

# EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 22/14

## ORDER

**Before:**

<b>Rashid Hossen</b>	-	<b>President</b>
<b>Raffick Hossenbaccus</b>	-	<b>Member</b>
<b>Desire Yves Albert Luckey</b>	-	<b>Member</b>
<b>Khalad Oochotoya</b>	-	<b>Member</b>

**In the matter of:-**

**Eastern Mix Ltd**

**(Applicant)**

**And**

**Syndicat des Travailleurs des Établissements  
Privés**

**(Respondent)**

This is an application for the revocation of the recognition of a trade union by virtue of **Section 39 (1) (b)** of the **Employment Relations Act 2008**, as amended.

The Applicant avers that by a letter dated 24<sup>th</sup> February 2014, the Respondent, through its President/Negotiator, Mr Atma Shanto, applied for

recognition as bargaining agent. Basing itself on the averments made in the said letter, Applicant recognized Respondent as a bargaining agent by way of a letter dated 28<sup>th</sup> February 2014. Once Applicant had recognized Respondent as a trade union entitled to negotiate in favour of the employees of the Applicant, Respondent informed Applicant in a letter dated 03<sup>rd</sup> March 2014 that only 15 workers of the Applicant were members of the trade union. In a further letter dated 10<sup>th</sup> March 2014, Respondent referred to 7 additional members of the trade union. Applicant avers that in truth and in fact in its letters dated 24<sup>th</sup> February 2014, 03<sup>rd</sup> March 2014 and 10<sup>th</sup> March 2014 respectively, Respondent made false, malicious and incorrect representations only to mislead Applicant into recognizing its trade union. Applicant further avers that amongst the names cited in its letters dated 03<sup>rd</sup> March and 10<sup>th</sup> March respectively, as alleged members of the trade union, at least 8 of the employees have withdrawn their membership and as at present they do not form part of the trade union. Applicant avers finally that it has documentary evidence from 9 employees who are no more members of the trade union. Applicant concludes that “Respondent has acted in default of **Section 37 (1) of the Employment Relations Act 2008**, as amended as it does not have the support of at least 30% of the employees of the Applicant to gain recognition as a bargaining unit.”

Mr Ashish Woochit, Director of Applicant and representing the Applicant deponed to the effect that Mr Atma Shanto wrote to the Applicant on the 24<sup>th</sup> February 2014 informing him that 30% of the employees of the Applicant are members of the Respondent and based upon that the company recognized the Union. The witness stated that this was done on the basis of trust.

There are 89 workers in the company, 1 who works as Human Resource Manager and 88 manual workers. The company eventually found out that Mr Shanto referred to only 15 plus 7 manual workers and the company informed Mr Shanto accordingly. The witness further added that there are 9 employees who informed the company of their withdrawal as members of the Union, with the result that there are only 13 members in the Union. The witness also added that should the Union have at least 30% of representativeness, the company has no objection in recognizing it.

Mr Atma Shanto, the representative of the Union stated that “*Confirmation Union Membership Form*” speak for themselves. They are documents signed by the members of the Union employed by the Applicant and all procedures have been followed for the voluntary recognition of the Union. There has been no misrepresentation with regard to the representativeness of the Union. He added that the members who claimed to have withdrawn from the Syndicat des Travailleurs des Établissements Privés are still members of the Union.

We need to refer to **Section 39** of the **Employment Relations Act 2008**, as amended which provides as follows:-

***“Revocation or variation of recognition of trade union of workers***

*(1) Subject to subsection 38 (10), the Tribunal may –*

*(a) on an application made by a trade union or a group of trade unions, make an order to revoke or vary the recognition of another trade union where it is satisfied that there has been a change in representativeness; or*

*(b) on an application by an employer, make an order to revoke the recognition of a trade union or a joint negotiating panel for any default or failure to comply with any provisions of a procedure agreement.*

*(2) Where an application is made under subsection (1), the recognition of the trade union or joint negotiating panel shall remain in force until the Tribunal makes an order.*

*(3) (a) An application to revoke or vary shall be determined by the Tribunal within 30 days of the receipt of the application.*

*(b) The Tribunal may, in exceptional circumstances, extend the delay specified in this subsection for another period of 30 days."*

It is clear that the burden is on the Applicant to prove on a balance of probabilities *"any default or failure to comply with any provisions of a procedure agreement"*. The Applicant admitted that initially the application for recognition was done *"en bonne et due forme"* in a document dated 24<sup>th</sup> February 2014. The Applicant is now averring that the number of manual workers does not meet the legal requirement of 30% on a total of 89 employees. Indeed the Applicant slept on its right to refuse recognition and after having duly recognized the Respondent, it is merely trying to invoke default. The evidence shows that the number of employees in the company does fluctuate every now and then. However, the Tribunal is not satisfied even on a balance of probabilities that there were false and misleading representations when the evidence adduced by the Applicant itself shows that some employees have allegedly withdrawn their membership from the Union and in the light of the *"Confirmation Union Membership Form"*. It would appear that the issue is more one in

relation to representativeness. The Tribunal firmly believes that the proper course to adopt is to go for a secret balloting exercise and that can only be considered should a fresh application be lodged. The legal time constraint has not favoured this course with regard to the present application.

The Tribunal issues no order for revocation of recognition of the trade union at this stage.

The application is set aside.

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

**(Sd)Raffick Hossenbaccus**  
**(Member)**

**(Sd)Desire Yves Albert Luckey**  
**(Member)**

**(Sd)Khalad Oochotoya**  
**(Member)**

**Date: 4 July 2014**