

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN/115/2014

ORDER

Before:

Shameer Janhangeer	Vice-President
Raffick Hossenbaccus	Member
Jay Komarduth Hurry	Member
Renganaden Veeramootoo	Member

In the matter of: -

Leather & Plastic Industry Workers Union

Applicant

and

Plastic Industry (Mtius) Ltd

Respondent

The Leather & Plastic Industry Workers Union (the "*Applicant Union*") has made an application before the *Tribunal* for an order to refrain Plastic Industry (Mtius) Ltd (the "*Employer*") from having recourse to any unfair labour practice pursuant to *section 54* of the *Employment Relations Act* (the "*Act*"). The *Employer* is resisting the application and was assisted by counsel. The *Applicant Union* was represented by its trade union technical advisor.

The application is supported by two letters dated 22.10.2014 and 10.11.2014 from the *Applicant Union* wherein the alleged facts giving rise to the present application have been set out.

Mr R. Chuttoo, Technical Advisor of the *Applicant Union*, adduced evidence and stated that the Leather & Plastic Industry Workers Union is recognised by the *Employer* since 20 years. The Union started negotiations for a Collective Agreement in 2012 notably

on the important issues of wage increase and the establishment of a wage structure as it exists in the remuneration order and other wage orders. The *Employer* has not come to an agreement with the proposals of the Union between 2012 and 2014 and the matter has been referred to the *Commission for Conciliation and Mediation* (the “*CCM*”) where discussion have pursued up to today. In July 2014, the *Employer* circulated a document dated 7 September 2014 giving details of arrears that workers would earn since 2012 if the Union had accepted the proposition of the management and produced same (Document A).

There were subsequent meetings held and in a meeting on 22 October 2014, the General Manager MrCorson told them that management has its employees at heart and that they were telling the employees what they thought what Union has not told them (the employees) which was amongst others what amount of money they have lost in arrears relating to their basic salary and that money that they would have earned in overtime was not included as they will only receive refund for the basic salary; all other allowances would be refunded. The amount according to Document A will be the amount the workers will receive if the Union signs the Collective Agreement. After the meeting, information circulated that employees interested in receiving the arrears of the new salary base of management’s proposal to contact the Production Manager Mr Oliver Curé and to make a written request, which is in total contradiction with Document A which states that the workers will receive the payment only if the Collective Agreement is signed by the Union. Mr Chuttoo also produced a second document dated 08 October 2014 wherein an employee has signed acknowledging that he has received the arrears after having made a written request (Document B). Up to today a lot of workers have signed and received the arrears while the dispute is before the *CCM* where management still has proposals to make. At the last meeting before the *CCM*, management stated that they were considering the Union’s demand for the wage structure and all, they may have to do a trade-offand that they are still negotiating. The dispute before the *CCM* is for the renewal of the Collective Agreement, i.e. to review the salary increase which is a dispute of interest. He produced a copy of the draft Collective Agreement dated 14 October 2014 submitted to the Union before the *CCM* (Document C). While discussions have been ongoing, they have found themselves to be in a confusing and anomalous situation inasmuch as some workers performing the same work have already received the increase according to a Collective Agreement that does not exist. The salaries of two workers performing the same work are different contrary to the *Employment Rights Act*. This is the element of unfair labour practice which the Union is claiming.

The representative of the *Applicant Union* also stated that there is an element of brainwashing and the employees have signed a petition dated 7 November 2014 addressed to the President of the *Tribunal* and produced same (Document D). Relying on what has

been stated in the petition, he stated that the issue of brainwashing is self-explained through the petition. According to him there is no precedent where an employer is discussing in all good faith before an institution when on the other side they have made employee sign for the increase and the arrears when there has been no agreement on any amount. This has weakened the bargaining power of the Union as certain employees think that as they have already taken the money they can no longer support the proposals of the Union and that is why they are appealing to the *Tribunal*. This has continued to weaken the bargaining power of the Union and it is a clear cut case of unfair labour practice.

In response to questions from counsel for the Respondent, Mr Chuttoo stated that he was not present at all the meetings. He did not agree that in some meetings the Union was informed and they took no objection. According to Document A, payment will be received if signed with the trade union. He interpreted the act of management as double language. The employees have understood that on receiving the arrears that they will not be able to continue with the demands of the Union. Document B, which states that if the ongoing collective bargaining succeeds the salary will be adjusted if need be, is in contradiction with the requirement to sign to obtain (the payment) as stated in Document A. He did not agree that the workers have been brainwashed to receive the money and at the same time were told that if the negotiations would lead to a higher increase they will earn more as it was never stated that if negotiations would be over they will earn more in referring to what was stated in Document B.

