

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 27/13

ORDER

Before:

Rashid Hossen	-	President
Esther Hanoomanjee (Mrs)	-	Member
Desire Yves Albert Luckey	-	Member
Georges Karl Louis	-	Member

In the matter of:-

Union of Bus Industry Workers (Applicant)

And

Luna Transport Co Ltd (Respondent)

This is an application made by Mr Imzad Beeharry, President of the Union of Bus Industry Workers, the Applicant for an Order for recognition of the said Trade Union as sole bargaining agent in relation to the employees of Luna Transport Company Ltd. It is averred that the bargaining unit is located at Petit Raffray and is in relation to workers belonging to the categories of Bus Conductors and Drivers. The Union averred that there are 46 employees working in the said bargaining unit.

On 12th February 2013 the Applicant officially wrote to the General Manager of Luna Transport Company Ltd (Respondent) for recognition. It further informed the Respondent that 40 out of 46 employees of the bargaining unit are members of the Union.

On 18th February 2013, Mr Balkrishn Gokulsing, Senior Attorney wrote a letter to the Union on behalf of the Respondent stating that the Respondent is unable to accede to the request of the Union for sole recognition as the Respondent was in presence of a letter dated 18th February 2013 signed by more than 90% of Luna Transport workers in which they stated that they do not wish to be represented by a Union.

On the 6th of March 2013, 36 members working at Luna Transport Company Ltd wrote to the Applicant Union stating that they are still members of the Union and that the Union should continue with the necessary steps for its recognition. This matter was fixed for hearing on the 24th May 2013 when the Applicant started deponing. At some stage it was decided that a ballot exercise is to be carried out on the premises of the Tribunal.

Although the law provides that it is for the Tribunal to organize and supervise a ballot exercise such task is for practical reasons normally done at the place of work of the workers that is space amenities provided by the employer.

There was no objection that the hearing be started anew and all evidence already adduced before the previous bench is to be considered before the present one.

The Applicant deponed to the effect that he received 32 signed check-off forms which he produced. He stated that he had already produced a receipt book

showing the signatures of 21 persons who had already paid and he again produced 7 receipts and some of them have already paid until July. He conceded that there have been problems regarding the Admission Forms. Some workers who were handed over a receipt did not request for check-off forms. Some paid on the eve of the hearing date and the rest on the very day of hearing. The Applicant stated that there are 46 Drivers and Conductors altogether. One Mr Georges Legallant who filled up the check-off forms for the workers was not called as a witness.

Mr Pravin Aubeeluck, a Driver, was the only witness called by the Applicant. He deponed to the effect that the employer's representative is of brutal nature and the employer's representative and his son threatened the worker and were about to beat him up. The employer served a notice of termination of employment on the witness as the latter joined the Applicant's Union. He agreed that the notice referred to non-performance at work and he also agreed that he was sacked by his previous employer as Driver following an accusation relating to theft of diesel.

Mr Kailash Autar is the Director of Luna Transport Company Ltd, the Respondent. He produced a list of all the employees including Drivers, Administrators and Managers. He denied terminating the contract of Mr Pravin Aubeeluck on the ground of the latter joining the Union. He averred that a number of workers signed a document refusing to join the Union.

Mr Rambujun Bundhoo is a Driver at the Respondent Company and he stated that he represents 23 workers who were in attendance on the hearing date. He confirmed that none of these workers are willing to join the Union and they would rather deal with Management directly. He invited the Tribunal to ignore

the signing of check-off forms by those workers. The witness agreed that the document showing their refusal to join the Union was signed on the very day of hearing. Counsel for the Respondent submitted that the document produced before the Tribunal shows a list of 60 workers excluding Management and the list submitted by the Union relates 32. The majority is now saying that they do not wish to join the Union so that the basis upon which the application is made does not hold anymore. As regards the check-off forms there are documents that are challenged and witness Legallant was not a witness in the case. The critical date when the application was made is the 12th February 2013 and it is on that date that the Applicant was to have evidence of representativeness. It is not *ex post facto*. Counsel further added that the witness called by the Applicant was given notice of termination of employment on the ground of poor performance and there is provision for it in the law.

The Tribunal has to decide whether the Applicant trade union would produce evidence that it is representative of the workers in a bargaining unit. This bargaining unit consists of Drivers and Bus Conductors. There is sufficient evidence to show confusion in relation to the filling up of Admission Forms and the Applicant's representative agreed on that issue.

The Applicant's witness did not add much in substance in relation to recognition. He was himself accused in the past of stealing diesel although at a different employer. Nothing prevents an employer to terminate a temporary contract on the ground of poor performance.

The law further provides that where it appears that the trade union is not representative as per the requirement of **Section 37** of the **Employment Relations Act** i.e. it must have the support of more than 50% of the workers in a

bargaining unit for it to have sole recognition, the Tribunal shall organize and supervise a secret ballot in the bargaining unit.

The parties were informed by the Tribunal that this would be the best course in the light of the evidence already adduced before the Tribunal. Further, a constraint of time limit unfortunately did not allow the Tribunal to proceed with same immediately. The Applicant was invited to consider the withdrawal of his application and the lodging of a fresh one whereby the Tribunal could order the holding of a secret ballot instantly. Such consideration was turned down by the Applicant.

In the circumstances the Tribunal is unable to issue an Order for recognition as sole bargaining agent.

The application is set aside.

(Sd) Rashid Hossen
(President)

(Sd) Esther Hanoomanjee (Mrs)
(Member)

(Sd) Desire Yves Albert Luckey
(Member)

(Sd) Georges Karl Louis
(Member)

Date: 7 June 2013