

**EMPLOYMENT RELATIONS TRIBUNAL**

**ERT/RN/83/2014**

**ORDER**

**Before:**

<b>Shameer Janhangeer</b>	<b>Vice President</b>
<b>Esther Hanoomanee (Mrs)</b>	<b>Member</b>
<b>Desire Yves Albert Luckey</b>	<b>Member</b>
<b>Renganaden Veeramootoo</b>	<b>Member</b>

**In the matter of:**

**Air Services Workers Union**

**(Applicant)**

**and**

**Airmate Ltd**

**(Employer)**

**Ipo**

**Private Enterprises Employees Union**

**(Co-Respondent)**

The Air Services Workers Union (the "Applicant Union") has made an application for recognition as sole bargaining agent for the bargaining unit of Ramp Attendants employed at Airmate Ltd (the "Employer") under *section 38 (1)* of the *Employment Relations Act 2008* (the "Act"). The latter is objecting to the application inasmuch as the Co-Respondent Union already represents the category of Attendants and that the category of Ramp Attendant is an offshoot of the bigger category of Attendants. The Private Enterprises Employees Union

(the “Recognised Union”) has been put into cause as Co-Respondent being the sole bargaining agent representing *inter alia* the category of Attendants employed at Airmate Ltd. They are also objecting to the application for recognition of the Applicant Union as a sole bargaining agent. In its application, the Applicant Union claims to have the support of 81 Ramp Attendants of a total of 118.

Mr Ashok Subron, Trade Unionist, adduced evidence on behalf of the Applicant Union. He stated that the application is for the specific bargaining unit of Ramp Attendant working at Airmate Ltd and listed the Ramp Services duties they perform. He produced a pay slip of a worker in the category of Ramp Attendant (Document A) which specifies that they work in the Ramp Service. These employees have only worked as Ramp Attendants since being recruited by the Employer and represent a single bargaining unit. The Employer also acts as a job contractor for Air Mauritius Ltd and Mr Subron produced a document showing the different salary scales of the category of Attendants (Document B). He advanced as reason why the employees have opted to form a separate Union and apply for recognition is to bargain for similar conditions of service to workers employed at Air Mauritius Ltd more specifically in relation to their salaries in line with *section 20* of the *Employment Rights Act 2008*.

In relation to the issue of membership, Mr Subron stated that the Applicant Union now has a membership of 92 workers and produced a bundle of 92 membership forms (Document C). He also produced a bundle of 85 check-off forms of the 92 workers members of the Union (Document D). The Applicant Union has more than 50% support in the specific bargaining unit of Ramp Attendants. Mr Subron also referred to photocopies of badges issued by the Department of Civil Aviation under the instructions of Airmate Ltd which specifically states ‘Ramp Attendants’.

The representative of the Applicant Union, in reply to questions from the opposing parties, notably stated that he is aware of a department of ‘Attendants’ at Airmate Ltd. No

collective agreement has been signed between the other Union and the Employer and the workers feel that they are being downgraded by Air Mauritius, where the salary scale is almost double for those performing the same duty on the same site. Mr Subron does not agree that Ramp Attendant is not a bargaining unit in itself nor that the bargaining unit should be the category of workers called Attendants. In relation to forming a joint negotiating panel with the Co-Respondent Union, the position of the Applicant Union is to agree to same only if the Co-Respondent can prove that they represent at least 30 % in the specific category. To questions from the representative of the Co-Respondent Union, he stated that members of his Union have withdrawn as members of other Unions. He recognised that the basic salary of Ramp Attendants and Attendants is the same at the Employer. He is not aware that the Co-Respondent Union has made representations that all workers of Airmate Ltd should be aligned with workers of Air Mauritius and could not say if a dispute has been reported to the *Commission for Conciliation and Mediation* (the "CCM"). He also emphasized that the duties of Ramp Attendants are different from other duties of Attendants and that the terms and conditions of service are different.

Mr Reaz Chuttoo, representative of the Co-Respodent, adduced evidence to the effect that his Union represents all employees at Airmate Ltd except those with executive managerial powers (i.e. managers) with 51 % support in all the categories which includes Attendants. He does not agree that Ramp Attendants is a separate bargaining unit as all Attendants employed at Airmate Ltd are on the same salary scale; and that Ramp Attendants are mobile with no fixed place of work. The Co-Respondent Union is seeking similar conditions to workers at Air Mauritius Ltd given that they are performing work of equal value and that Airmate Ltd belongs to Air Mauritius Ltd. A labour dispute has been reported before the CCM. He recognises that the interests of the workers would be through a joint negotiating panel, however as the Applicant Union is insisting for sole recognition they have no other alternative than to object to the present application. He does not agree that the Applicant Union has majority support in the bargaining unit of Attendants. He also stated that he could not say how many Ramp Attendants were members of the Co-Respondent Union which only recognises the category of Attendants. There is no procedure agreement between his Union and the Employer. Mr Chuttoo further produced a letter

addressed to the General Manager of Airmate Ltd on the issue of their employees being aligned onto the wage structure prevailing at Air Mauritius Ltd (Document E).