Mr John Smith, Human Resource Manager at the Maurel Group, adduced evidence on behalf of the *Employer*. He produced a copy of a written request for an increase in salary made by an employee (Document E). Management received requests from the employees to have information on the Collective Agreement, more precisely on the increase in salary proposed before the *CCM* to the Union; they informed the employees that the information must come from the Union; the employees later returned stating that they have not received any information from the Union and requested to have information concerning the increase; they informed the Union of the requests who did not object to same; they then proceeded to have a meeting with all the employees informing them of the requests received and of the existing mechanism with the Union being the bargaining agent and that it is for the Union to communicate information on the proposed Collective Agreement. In the meeting, they informed the employees of the management's proposal on the salary increase, following which they received informal individual requests from employees on details of the evolution in their salary in relation to the increased proposed. They acceded to the requests of employees giving details on what they will receive if an agreement is signed. On 25 August, they met with the Union anew and informed them of the information given to the employees following the demands on increase of salary, to which the Union did

not take any objections. The *CCM* was informed of the communication relating to the salary increase by correspondence and produced a copy of the letter dated 29 August 2014 sent to the *Commission* (Document G) in reply to a letter dated 28 August 2014 (Document F). Referring to Document B, Mr Smith explained that by the last paragraph the company means that if there is an agreement on a higher percentage to what management paid the adjustments will be made. The employees have understood same and they were explained the same thing that any amendment to the Collective Agreement on the percentage, the salary will be adjusted consequently individually as from the start of the Collective Agreement. Mr Smith did not agree that the company has indulged in unfair labour practices.

Following questions from the representative of the *Applicant Union*, Mr Smith stated that it is following a verbal request that Document A followed, the model of which was sent to the *CCM* containing the same information with different figures. He agreed that according to Document A which comes from the *Employer*, there is no invitation made to the employees for them to make a request if they wish to have the increase. He agreed that Document B wherein the employee has signed acknowledging having received the increase proposed was not sent to the *CCM* as no request was made from the latter to send same. According to the management's proposal, the basic salary has increased. In response to the issue that two employees doing the same work in the same category are receiving different salaries, Mr Smith stated that the conditions are the same and this depends on the request of the employees who are free to choose and that they cannot pay without the employee's request. They have not refused to pay any worker and this is not against the law. The payment is an interim one dependent on the request of the employees made voluntarily. There has been no agreement. Mr Smith also clarified that the first request is verbal and the request for payment is in writing. 93 out of a 118 employees have received the salary increase and the 25 others have not made any requests. He has no information on requests that have not been acceded to or have been freeze. There are employees who perform the same job but according to their seniority and qualifications, they have different salaries. The conditions that have been applied individually are better conditions. For those who have not received their payments, they will receive their arrears as from 1 July 2012 when an agreement will be reached before the *CCM*.

The present application is one pursuant to *section 54 (2)* of the *Act*. This provision states as follows:

(2) *Where any party considers that there has been any form of unfair labour practice during collective bargaining, the aggrieved party may apply to the Tribunal for an order directing the other party to refrain from having recourse to such practice and the Tribunal, on*

hearing the parties, shall within 30 days of the date of receipt of the application, make such order as it thinks fit.

However, it cannot be overlooked that *section 54* of the *Act* confers a general duty on a party not to have recourse to any unfair labour practice in the following terms:

(1) No party shall have recourse to any form of unfair labour practice during collective bargaining.

What may amount to unfair labour practice has been defined at *section 54 (4)* of the *Act* as follows:

(4) For the purposes of this section, "unfair labour practice" means any act or omission on the part of any party which undermines the bargaining process.

The representative of the *Applicant Union* has lengthily deposed as to the negotiations ongoing between themselves and the *Employer* in relation to a new Collective Agreement. It has not been disputed that the matter has been reported to the *CCM* where it is still ongoing. The gist of the complaint of the Union before the *Tribunal* has been the acts of the *Employer* in granting arrears in salary and payment thereof after having received individual requests from the workers. This is also while no Collective Agreement has been signed and no agreement has been reached before the *CCM* in relation to the labour dispute on the issue of increase in salary and the establishment of a wage structure reported thereto. The act of the *Employer* in making employees sign for the arrears and increase in salary while still discussing in good faith with the Union before the *CCM* has weakened the power of the Union and the employees who have opted for same can no longer support the Union's proposals.

