

# **EMPLOYMENT RELATIONS TRIBUNAL**

**ERT/RN 100/14**

## **ORDER**

**Before:**

<b>Rashid Hossen</b>	-	<b>President</b>
<b>Vijay Kumar Mohit</b>	-	<b>Member</b>
<b>Rajesvari Narasingam Ramdoo (Mrs)</b>	-	<b>Member</b>
<b>Triboohun Raj Gunnoo</b>	-	<b>Member</b>

**In the matter of:-**

**Organisation of Hotel, Private Club &Catering  
Workers Unity**

**(Applicant)**

**And**

**Beau-Port Industries Ltd/Le Prince Maurice Hotel**

**(Respondent)**

On 15<sup>th</sup> September 2014 an application was lodged before the Employment Relations Tribunal by the Organisation of Hotel, Private Club and Catering Workers Unity for an Order of recognition as bargaining agent in relation to the employees of Beau-Port Industries Ltd/Le Prince Maurice Hotel. The application is supported according to the Applicant by more than

30% of the workforce within the said bargaining unit located at Belle Mare and consists of the following grades:-

Valet des Chambres	Gardener
Head Waiter	Laundry
Cleaner	Team Leader
Pastry Cook	Cashier
Receptionist	Plumber
Hostess	Telephonist
Porter	Stewarding
Life Guard	Supervisor
Entertainer	Assistant Cook
Handyman	Electrician
Kitchen Helper	Barman
Attendant	Pool Attendant
Cook	Therapist
Waiter	Linen Attendant
Attendant	Carpenter
Driver	Clerk
Demi Chef de Partie	Security Officer
Painter	

The application is made for the purpose of collective bargaining in respect of above named grades.

The Applicant has annexed 136 Confirmation Forms.

The only witness called for the Applicant is the representative of the Ministry of Labour, Industrial Relations and Employment, Mr D. M. Gopaul who holds the post of Senior Labour and Industrial Relations Officer. He stated that he had been delegated by the Permanent Secretary of the Ministry of Labour to depone in the present matter. He enquired into the list of workers included in the bargaining unit with respect to the present application and he produced a document to that effect. According to him the

enquiry had been recently effected i.e. 2, 3 days prior to his attending Tribunal and there are some 221 workers that are in the said bargaining unit categorizing themselves into different groups. He agreed under cross-examination that there are other posts that have not been included in his list and that there are in fact 312 employees in total. The latter figure minus 252 (as advanced by the Union) makes 60 and those 60 must be in other posts. He added that there are 29 posts at managerial level.

The representative of the Respondent Mr Juno Lagaille stated that the application does not meet the requirement of 30% with regard to representativeness. According to him the posts of Lifeguard, Gardener and Security Officers are subcontracted and incumbents do not form part of the permanent workforce. He gave a description of the 60 workers that are not included in the list. The witness also stated that there have been some 48 departures since the 10<sup>th</sup> of March 2014.

Counsel for the Respondent submitted on three points:-

- (i) There are over 60 employees who ought to have been in the bargaining unit;
- (ii) The law makes reference to workers and they include all those who fit in the bargaining unit. Those who are at management level cannot be excluded and
- (iii) the application is not supported by evidence inasmuch as the representative of the Applicant failed to depone.

We will deal with the last point first. It is incumbent on Applicant to adduce evidence sufficient in support of its application. The representative of the Organisation of Hotel, Private Club and Catering Workers Unity chose not to be in the box to sustain the application and be subjected to cross-examination. The only witness who deponed is the representative of the Ministry of Labour and Industrial Relations and his evidence is restricted only to the bargaining unit list that was submitted to him by the Union and which list is hotly contested by the representative. The putting in of Confirmation Forms cannot be considered to be sufficient evidence when representativeness is in issue. A party has to offer sufficient evidence. We note also that the representative of the Union has made a request to the Tribunal to organize and supervise a secret ballot. We refer here to what the Tribunal stated in the matter of the *Union of Bus Industry Workers and UBS Transport Ltd* [ERT/RN 94/13]:-

*“The application to the Tribunal to organize and supervise a secret ballot to determine which trade union workers wish to be their bargaining agent cannot be granted by the mere asking. The applicant must pass the threshold of satisfying the Tribunal that there is sufficient evidence that would justify such course. The applicant chose to withhold information regarding representativeness of his trade union membership and which issue is hotly contested by the respondent. We are aware of the legal provision that protects the interest of members of union who do not wish to reveal their identity. That should in no way be interpreted as an obligation on the Tribunal to proceed for secret balloting by the mere asking.”*

Likewise in *Private Enterprises Employees Union and Tropic Knits Ltd* [ERT/RN 85/13], the Tribunal had this to say:-

*“It is for the Applicant to make its case with sufficient evidence that will justify an order in its favour. An application form that avers ‘not less than 118’ in the bargaining unit located at Royal Road, Forest Side must satisfy the Tribunal that the ‘not less than 118’ represents ‘not less than 30%’. The Tribunal has not been favoured with the exact number of those workers in the bargaining unit, excluding foreign and temporary workers. In any event even if we were to accept the figures (unchallenged) provided by the Respondent and discard managerial staff and expatriate employees, the Applicant would have the support of only 19.9% of the workers in the bargaining unit if they indeed have the support of 118 workers. Furthermore we note that there is a disparity with regard to the location of the bargaining unit as averred in the application and evidence ushered before the Tribunal.”*

With regard to the submission that there are over 60 employees who ought to have been in the bargaining unit, we quote here the answer given by Mr Gopaul the representative of the Ministry of Labour and Industrial Relations to a question put to him in cross-examination:-

*“**MR HEIN:** D’accord. Now, I am putting it to you that in the request that has been made by the union there are other posts that have not been included by you because you have not been asked for that?*

***MR GOPAUL:** Yes.”*

As to the definition of ‘worker’ in the **Employment Relations Act 2008**, as amended, it means “*a person who has entered into or who works under a contract of employment, or a contract of apprenticeship with an employer, other than a contract of apprenticeship regulated under the Mauritius Institute of Training and Development Act, whether by way of casual work, manual labour, clerical work or otherwise and however remunerated*” and it includes “*a former worker*” and “*a person who has accepted an offer of employment.*” Nowhere do we find in the application form that managers are to be excluded in the bargaining unit. Indeed workers include all those who fit in the bargaining unit irrespective of them performing duties at management level. Trade union has to make clear as to who they wish to be included in the bargaining unit.

For the reasons given above, the application is set aside.

**(Sd) Rashid Hossen**  
**(President)**

**(Sd) Vijay Kumar Mohit**  
**(Member)**

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

**(Sd) Triboohun Raj Gunnoo**  
**(Member)**

**Date: 3 December, 2014**