or two days back and that he only complained to the President of his union. He did not complain to management. He did not know how this situation had occurred.

Another witness called on behalf of Respondent No 1 deposed before the Tribunal and he stated that he is a member of Respondent No. 1. He stated that it was only on that day that he learned that he was no longer a member of Respondent No. 1. He learned that for the month of November no check-off was made in his case in favour of his trade union, that is, Respondent No. 1. He stated that he never sent any letter to withdraw his membership from Respondent No. 1 or any form to stop his check-off. In cross-examination, he stated that he had not yet had an opportunity to make a complaint and would do so only after the sitting of the Tribunal.

Respondent No. 2 and Co-Respondents Nos. 1 and 3 decided not to adduce evidence under oath before the Tribunal. The representative of Co-Respondent No. 2, on the other hand, deposed before the Tribunal and he stated that he supports the application made by the Applicant union.

The Tribunal has examined all the evidence adduced before it including the submissions of all counsel, all the documents produced and the pleadings of all parties. With the passage of time, the representativeness of trade unions in a particular bargaining unit may change. Under section 39(1)(a) of the Act, there is no requirement for a trade union applying for an order to revoke or vary the recognition of another trade union to be also a recognised trade union in the same bargaining unit. The evidence adduced before us suggests that the applicant union too has members in the bargaining unit *in lite* so that we find that the applicant has a 'locus standi' and can make the present application. The objection taken to the effect that the applicant union does not have a 'locus standi' to lodge the present application cannot stand and is set aside. The application has been made under section 39(1) of the Act to revoke an order of the Tribunal granting sole recognition to Respondent No. 1 to represent the workers in the relevant bargaining unit. Again, we find no discrepancy in the application, and the order sought ultimately as per the averments of Applicant in its application and statement of case can, at best, be an order for variation of recognition of Respondent No. 1 (that is, from sole recognition to recognition). Counsel for Applicant made it clear in submissions that Applicant is proceeding only under section 39(1)(a) of the Act and is not insisting, and rightly so, on the prayer at paragraph 9(ii) of the application.

Also, the Tribunal has no qualms to use reliable evidence adduced by an employer to ascertain the representativeness of a trade union. In the present case, the representative of Applicant has stated under oath that everything which the Applicant has averred in his statement of case is true. At paragraph 6, the Applicant has averred that:

6. "PLHDWU avers that it has not at this point sent the applications to the CHCL to be processed as there are fears that workers may be unduly pressured by certain officers of the management of the CHCL and PLMEA to withdraw their applications, as has happened in the past."

The representative of Applicant was specifically referred to this paragraph 6 of the statement of case of Applicant in cross-examination and the latter was adamant and did not agree that what was averred in paragraph 6 in relation to certain officers of Respondent No. 2 was not true. In this particular case, we have unchallenged evidence from one worker to the effect that he is a member of Respondent No 1 and that though he never withdrew as a member from his trade union, that is, Respondent No. 1, yet his check-off for the month of November 2021 was made in favour of the Applicant union.

He stated in cross-examination that he complained with the President of his trade union. Another worker was called as a witness for Respondent No. 1 and he stated that he is a member of Respondent No. 1 and that he learned that for the month of November 2021, no check-off was made for his trade union, Respondent No. 1. He never sent any letter to withdraw from the union or any form to management to stop his check-off in favour of Respondent No. 1. Both workers stated that they did not know how this situation arose. The representative of Respondent No 1 swore as to the correctness of the contents of the statement of case of Respondent No. 1. Paragraph 5(ii) of the statement of case of Respondent No. 1 provides as follows:

5(ii) "There has been allegation of alleged forgery of signatures made by members of the applicant (OB 125/2021 Port Police refers)."

The representative of Respondent No 1 added that there were a few members of Respondent No. 1 who had reported that they had not filled in any forms and yet their check-offs in favour of Respondent No. 1 had stopped.

