

**EMPLOYMENT RELATIONS TRIBUNAL
ORDER**

ERT/RN 25/2013

Before:

Shameer Janhangeer	-	Vice-President
Sounarain Ramana	-	Member
Rajesvari Narasingam Ramdoo (Mrs)	-	Member
Triboohun Raj Gunnoo	-	Member

In the matter of:-

Private Enterprises Employees Union

Applicant

and

Hotel Le Flamboyant (Gitanjali Co Ltd)

Respondent

The Private Enterprises Employees Union (the "*Applicant Union*") has made an application before the *Tribunal* for an order for recognition under *section 38 (1)* of the *Employment Relations Act* (the "*Act*"). The *Applicant Union* claims to represent 30% of all employees, excluding those with executive managerial powers and those with less than one year service, of Hotel Le Flamboyant (the "*Employer*") in Port Maturin, Rodrigues.

The *Applicant Union* was assisted by a trade union representative and the *Employer* was assisted by Counsel instructed by Attorney.

Mr Reeaz Chuttoo, Trade Unionist, adduced evidence on behalf of the *Applicant Union*. He stated that among the 15 employees of the hotel, the union has 9 members. These 9 members have voluntarily signed their union membership forms and have produced photocopies of their identity cards. The 9 members represent more than the 30% required by law for recognition. The bargaining unit represents all workers except those with

executive managerial powers. Among the members, none have less than a year's employment. The union wrote to the employer for recognition which the employer did not grant and hence they have applied to the *Tribunal* for recognition. They are therefore asking for recognition for purposes of collective bargaining as they represent more than 30% in the bargaining unit. He also stated that he is not asking for sole recognition.

Under questions put by Counsel for the *Employer*, Mr R. Chuttoo stated the union has representatives in Rodrigues. He personally met with 3 workers of the hotel. He has an updated list of workers at the hotel, who are members of the union and those who are not, which he received from his representative in Rodrigues. According to him there are 14 workers at the hotel and one has recently been recruited. There are 9 members of the union.

Mr R. Chuttoo also added, in re-examination, that according to the Constitution of the union if a worker no longer wishes to be a member of a union, he has to sign a Form B. Up to now no employee has contacted the union's representative in Rodrigues stating that they wish to leave the union. All members are aware of the Constitution of the union and are explained how the union works, what are the requirements and what the worker must adhere to.

Mr Bissoon Mungroo, Director, was called to adduce evidence on behalf of the *Employer*. He stated that the hotel has 15 employees and cited their names. Among them, 3 have worked for less than a year. He produced a copy of the list of 15 staff employed as at 14 May 2013 (Document A). He also produced 3 pages of photocopies of identity cards (Document B) of workers who do not wish to join the union. He also produced a fax copy of a letter dated 7 May 2013 with a photocopy of 3 identity cards (Document C). The letter shows 11 workers who have signed personally and written their identity card numbers. The 3 last of the 11 workers were recruited last Monday. He also produced the original of the letter dated 7 May 2013 (Document D). According to him, the union does not represent 30%.

Following questions put by the representative of the *Applicant Union*, Mr B. Mungroo notably stated that in reply to the union's letter, he wrote asking to be shown the 30% to enable him to recognise. He recognises what has been said in the law. He had no meeting with the trade union and only received a letter stating that the union has 30% support. He recently laid-off some workers and went on to explain the working habits of the employees of the hotel and made comments on their attendance. He lays-off workers who do not work and cannot accept caprices of a worker when the worker does not want to work. He stated that the workers wrote that they do not agree to join the union and when confronted with

the list produced (Document C), he stated that each worker has written his name, his identity card number and signed. Nothing moved him to ask the workers why they wish to join the trade union, the workers wrote that they have been contacted to join the union. The workers did not sign in his presence, they wrote, telephoned him, told him that they have been requested to join the union. He also stated that there has been pressure, people have been sworn at, people are not coming to work by bus on time and that they (the workers) do not want to join the union. He is not aware of the workers' signature on the list. He has also denied having increased the salaries of the workers by more than what has been provided for in the law.