Mr Suresh Khaiwa, a Cargo Attendant at Airmate Ltd, was called on behalf of the Co-Respondent Union and described the nature of his work. He also stated that the Co-Respondent Union has started negotiations with management to align the conditions of work of employees, which includes the category of Attendants, at Airmate Ltd with that of Air Mauritius Ltd. His work as a Cargo Attendant is not similar to that of a Ramp Attendant, although the pay is the same. Work conditions for Attendants at Air Mauritius Ltd are not similar. He further stated that he would be able to work as a Ramp Attendant if posted in the Ramp Services.

Mrs Poolwantee Rekha Ramdenee, Human Resource Officer at Airmate Ltd, stated that the Employer has not approved the application for recognition by the Applicant Union as recognition was granted to the Private Enterprises Employees Union which represents the categories of Customer Service Agent/Assistants, Clerks, Attendants of all departments including Ramp Services and IT Customer Service Officer and produced a letter dated 7 July 2014 in support of same (Document F). The Ramp Attendant department is a Service Bureau Department where people are recruited on behalf of Air Mauritius Ltd and are posted in different departments at the said company. Ramp Attendants are under Service Bureau Attendant in the organizational structure. Attendants are recruited as an entity and are posted in Cargo, Cleaning and in the Baggage Services department at Air Mauritius Ltd. A copy of the organizational structure was produced to this effect (Document G). She considers Attendants to be a bargaining unit but not Ramp Attendants and produced a contract of an Attendant posted in the Ramp Services of the Ground Operations Department (Document H) and of an Attendant posted in the Cargo Services of the Ground Operations Department (Document J). There are 278 Attendants at Airmate Ltd of which 135 are posted in the Ramp Department. The Management of Airmate Ltd would have no objection to the Applicant Union being recognised with 33% support in the category of Attendants; they are objecting to sole recognition as they do not consider Ramp Services as

a bargaining unit. A letter dated 25 August 2014 recognizing the Co-Respondent Union as sole bargaining agent was produced (Document K).

The representative of the Employer also stated that in July there was no union with sole recognition. The Co-Respondent Union made a demand for sole recognition by way of letter and this was granted on 25 August 2014. She does not recall if there was any issue of sole recognition when she met with Mr Subron on 6 June 2014. She confirmed that the duties of Ramp Attendants are not the same as the duties of Cargo and Cleaning Attendants although their duties are of a manual nature. Although any Attendant can work in the Ramp Services, it is after they are deployed in the department that they are given training. There are 65 Attendants, which comprises Ramp, Cargo and Cleaning, of a total of 278 workers who are members of the Co-Respondent Union. She has received letters from workers who have resigned from the Co-Respondent Union. She also agreed that the Co-Respondent Union made its application for sole recognition around February – March of 2014.

The present application for sole recognition by the Air Services Workers Union is in relation to the category of Ramp Attendants, who are Attendants recruited to work at the Ramp Services of Airmate Ltd as per the Notice of Application submitted. The application is pursuant to the refusal of the Employer on 7 July 2014 to grant sole recognition under *section 37 (2)* of the *Act*. The Applicant Union therefore is seeking an order for recognition under *section 38 (1)* of the *Act* inasmuch as it satisfies the criteria for sole recognition under *section 37 (2)* of the *Act*.

The Employer, despite adopting a relatively neutral position in the matter, is objecting to the application inasmuch as it has already recognised the Co-Respondent Union as the sole bargaining agent for all the category of workers it employs except those with managerial powers; and it does not agree that the category of Ramp Attendants is a separate bargaining unit of its own. The Co-Respondent Union is likewise objecting to the present application.

The main issue in relation to the application is whether the category of Ramp Attendants or Attendants recruited to work in the Ramp Services at Airmate Ltd (as stated in the Applicant Union's application dated 31 July 2014 to the Tribunal) is a separate bargaining unit or a subcategory of the bargaining unit of Attendants, which comprises Cargo, Cleaning and Ramp, employed at Airmate Ltd.

Under *section 2* of the *Act*, a bargaining unit is defined as 'workers or classes of workers, whether or not employed by the same employer, on whose behalf a collective agreement may be made'. Further to this meaning, *paragraph 92* of the *Code of Practice* to be found in the *Fourth Schedule* of the *Act*, which is meant to provide guidance for the promotion of good employment relations, guidance for the grant of negotiating rights and assist employers and trade unions to bargain effectively, has put forward various factors to be taken into account in establishing a bargaining unit.

