

**EMPLOYMENT RELATIONS TRIBUNAL
ORDER**

ERT/RN 110/12

Before:

Shameer Janhangeer	-	Vice-President
Soonarain Ramana	-	Member
Rajesvari Narasingam Ramdoo (Mrs)	-	Member
Georges Karl Louis	-	Member

In the matter of:-

Organisation of Hotel, Private Club & Catering Workers Unity

and

One & Only Le St Géran Ltd

and

ipo

Le St Géran Hotel Workers Union

The *Organisation of Hotel, Private Club & Catering Workers Unity* (the "*Applicant Union*") has made an application for variation of recognition of the *Le St Géran Hotel Workers Union* (the "*Recognised Union*"), which is the sole recognised union at the *One & Only Le St Géran Ltd* (the "*Employer*"). All the parties were assisted by Counsel in the present matter.

Mr A. Shanto, Negotiator and representative of the *Applicant Union*, was called to depone. He notably produced a bundle of 199 resignation forms dated 24.09.2012 (Document A), wherein the workers concerned have informed the *Secretary of the Le St Géran Hotel Workers Union* that they are resigning from his trade union. He also produced a bundle of 220 ceased forms dated 07.11.2012 (Document B), wherein the workers have withdrawn their authority to the Manager of the *Employer* to deduct their monthly trade

union subscription from their wages paid to the *Union*. He maintained that *Le St Gérard Hotel Workers Union* does not have 50 per cent support and that is why he is asking for variation.

Mr A. Shanto was also questioned by Counsel for the Co-Respondent. He did not agree that the *Union* had 228 members as per their list. He also stated that it is possible for a worker to be a member of both trade unions and that a worker may have left the other trade union and rejoined afterwards.

Counsel for the *Applicant Union* has furthermore called six witnesses who have in all produced 31 letters dated 22.01.2013 (Documents C₁ to C₆; D₁ to D₁₀; E₁ to E₄; F₁ & F₂; G₁ to G₄; and H₁ to H₅) wherein the signatories have each authorised each of the witnesses to represent them in the *Tribunal* as they will not be able to be present personally. They have also stated in the letter that they do not wish Mr Armance to represent them as a member of the *Recognised Union*, they disagree that their names figure on the list of the *Recognised Union* and that they are a member of the *Applicant Union*. A copy of the signatories' identity card is also attached on a separate sheet to each of the letters upon which the worker has signed. The witnesses were also questioned on whether the workers who have submitted the aforesaid letters have informed the *Employer* that they have joined the *Applicant Union* or if they have communicated the aforesaid letters to management.

Counsel for the *Applicant Union* also called Mr A. Ramasamy, who had previously produced 10 letters (Documents D₁ to D₁₀), anew. He gave the names of 13 workers, whose pay slips were in his possession, who have told him that they are no longer members of the *Recognised Union* although their names appear on the list of 228 workers of *Le St Gérard Hotel Workers Union* of which there are 7 new workers in addition to the 31 workers. However, he could not say whether the 13 workers had informed management that they are no longer members of the *Recognised Union*.

Mrs N. Muttea, HR Coordinator, was called on behalf of the Respondent. She explained that management pays check-off on behalf of some employees and some employees pay their check-off directly to *Le St Gérard Hotel Workers Union*. In December 2012, the *Recognised Union* has a membership of 232 workers, out of which they paid check-off for 166 workers. In January, the membership of the *Recognised Union* was at 234 of which 223 workers' check-off was being paid by them. She further disagreed that the internal union (i.e. *Le St Gérard Hotel Workers Union*) was one created by the management of the Hotel. She produced a list of 232 members (Document J) which according to her came from the Human Resources Department. She could not say if she agreed or not to the 31

proxies. She also gave the check-off figures for November 2012 as 166, for October 2012 as 174, and September 2012 as 321.