Mr B. Mungroo, under re-examination, also stated in relation to the letter produced (Document C) that what has been typed is collective and is not written. He also maintained that the workers do not attend to all their working days in a month.

Mr R. Chuttoo also produced the 9 membership forms together with copies of the identity cards of the workers (except for one worker who produced a copy of his driving licence) who have joined the *Applicant Union* (Documents E₁ to E₉). In relation to the forms produced, Mr B. Mungroo stated that the forms were signed in January and asked the *Tribunal* to verify the names, the signatures and the quantum. He also stated that there is a difference between a form signed in January and one signed last week.

The present application for recognition of a trade union as a bargaining agent has been made pursuant to *section 38 (1)* of the *Act*. The *Applicant Union* is relying on 9 membership forms dated between the 24 January 2013 and 29 January 2013 in support of its application, which according to them represents more than 30% of workers in the bargaining unit. It may be noted that 8 of the 9 members of the *Applicant Union* are among the workers from the list of the 15 staff employed at the hotel produced by the representative of the *Employer*. It must also be noted that 3 of the 15 staff at the hotel have worked for less than one year and cannot form part of the bargaining unit as per the application.

The *Employer*, on the other hand, contends that 11 workers of the hotel have informed him that they are not interested in joining the trade union and want to discuss directly with the representative of the hotel and a letter dated 7 May 2013 together with photocopies of identity cards has been produced to this effect. The 11 workers have inserted their names, identity cards numbers and signed in the aforesaid letter. When compared to the hotel staff list produced, 7 of the names of the 11 workers are present. Moreover, 4 of the 7 workers are among the 9 members of the *Applicant Union*.

It may be noted from the letter dated 7 May 2013 that the workers therein have stated that they have been approached to join a trade union. However, from the forms produced by the representative of the *Applicant Union*, the 4 workers similar to the letter dated 7 May 2013 and the membership forms are members of the trade union since the 24th and the 27th of January 2013.

The *Tribunal* has found that the *Applicant Union* has 8 members from the list of 15 workers of the hotel, which also includes the 3 workers who have worked for less than a year. In relation to the aforementioned 4 workers, the *Tribunal* cannot be fully convinced that they have ceased to be members of the *Applicant Union* when it was open for them to inform the union that they no longer wish to be members as has been explained by the representative of the *Applicant Union*. Furthermore, the representative of the *Applicant Union* was adamant that the union still has the same membership numbers as at the time of the application, none of which having less than a year's employment at the hotel.

As a matter of guidance for the promotion of good employment relations, one may note what has been stated in the *Code of Practice* at paragraph 40 of the *Fourth Schedule* of the *Act* in relation to a worker:

The individual worker has obligations to his employer, to the trade union to which he belongs and to his fellow workers. He shares responsibility for the state of employment relations in the establishment where he works and his attitudes and conduct can have a decisive influence on them.

It may also be noted that even when considering that the 4 workers (whose names, signatures and identity card numbers appear in the letter dated 7 May 2013) are no longer with the union, the *Tribunal* does find that the *Applicant Union* still has at least 30% support with its 4 remaining members in the bargaining unit of 12 workers.

The *Tribunal* is therefore satisfied that the *Applicant Union* has produced evidence that it is representative in accordance with section 37 of the *Act* and issues an order that the Private Enterprises Employees Union be granted recognition to undertake collective bargaining with Hotel Le Flamboyant (Gitanjali Co Ltd) for a bargaining unit comprising of all workers at the hotel except for those workers with executive managerial powers and with less than a year's service.

The *Tribunal* also declares that the Private Enterprises Employees Union shall be recognised as a bargaining agent. The recognised trade union and the *Employer* are now therefore required to meet at specified intervals or at such time and on such occasions, as the circumstances may reasonably require, for the purposes of collective bargaining.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Sounarain Ramana
(Member)

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

(Sd) Triboohun Raj Gunnoo
(Member)

Date: 4th June 2013