EMPLOYMENT RELATIONS TRIBUNAL

RULING

RN 50/13

Before

IndirenSivaramen	**Vice-President**
Vijay Kumar Mohit	**Member**
Denis Labat	**Member**
Khalad Oochotoya	**Member**

In the matter of:-

Syndicat des Travailleurs des Etablissements Privés (Applicant)

And

Tea Blenders Ltd (Respondent)

The Applicant has applied to the Tribunal for an order directing the Respondent, that is, the employer, to recognise Applicant as a bargaining agent for a bargaining unit consisting of workers of the Respondent. The Respondent was assisted by Counsel whereas the Applicant was represented by Mr A Shanto. The Respondent has taken a preliminary objection to the present application which read as follows:

The Respondent moves that the present application made under section 38(1) be set aside inasmuch as it has not been preceded by an application in writing to the employer under section 36(1) prior to the matter being referred to the Employment Relations Tribunal.

The matter was thus fixed for Arguments whereby Mr Shanto informed the Tribunal that the Applicant was insisting with the said application though he accepted that no application in writing had been made to the employer prior to this matter being referred here. According to him, there was no need for a written application to be made to the employer and the present application could be made directly to the Tribunal.

Senior Counsel for Respondent offered his arguments before the Tribunal whilst Mr Shanto stated that he was leaving the matter in the hands of the Tribunal.

The Tribunal has examined the arguments of Counsel whilst bearing in mind the admission by Mr Shanto that no written application had been made first to the employer before the matter was referred to the Tribunal under section 38(1) of the Employment Relations Act (the "Act"). The law is clear and the jurisdiction of the Tribunal under section 38 of the Act to order the employer to recognise the trade union as bargaining

agent exists only where an employer refuses to grant recognition to a trade union in accordance with section 37 of the same Act. The refusal need not be in writing and for obvious reasons the jurisdiction of the Tribunal would still be available to a trade union or group of trade unions where the conduct of the employer would in fact amount to a refusal. We cannot however accept that section 36(1) of the Act allows a trade union not to apply in writing to an employer and thus bypass the latter and come directly to the Tribunal.

Besides not being conducive to good employment relations, such an interpretation would not make sense. The Tribunal was quite puzzled by the stand of the Applicant. Section 36 of the Act deals with 'Application for recognition' and subsection (1) provides as follows:

"A trade union or a group of trade unions of workers acting jointly may apply in writing to an employer for recognition as a bargaining agent, or as a joint negotiating panel, or as a sole bargaining agent, for a bargaining unit."

This provision is to be read along with other provisions in the same section and with sections 37 and 38 of the Act. First of all, the application will be in writing and according to section 36(2) of the Act, the application shall be accompanied by a number of documents and information. There is then a strict time limit provided by section 36(3) of the Act whereby the employer has to inform the union/s of his decision and this again in writing. Section 38(1) of the Act provides that "*Where an employer refuses to grant recognition to a trade union or a group of trade unions in accordance with section 37, the trade union or group of trade unions may apply to the Tribunal for an order directing the employer the recognise the trade union or group of trade unions*."

The procedure as provided under section 36 of the Act coupled with section 38(1) of the Act clearly show that access to the Tribunal is granted when an employer refuses to grant recognition to a trade union in accordance with section 37 (which deals with the criteria for recognition essentially in the form of percentage of support from workers required) following an application which would have been made to the employer as per section 36 of the Act. The words "may apply" in section 36(1) (see above) only provide that a trade union may or may not wish to apply for recognition, that is, to act as bargaining agent for a particular bargaining unit. Use of the words "shall apply" would instead have been odd since a trade union with say less than 30 per cent of the support of the workers in a bargaining unit may wish not to apply, and rightly so, for recognition as a bargaining agent in a particular bargaining unit.

This application has been wrongly entered and an application should instead have been made to the employer first. The application is thus set aside.

(Sd)	**(Sd)**	**(Sd)**	**(Sd)**
Indiren Sivaramen	**Vijay Kumar Mohit**	**Denis Labat**	**Khalad Oochotoya**
Vice-President	**Member**	**Member**	**Member**

22 August 2013