EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 111/14

ORDER

Before:

Rashid Hossen	**-**	**President**
Sounarain Ramana	**-**	**Member**
Rabin Gungoo	**-**	**Member**
Triboohun Raj Gunnoo	**-**	**Member**

In the matter of:-

Triolet Bus Service Ltd

(Applicant)

And

Union of Bus Industry Workers (UBIW)

(Respondent)

This is an application made under **Sections 76 and 86(3) of the Employment Relations Act 2008,** as amended to declare a threatened strike scheduled on 11th October 2014 to be unlawful.

The Applicant avers the following:-

1.1 On 03 August 2013, Applicant, amongst others, and Respondent came into a collective agreement whereby the

workers would be entitled to an increase of salary by 19% over a period of three years.

1.2 The Collective Agreement is therefore in force until 31 July 2016.

1.3 The Applicant has become aware that the Respondent intends to carry-out a strike in the transport sector on 11 October 2014, and thereafter in case no satisfaction is given to it, it will carry-out a strike of unlimited duration as from 02 December 2014.

1.4 In August 2013, the Applicant entered into a collective bargaining with the Respondent whereby the said increase of 19% would be split in three years, payable 15% of increase as from 01 August 2013 retroactively; 2% of increase as from 01 August 2014; and finally 2% as from 01 August 2015.

1.5 Following this collective agreement, there has been no labour dispute, no meaningful negotiations with the employer for a period not exceeding 90 days or for such longer period as may be agreed in writing between the parties.

1.6 The Respondent failed to seek any assistance from the Conciliation Service of the Ministry of Labour, Industrial Relations and Employment, since no meaningful negotiations were held.

1.7 Had negotiations been held, no settlement has been reached between the parties, the Respondent was bound to report a labour dispute to the Commission for Conciliation and Mediation (**CCM**), which again, the Respondent failed to do. In which case, the CCM would then have 30 days or such longer period as agreed between the parties to complete its

proceedings; even this did not take place. In case no agreement is reached, the CCM would have to submit its report to the parties within 14 days; that also never happened since there was no labour dispute.

1.8 It is only when both parties decline to refer the labour dispute for voluntary arbitration (i.e. refer the case to the Employment Relations Tribunal or a Private Arbitrator), that the Union may, within 45 days of submission of the Report, have recourse to strike action subject to the following strict procedures being followed –

(i) A strike ballot supervised by the Permanent Secretary of the Ministry of Labour be carried out by the Union;

(ii) the ballot is successful in obtaining an absolute majority (i.e. more than 50%) of the workers concerned by the dispute;

(iii) a notice of not less than ten days of the commencement of the strike is given to the Minister and to the employer.

1.9 The above strict procedures have not been followed by the Respondent.

1.10 The Employment Relations Act 2008 also provides that where a labour dispute is reported, no party to the dispute may report –

(i) Any other labour dispute between the same parties within a period of six months immediately following the date on which the original report was made;

(ii) a labour dispute on the same issue between the same parties within a period of 24 months following the date of the determination of the dispute; or

(iii) while a collective agreement is in force except during the renegotiation period of the collective agreement

which shall not be less than 3 months before the expiry of the collective agreement.

1.11 Being given that there is already a Collective Agreement in force which was signed on 03 August 2013 and remains valid until 31 July 2016, the Act therefore prevents the Respondent from reporting a dispute.

1.12 The Act also provides that –

(i) an employer cannot terminate the employment of a worker by reason of his participation in a lawful strike (meaning that in case of participation in an unlawful strike, an employer may sanction the worker);

(ii) a worker shall not be entitled to be paid wages while he is on strike;

(iii) A worker who participates in an unlawful strike shall commit an offence and may be liable to a fine not exceeding Rs 10,000 on conviction.

2. The Applicant avers that all the above and all the above provisions of the law have not been fulfilled by the Respondent and therefore the aforesaid intended strike is unlawful.

3. In view of the above circumstances and being given that the country may be paralysed due to a strike in the transport industry and in view that the interests of the workers themselves are at risk, it is urgent and necessary that an interim order in the nature of an injunction be issued preventing Respondent from causing any strike in the transport sector from occurring on 11 October 2014 or onwards. The Applicant also prays that a summons be issued against the Respondent to show cause if any, why the said strike should not be declared unlawful.

4. The Applicant avers that the balance of convenience is in its favour.

5. The Applicant undertakes to compensate the Respondent for any reasonable damages arising of the issuing of any of the above ORDERS in the event that Judgment is given in favour of the Respondent.

6. The Applicant therefore prays accordingly and prays for any such order as the Hon. President shall deem appropriate in the circumstances.

Mr Leckram Nundlall, Managing Director of Triolet Bus Service Ltd (Applicant) ratified the contents of Applicant's affidavit and stated that a Collective Agreement has been signed in August 2013 between the Triolet Bus Service Ltd (TBS Ltd) and the Union of Bus Industry Workers (UBIW). The Collective Agreement has many parties subscribed to it with more or less the same terms and conditions and is valid for 3 years. The TBS Ltd employs some 825 employees inclusive of drivers, conductors, administrative staff and workshop staff grouped into two Unions. The UBIW has the support of some 400 to 450 employees at the company which represents about 40% of the workers. The deponent confirmed that there has been no dispute declared by the workers following signature of the Collective Agreement and that the Applicant has never been called by the Commission for Conciliation and Mediation (CCM). Neither has there been any complaint regarding health, safety or security nor has the employer failed to pay remuneration for about 50% of its workforce and nor was he subject to any Voluntary Arbitration. The witness stated that he learned from the media that a strike was being set on the 11th October and it was eventually suspended.