Mr R. Aukraj, the Vice-President of the *Recognised Union* adduced evidence on their behalf. He produced a list of the members of his trade union dated 23.01.2013 headed "Internal Union List as at 23 January 2013" (Document K) which shows membership to be at 228 workers. He has never received any of the letters showing that the workers have resigned from his union and has cited the name of a worker who told him that he has never signed the letter. He also stated some of his members pay cash where no check-off has been deducted from them. He was thoroughly cross-examined. He acknowledged that his trade union is known as the internal union. Being referred to the rules of *Le St Géran Hotel Workers Union*, he stated that the executive committee of the union has not yet met in January. He did not agree that they have only 166 members which is below 50 per cent. He also stated that 66 members pay their trade union fees in cash directly to the union. He did not have a list of these 66 members. He denied that his union represents the interests of the management and not the workers.

The Co-Respondent called three other witnesses. Mr K.K. Sewdhone has denied that he signed a letter dated 17.01.2013 addressed to *Le St Géran Hotel Workers Union* stating that he is resigning from the *Recognised Union* and that he has given a declaration to the Police. In cross-examination he notably denied filling any form. Mr N. Lofur stated that he was called to sign a paper about three weeks ago to which he was not willing and was threatened to sign same. Mr K.S. Futtinga explained the circumstances in which he signed a letter that has been produced, namely that he signed the pre-typed letter without reading same. Had he been explained that signing the letter meant that he would be resigning from the *Recognised Union*, he would not have signed same. In questions put to him, he stated that he does not know how to read properly but can sign. He stated that he is with the *Recognised Union*.

The present application for variation of recognition has been made pursuant to *section 39* of the *Employment Relations Act*. The parties in the matter have agreed that the number of workers in the bargaining unit is 442. The *Applicant Union* is contending that the *Recognised Union* no longer has more than 50 per cent support despite its list of 228 members.

The *Applicant Union* has produced a bundle of resignation forms which according to its representative show that 199 members have resigned from the *Recognised Union* as at 24.09.2012. The *Tribunal* has considered these forms (which it has found to contain about

198 individual names), compared same to the internal union list of 23 January 2013 (Document K) and has found that the names of 51 workers appear in the latter list. May it therefore be meant to be taken that 147 workers have resigned from the *Recognised Union* and that 51 workers are still members of the *Recognised Union*. It must also be considered that, as per the evidence of the *Employer's* representative, check-off paid by the Hotel to the *Recognised Union* stood at 321 workers in September 2012, 174 workers in October 2012, 166 in November 2012, 166 (out of 232 members) in December 2012 and 223 (out of 234 members) in January 2013. The *Recognised Union* is contending that it has 228 members as per its updated list.

The *Tribunal*, basing itself on the aforesaid resignation forms and the membership of the *Recognised Union*, cannot therefore conclude that the *Recognised Union* no longer has more than 50 per cent support in the bargaining unit at the *Employer* when 51 of the workers who have supposedly resigned on 24.09.2012 are still members of the *Recognised Union* as per its updated list of 228 members dated 23.01.2013.

The *Applicant Union* is furthermore relying on 31 letters, signed by members of the *Union* and addressed to the Secretary of the *Recognised Union*, having photocopies of their identity cards with their original signature thereon which have been produced by several witnesses who have been called to depose on behalf of the *Applicant Union*. These 31 letters show that their signatories do not acknowledge Mr Armance to represent them as a member of the *Recognised Union*, disagree with their names being on the list of the *Recognised Union* and that they are members of the *Applicant Union*.

Counsel for the Co-Respondent strongly objected to the production of these letters during the proceedings on the ground that the witnesses cannot give evidence on behalf of their colleagues. The *Tribunal* has allowed the production of these letters. The *Tribunal* must however decide on the weight to be attached to the letters produced.

The *Applicant Union* is also relying on evidence adduced to the effect that 13 workers informed a representative of the *Applicant Union* that they are no longer members of the *Recognised Union* and of these 13 workers, there are 7 new workers with the rest being among the 31 workers on behalf of which letters were produced. A similar objection was taken to this evidence being adduced.

In *C. Roopchand v J. Aboobakar & Anor.* [2004 SCJ 1], the Supreme Court in commenting on the evaluation of hearsay evidence quoted the following from *Murphy on Evidence*, 7th Edition, on the matter of weight to be attached to hearsay evidence:

Ordinarily, the weight of a hearsay statement must be considered less where it is clear that the maker could have been called as a witness without undue difficulty.