The mere explanation which was sought to be offered in relation to the averments of the two workers and those of the representative of Respondent No. 1 mentioned above was not in the form of evidence before the Tribunal but came from submission of counsel for Applicant. We may here refer to an extract of the submissions: … *We had one Mr Juttun, one Mr Shookhye and Mr Seenanan as well, we have three persons to come and talk about alleged forgery. But what did they say? They do not know what happened, all they saw was that, at the end of November when there was going to be the deductions for check-off the deduction was not made in favor of the PLMEA. How this happened? We do not know. Are they saying somebody forged their signatures? Did the Tribunal hear anyone say somebody would have forged my signature? The answer is no. All they said is that we do not know what has happened. We just know that, at the end of the month, the deductions were not correctly made. Isn't it possible that when the management receives the number of forms that a name here or there just slips in the cracks and then an error, a mistake is made which can easily be corrected by going to verify. (…)*

Coupled with that, the representative of Respondent No. 2, the employer, was not called to depose before the Tribunal to at least confirm under oath or solemn affirmation the figures in relation to check-offs, be it for the month of October 2021 or November 2021. We have absolutely no evidence at all from the employer in relation to the averments made by the two workers and the representative of Respondent No. 1. The figures provided by Applicant in his statement of case differ from figures mentioned in the statement of case of Respondent No. 2. But more importantly, figures provided by Respondent No. 2 clearly cannot stand and cannot be relied upon (underlining is ours) since from a mere total of the figures provided in the statement of case of Respondent

No. 2 the 'union membership' at Respondent No. 2 as at 25 November 2021 would give a total of 1497 workers whereas it is averred earlier in the same statement of case that there are only 1277 workers in the said bargaining unit.

In fact, Respondent No. 2 avers at paragraph 4c of his statement of case the following:

"*It is to be noted that the figures representing union membership as at 25.11.2021 shows a total of 1,497 employees whilst the total number of employees in the bargaining unit is 1277 and this is due to the fact that some employees are members of more than one trade union*;" (underlining is ours)

The Tribunal is left in the dark as to how such a situation occurred. This is simply not in line with section 29(1A) of the Act which provides as follows:

29(1A) "A worker shall have the right to join only one trade union, of his choice, in the enterprise where he is employed or his bargaining unit."

In the present case, the Applicant has the burden to show that there has been a change in representativeness which would warrant the intervention of the Tribunal. Paragraph 4(iii) of the statement of case of Applicant which contains averments in relation to the membership of workers as at 9 November 2021 is denied by both Respondent No. 1 and Respondent No. 2. There is simply no reliable evidence at all before us which would show conclusively that there has been a change in representativeness which would warrant the Tribunal to revoke its order dated 7 March 2014 in case bearing number ERT/RN 08/14. It is apposite to note that the Tribunal has not been provided in the present case with the 313 forms (or copies thereof) which have allegedly been collected by Applicant from October up to the beginning of November 2021.

Also, a worker must withdraw from his trade union before joining any other trade union in his bargaining unit. The Tribunal bears in mind the evidence under oath of the representative of Respondent No. 1, who is the Secretary of the union, that he has not received any letter or form from any member of the union to the effect that the member was withdrawing as a member from the said union. The right of a worker to belong to a trade union as well as the right of a worker to withdraw from a particular union cannot be overemphasized but clearly there must be a procedure in place for doing so. This is usually taken care of in the rules of a trade union. A trade union must, for obvious reasons, be informed and is the main party concerned if ever a member of the trade union withdraws from the said union.

In the light of the state of the evidence before us and for all the reasons given above, the Applicant has failed to prove even on a balance of probabilities that there has been a change of representativeness which would warrant the Tribunal to vary or revoke the

sole recognition granted to Respondent No. 1 in the relevant bargaining unit at Respondent No. 2. The application is thus purely and simply set aside.

SD Indiren Sivaramen

Acting President

SD Francis Supparayen

Member

SD Karen K. Veerapen

Member

SD Parmeshwar Burosee

Member

5 January 2022