The *Employer*, through the evidence of its representative, has given an account of the sequent of events in relation to the negotiations on a Collective Agreement, the dispute before the *CCM* and the how it came to pay the salary arrears to its employees. It was notably stated that prior to the meeting with employees, the Union was informed of the requests made and did not object to same. The management also explained the role of the Union in the process and its role to impart information on the proposed Collective Agreement during the meeting.

The *Applicant Union* has also cited the anomalous and confusing situation that this has created in the workplace with employees performing the same task receiving different salaries which it claims is contrary to the *Employment Rights Act*. Although the *Employer* has stated that 25 of 118 employees have not made any requests for same, it has also been

stated that there are employees performing the same job who receive different salaries according to their length of service and qualifications.

The matter for the *Tribunal* to decide is whether the acts of the *Employer* in granting arrears to the workers following their requests while at the same time being engaged into negotiations with the Union before the *CCM* constitutes an act which undermines the bargaining process on the part of the *Employer* which would amount to unfair labour practice.

The facts of the present matter have revealed that the negotiations for a new Collective Agreement which should be applicable as from July 2012 is still ongoing before the *CCM*. The *Employer* has given an account of how it eventually came to pay certain workers while negotiations between them and the Union have been ongoing. The *Employer* has also pointed out that according to its letter dated 8 October 2014 produced as Document B, it would have to adjust the payment made if there is an agreement on a higher percentage to what they have paid. They have also maintained that the Union was informed of the requests made and that the latter did not object to same. They did also inform the employees of the existing mechanism whereby the Union is the bargaining agent and should communicate information to the workers on the Collective Agreement proposed. They have not refused to pay any employee who are also free to choose but the employee must make a request for same.

The *Applicant Union*, on the other hand, has found itself in a situation where it is engaged in a collective bargaining process on behalf of the bargaining unit it represents and is still in a situation of deadlock vis-à-vis the *Employer* when its members have upon individual requests made obtained payment on arrears of their salary which would be due if they were to agree to the figures proposed by the *Employer*. The Union has explained that this is creating a situation where workers performing the same work are not on equal pay as some have received the increase while others have not.

In relation to the present application, it must be borne in mind that the *Employer* has not excluded that the interim payment made would have to be adjusted as has been stated in the letter dated 8 October 2014, wherein the workers have signed acknowledging having received the interim payment, as follows:

Il est évidemment convenu que dans la mesure où les négociations collectives en cours aboutissent, votre salaire sera réajusté si besoin.

The negotiations towards a Collective Agreement are still ongoing in the form of a labour dispute before the *CCM*. The *Tribunal* has noted that from the documents produced that the salary structure proposed by the *Employer* has been communicated to the *CCM* as has a model of the letter wherein employees have been informed of the proposed salary increase by management and the refund that they will be given if the Collective Agreement is signed. Despite the contention of the *Applicant Union* to the effect that the request and the subsequent payment made has weakened their position, the workers have put in signed a petition dated 7 November 2014 wherein they have stated that many of them have debts, they need money and have been obliged to sign a request to submit to the management. However, they are still supporting the proposals of the Union for a new salary structure which is more than what the company is giving them. They have also appealed to have all the support for them to benefit from a decent salary base in the petition submitted.

In the circumstances, bearing in mind that the negotiations towards a Collective Agreement are still ongoing before the *CCM*; that the *Employer* has not excluded that it may have to readjust the salary of its employees if there is any agreement in the ongoing negotiations; and that the workers have stated that they are still behind the proposals of the Union despite having requested and obtained payment of arrears, the *Tribunal* cannot find that the acts and doings of the *Employer* have undermined the bargaining process which would amount to unfair labour practice.

The Parties are however advised and reminded to endeavour towards and maintain a spirit of good faith in the process of bargaining with a view of achieving harmonious employment relations at the workplace and do their utmost to reach a Collective Agreement satisfactory to both sides. In this context, the *Code of Practice* has provided that:

113. *Bargaining in good faith requires the trade union or the group of trade unions and the employer to –*
- ...
- (f) *refrain from doing any act that is likely to undermine the bargaining process or the authority of the other party;*

The application is therefore set aside.

SD.....
Shameer Janhangeer
(Vice-President)

SD.....
RaffickHossenbaccus
(Member)

SD.....
Jay Komarduth Hurry
(Member)

SD.....
RenganadenVeeramootoo
(Member)

Date: 2ndDecember 2014