Furthermore, in *The Mauritius Commercial Bank Limited v The Mauritius Union Assurance Company Limited* [2011 SCJ 277], the Supreme Court noted the following on the issue of weight to be attached:

Indeed the weight to be attached to such statement will in due course have to be considered in the light of its contents and all relevant surrounding circumstances including the absence of testing by cross examination.

The *Recognised Union* presently has the support of 228 members in a bargaining unit which comprises of 442 workers at the *One & Only Le St Géran Ltd.* This would be about 51 ½ per cent. The *Applicant Union* would therefore need to show that at least 7 workers are no longer members of the *Recognised Union* to prove that the latter union no longer has the necessary support for sole recognition, which is more than 50 per cent of the workers, in the bargaining unit to succeed in its present application for variation of recognition.

Having considered the evidence on record adduced by the parties to this application, in particular the 31 letters produced as well as the 7 additional names adduced in evidence by witnesses of the *Applicant Union*, the *Tribunal* has found that it cannot lay too much emphasis on the weight to be attached to the aforementioned evidence in view of the circumstances of the present case.

The evidence of the three workers called on behalf of the *Recognised Union* has notably aroused the *Tribunal's* attention. The more so that one worker has denied signing a letter and has even referred the matter to the Police; and another has clearly stated that he was threatened to sign a letter. The last witness called was not too clear as to whether he had voluntarily joined the *Applicant Union* despite having signed a letter (vide Document F₂) although he was adamant that he is not a member of the *Applicant Union*.

This has left the *Tribunal* in serious doubts as to the reliability of the contents of the letters produced when it was open for the *Applicant Union* to individually call at least 7 of

the workers who have supposedly resigned from the *Recognised Union* when it has instead chosen to call 6 representatives to produce letters on behalf of the workers who have apparently resigned. One of these representatives was also called twice. Likewise, the *Tribunal* cannot attach much weight with regard to the 7 workers who have allegedly left the *Recognised Union* although their names still appear on their list.

The *Tribunal* has also noted that the *Applicant Union* through its main representative did intend to produce a bundle of forms dated 17.01.2013 showing that 92 members have resigned from the *Recognised Union*. Upon the Co-Respondent raising the issue that signatures on these letters have been forged, the *Applicant Union* did not insist with the production of these forms. Although, these forms have not been formally adduced in evidence, the *Tribunal* in taking into account these circumstances has found some cause for concern with regard to this application.

Although the *Tribunal* is not bound by the law of evidence and may deal with the matter with a minimum of legal formalities, it cannot also be overlooked that the *Tribunal*, in spite of its administrative nature, must act and is bound to act judicially and follow substantially the procedure of a court of law (vide *Mauritius Breweries Ltd v Commissioner for Income Tax and six other cases [1996 SCJ 402]* followed in *D. Bagha and Ministry of Education, Culture and Human Resources and Anor. [RN 1023 of 2009]*).

The *Applicant Union* has furthermore sought to show that given that the *Recognised Union* has only 166 members paying check-off it does not have the required support and in so doing has questioned whether there are 66 other members of the latter union who are paying their dues directly to their trade union. The *Tribunal* has not found any merit in this argument in as much as the *Applicant Union's* case is based on the membership list of the *Recognised Union* which showed 232 members in December 2012 and 228 members as at 23.01.2013. The evidence of the *Employer* is also relevant in as much as they paid check-off to the *Recognised Union* for 166 workers out of 232 members in December 2012 and for 223 workers out of 234 members in January 2013. It is clear that membership numbers do not equate to check-off numbers.

In the circumstances, the *Tribunal* cannot be satisfied that there has been a change in the representativeness of *Le St Géran Hotel Workers Union* at the *One & Only Le St Géran Ltd* and therefore cannot make an order in relation to the present application.

The application is therefore set aside.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Soonarain Ramana
(Member)

(Sd) Rajesvari Narasingam Ramdoo (Mrs)
(Member)

(Sd) Georges Karl Louis
(Member)

Date: 19th February 2013