It may also be noted that *paragraphs 90* and *91* of the *Code of Practice* is of relevance to the issue of a bargaining unit. They read as follows:

90. *A bargaining unit shall cover as wide a group of workers as practicable. Too many small units make it difficult to ensure that related groups of workers are treated consistently. The number of separate units can often be reduced by the formation of a joint negotiating panel representing a number of trade unions.*
  
91. *The interests of workers covered by a bargaining unit need not be identical, but there shall be a substantial degree of common interest. In deciding the pattern of bargaining arrangements, the need to take into account the distinct interests of professional or other workers who form a minority group shall be balanced against the need to avoid unduly small bargaining units.*

The Applicant has notably relied on an Airmate Ltd pay slip of a worker located in the Ramp Services, the specific duties Ramp Attendants perform and an extension of contract of employment of an Attendant in the Ramp Services of the Grounds Operations Department annexed to the application as well as copies of Department of Civil Aviation badges issued to Airmate-Ramp Attendants. The Representative of the Applicant has also contended that the duties of the Ramp Attendants and other Attendants are not the same.

The Employer, on the other hand, has adduced evidence to the effect that Attendants are recruited as an entity and thereafter posted in the different departments at Air Mauritius Ltd supported by the Airmate organizational structure showing Attendants to be in a single grade. She also stated that any Attendant can work in the Ramp Services. She further also produced two contracts of employment for the post of Attendant posted in the Cargo and Ramp Services respectively. The sole witness of the Co-Respondent has also adduced evidence that the duties of a Cargo and a Ramp Attendant are not the same although it would be possible for the witness to work in the Ramp Services.

The evidence adduced by the Representative of the Employer is more pertinent to the issue of whether the category of Ramp Attendants constitutes a separate bargaining unit on its own. The Airmate organizational structure produced clearly shows Attendants to be in a separate category among the various grades existing at the Employer falling under the Service Bureau Department. The evidence has further borne out that this particular category is subdivided into Cargo, Cleaning, Ramp and Baggage Services.

The two contracts of employment of Attendants produced are also of much relevance. They both clearly show that the worker is being offered employment on a fixed term contract as Attendant. Among the terms and conditions, notably under the heading of 'Posting', we may find that the place of duty of the worker shall be 'at the Company's client premises or at any other locations where the company may require you to work'. Although, it does go onto say that the worker will be posted in the Cargo or Ramp Services of the

Ground Operations Department at Air Mauritius Ltd, the following provision identical to both contracts must be considered:

*Management may eventually advise you should there be any change in your work location. We alternately reserve the right for operational reasons to transfer you to its Call Centre.*

The two contracts headed 'ATTENDANT' clearly show that the worker is being engaged as an Attendant and posted in either the Cargo Services or the Ramp Services of the Grounds Operations Department of Air Mauritius Ltd. The contract also allows for a change in the employee's work location and for the right of the Employer to transfer the employee to its Call Centre.

Although the extension of contract of employment annexed to the application states that the worker's 'contract of employment as Attendant in the Ramp Services of the Grounds Operations Department' is being extended, it must not be overlooked that the term and conditions of employment as spelt in the contract of employment remain unchanged, save for the hours of work and remuneration. Thus, the above provisions in relation to the posting of the worker are still effective in the contract of extension.

Furthermore, although it has not been disputed that the duties of Attendants in their various postings are not the same, it must be noted that an Attendant in the Cargo Services can also perform the work of a Ramp Attendant and that the Attendant is offered specific training once posted in any of the subcategories of the grade. Moreover, the aforementioned contracts of employment have also borne out that the Attendants posted in the Cargo and Ramp Services receive the same basic salary.



In light of the evidence adduced, it is clear that Ramp Attendants cannot be considered as a separate bargaining unit at Airmate Ltd. Furthermore, in relation to whether this subcategory of Attendants could be established as a separate bargaining unit, it would be appropriate to refer to *paragraph 93 (1) of the Code of Practice*, which states as follows:

*Where proposals are made for the establishing or varying a bargaining unit, the first aim of management and trade unions shall be to reach agreement.*

Although the Representative of the Applicant Union has stated that the aim of seeking recognition on behalf of Ramp Attendants at the Employer is to negotiate for similar terms and conditions of employment to workers at Air Mauritius Ltd, evidence has also been adduced to the effect that the Co-Respondent Union is engaged in the same agenda and has reported a matter before the CCM on the issue. It would therefore be advised, in accordance with *paragraph 91 of the Code of Practice*, that the solely recognised Co-Respondent Union takes into account the distinct interests of this group about 135 workers in the Employer organization in order for the workers concerned to avoid the need to form an unduly small bargaining unit. It may also be noted that the Employer would have had no objection had the application been for recognition as a bargaining agent for the bargaining unit of Attendants within which the Applicant Union has 33 % support.

In the circumstances, bearing in mind that a bargaining unit shall cover a wide group of workers as practicable, the Tribunal cannot accede to the application for recognition as a sole bargaining agent for the bargaining unit of Ramp Attendants at Airmate Ltd by the Air Services Workers Union.

The application is therefore accordingly set aside.

**SD.....**

**Shameer Janhangeer**

**(Vice-President)**

**SD.....**

**Esther Hanoomanjee (Mrs)**

**(Member)**

**SD.....**

**Desire Yves Albert Luckey**

**(Member)**

**SD.....**

**Renganaden Veeramootoo**

**(Member)**

**Date: 25 September 2014**