The Respondent is consulting its members and they are planning to go for a strike on the 02nd or 03rd December 2014.

Mr Satish Ramdewar, driver at the Applicant's company also deponed. He is a member of the Respondent's Union and he learned that a strike was to take place with regard to the workers at Applicant's place on the 11th October 2014. According to him workers were being notified verbally about the strike. The message came from a representative of the Union, one Mr Ramtohul and from other workers. The strike of the 11th October 2014 did not take place.

In his submissions, Mr Sookia, attorney-at-law for Applicant, explained that the purpose of calling Mr Ramdewar is to establish that knowledge of the strike did not come only from the media. The purported strike which was to take place on the 11th October last is an ongoing issue as it has been postponed to another date i.e. 02nd of December 2014. He referred us to the various provisions governing strike in the **Employment Relations Act 2008,** as amended. According to him the procedures laid down have not been followed and there is still a Collective Agreement that is in force. Neither has there been any issue regarding health and security of any worker nor any remuneration that has been left unpaid.

The Respondent has failed to put in an appearance in spite of notice forwarded by registered post and summons duly served upon it and the Tribunal proceeded to hear the application in absence of the Respondent.

The Tribunal refers to **Part VII** of the **Employment Relations Act 2008,** as amended under the heading **'Strikes and Lock-outs':-**

"76. Right to strike and recourse to lock-out

(1) Subject to section 77, every worker has the right to strike and every employer may have recourse to a lock-out, where-

(a) a labour dispute has been reported under section 64 and no agreement has been reached;

(b) the parties to the labour dispute have not elected to refer the dispute for voluntary arbitration under section 63;

(c) a strike ballot has been successfully taken in accordance with section 78; and

(d) a notice of the strike or lock-out has been given to the Minister in accordance with section 79.

(2) Notwithstanding subsection (1), a worker shall have the right to strike where-

(a) the strike relates to a major health and safety issue that may jeopardise the life and security of any worker, unless the worker has been transferred forthwith to another workplace which is safe and without risks to health; or

(b) more than 50 per cent of the workers of an enterprise have not been paid remuneration within the prescribed period,

and the Minister has been notified and remedial action ahs not been taken by the employer within a reasonable delay fixed by the Minister.

77. Limitation on right to strike or recourse to lock-out

(1) Subject to section 76(2), a person shall not take part in a strike or a lock-out where -

(a) the conditions and procedures applicable in pursuance of section 76(1) have not been followed;

(b) strike or lock-out occurs whilst –

(i) a collective agreement or an award relating to wages, and terms and conditions of employment is in force;
or

(ii) a report of the Pay Research Bureau or a salary commission, by whatever name called, by which the person has opted to be governed, is in force in relation to remuneration or allowances of any kind;

(c) the labour dispute is one which is governed by section 70(3);

(d) the labour dispute is reported by an individual worker;

(e) the minimum service required under section 81 has not been organized and put into effect;

(ea) the Tribunal makes an order under section 86(3); or

(f) the Supreme Court makes an order under section 82(3).

(2) Any strike or lock-out in contravention of subsection (1), shall be unlawful.

86. Functions of Tribunal

(1) The Tribunal shall have such functions as are specified in this Act, the Employment Rights Act or as may be prescribed.

(2) Without prejudice to the generality of subsection (1), the Tribunal shall –

(a) make awards;

(b) make orders in relation to recognition, check-off agreement, agency shop order, minimum service and any other issues under this Act;

(ba) make awards and orders under the Employment Rights Act in relation to the reduction of workforce or closing down of enterprise;

(c) interpret collective agreements, awards and orders; and

(d) publish on or before 31 March of every year, an annual report providing summaries of cases and rulings.

(3) Where any party to a matter relating to terms and conditions of employment fails to follow the procedures and remedies available under a procedure agreement or under this Act with regard to an existing or threatened strike or lock out arising out of a labour dispute whether or not reported under section 64 and if the dispute has been so reported, whether or not the report has been rejected under section 65, the other party may apply to the Tribunal and the Tribunal may make an order –

(a) requiring the parties to make use of the procedures and remedies available under the procedure agreement or under this Act; and

(b) declaring any existing or threatened strike or lock-out to be unlawful.

*(4) A party shall comply with an order under subsection (3) forthwith.***”**

After hearing the Applicant and considering the documents produced we are satisfied that the Applicant has made its case, the more so as the evidence adduced has remained unchallenged given the absence of the Respondent. There being no labour dispute that has been reported to the Commission for Conciliation and Mediation and also no issue regarding health and safety of any worker as well as unpaid remuneration, it is clear that the procedures laid down in the **Employment Relations Act 2008** as amended have not been followed. The Tribunal will also refer to **Section 64(7)** of the **Employment Relations Act 2008** as amended which provides as follows:

“*Where a labour dispute is reported to the Commission, a copy of the report of the dispute shall be served by or on behalf of the party making the report upon every other party to the dispute.***”**

In addition there is a Collective Agreement which is still in force until 31st July 2016.

The Respondent is ordered to make use of the procedures and remedies, if any, available under the Procedure Agreement or under the **Employment Relations Act 2008** as amended should it envisage organizing a strike.

In the circumstances, the Tribunal makes an order declaring the threatened strike at TBS Ltd to be unlawful.

The interim order issued on 10th October 2014 lapses.

(Sd)Rashid Hossen
(President)

(Sd)Sounarain Ramana
(Member)

(Sd)Rabin Gungoo
(Member)

(Sd)Triboohun Raj Gunnoo
(Member)

Date: 31 October 2014