

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/RN/03/13

Before:

Indiren Sivaramen	- Vice-President
Ramprakash Ramkissen	- Member
Rajesvari Narasingam Ramdoo	- Member
Khalad Oochotoya	- Member

In the matter of:-

Organisation of Hotel, Private Club & Catering Workers Unity (Applicant)

And

Smegh Ltd, La Plantation Resort & Spa (Respondent)

This is an application under Section 51(8) of the Employment Relations Act for an order requiring the Respondent (the employer) to comply with a provision of the procedure agreement entered into by both parties. The relevant provision (Article 5(ii)) of the procedure agreement, subject matter of the dispute, reads as follows: "*The company hereby agrees to afford every assistance to the Union to carry out its legitimate functions. (...)*" The Respondent was assisted by Counsel whilst the Applicant was assisted by a negotiator.

Evidence has been adduced by the union to show mainly that trade union meetings have been held in the mess room previously by the Applicant during 'lunch time' without causing any disturbance whilst the evidence led by the Respondent was to the effect that the meetings held in the mess room caused inconvenience to some workers including non-unionised workers and to the Respondent as well inasmuch as the mess room is also used by contractors who, strictly speaking, have nothing to do with trade union business of the hotel though they may be operating within hotel premises. Unchallenged evidence has also been adduced in relation to the limited seating capacity in the mess room for lunch.

The Respondent has also adduced evidence to the effect that it has proposed to the union that the meetings be held in a conference room whereby 'time-off' may also be granted to members of the union to attend the said meetings.

The Tribunal has examined all the evidence adduced before it. It is apposite to note that the Applicant is not seeking Respondent's compliance with a provision of the

procedure agreement whereby specific obligations or duties have been imposed on the Respondent. Instead, the relevant provision has been couched in very general terms to say the least whereby the Respondent agreed to afford every assistance (underlining is ours) to the union to carry out its legitimate functions. This is not a provision whereby a detailed procedure for dealing, for example, with grievances or disciplinary action has been provided and not complied with. Also, the provision relied upon by the union cannot be interpreted to mean that previous arrangements made for the union to hold meetings shall not or cannot be varied.

The Tribunal will refer to the last part of Article 5(iii) of the procedure agreement whereby it is expressly provided that "*Further, employees shall not engage in any union activity while on employer's time or on employer's property except with the express permission of management.*" This provision is not inconsistent with relevant sections of the law such as section 40 of the Employment Relations Act (ERA) which deals with access to workplace and section 29 of the same Act which deals with the right of workers to freedom of association. Section 29(1)(c) of the ERA provides that "*Every worker shall have the right-*
(c) subject to section 42, to take part, outside working hours or with the consent of the employer within working hours, in the lawful activities of a trade union of which he is a member;". Section 42 of the ERA relates to time-off facilities. For meetings held by the Applicant on the Respondent's property or while workers are on employer's time, the express permission of management is required. Obviously, this permission should not be unreasonably denied and the issue of reasonableness will depend on a number of factors including prevention of disruption of work.

In this particular case, the Respondent is not objecting to trade union meetings being held on its premises but the issue is the venue for such meetings. The evidence adduced clearly shows that the holding of meetings by the trade union (even if held only once every two months) in the mess room causes inconvenience to workers and the Respondent. We will not go as far as describing same as "disturbance". However, the mere fact that there is a television set there which cannot be switched on during trade union meetings, the limited seating capacity in the mess room for even the unionised workers and the unchallenged evidence that food is provided by the hotel in that mess room to all workers illustrate this inconvenience. Management is proposing for the meetings to be held in a larger conference room and this appears reasonable provided of course that the relevant workers can, in practice, attend the meetings without being prejudiced in terms of having to opt between taking their lunch provided to them by the hotel in the mess room only or attending the trade union meeting with no lunch. In any event, it is an offence for any employer to restrain a worker from exercising his right to freedom of association under section 29 of the ERA. The representative of the Respondent referred to "time-off" to be granted to members of the union to enable them to attend the meetings. The Tribunal finds that some kind of arrangement in terms of permission to attend meetings of the recognised trade union (with no loss of pay) or other arrangement for food consumption during lunch time may be worked out and agreed between the parties.

What really matters in this case is that the Respondent is not removing its assistance to the union to enable it to carry out its legitimate functions. The Respondent is in fact proposing an alternative venue on the ground of inconvenience caused to users of the mess room. There is no reference in the procedure agreement that meetings of the trade union are to be held in one particular venue only or at a particular time. In any event, in the light of the current application, even if the Applicant was successful, the Tribunal could only have issued an order requiring the Respondent “to provide every assistance to the union to carry out its legitimate functions.” The Tribunal cannot read in Article 5(ii) of the procedure agreement more than what has been agreed between the parties.

For all the reasons given above, the Tribunal finds that the Applicant has failed to show that an order requiring the Respondent to comply with the first part of Article 5(ii) of the procedure agreement ought to be granted and the application is set aside.

(Sd) Indiren Sivaramen
Vice-President

(Sd) Ramprakash Ramkissen
Member

(Sd) Rajesvari Narasingam Ramdoo
Member

(Sd) Khalad Oochotoya
Member

7 February 2013