

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN/92/2014

ORDER

Before:

Shameer Janhangeer	Vice President
Vijay Kumar Mohit	Member
Rabin Gungoo	Member
Renganaden Veeramootoo	Member

In the matter of: -

Syndicat des Travailleurs des Etablissements Privés

Applicant

and

Compagnie Sucrière de Bel Ombre Ltd

Respondent

The Syndicat des Travailleurs des Etablissements Privés (the “Applicant”) has applied to the Tribunal for an order under *section 51 (8)* of the *Employment Relations Act* (the “Act”) requiring the Compagnie Sucrière de Bel Ombre Ltd (the “Respondent”) to comply with a provision of a procedure agreement.

The application is in relation to time-off facilities regarding a trade union activity request of which was rejected to by the Respondent. The Respondent in its statement of

case has put forward two reasons in support to its objection to the present application, namely that the subject matter of the press conference and ancillary information was not disclosed and that it is not a trade union activity; and that the release of the four representatives of the Union could have hindered the operations of the Respondent Company.

Mr A. Shanto, representative of the Applicant Union, referred to *Article 5 (iv)* of the *Procedure Agreement* between his Union and the Respondent employer, which refers to the granting of time-off facilities for seminar, conference and trade union activities during working hours of employees attending as affiliated representatives of the trade union. He also submitted a letter dated 27 August 2014 from the Respondent wherein the request for time-off was refused as well as a letter dated 25 August 2014 addressed to the management.

Mr S. D. Bheekhar, a Gardener at the Respondent Company, was called on behalf of the Applicant. He stated that he is a representative of his fellow workers with the *Syndicat des Travailleurs des Etablissements Privés*. He was refused time-off for a press conference held on the 29 August 2014. He was told that he would not be granted time-off but could apply for a day's local/annual leave. The other workers present also had to apply for a day's annual leave to attend the press conference. He contends that a press conference is an important activity of the trade union. He also added that the press conference was held in relation to issues, which includes increase in salary, they have with the employer following the latter's disaccord.

The witness, under questions from Learned Counsel for the Respondent, agreed that he did not specify the duration for the time-off requested nor was the subject matter of the press conference stated in the request for time-off. He insisted that the press conference was a trade union activity in his opinion.

It has not been disputed that the *Procedure Agreement* between the Applicant and the Respondent makes provision for the grant of time-off facilities to accredited representatives of the Union by the employer. Indeed, the provision of time-off facilities in a procedure agreement is to be found at *section 42 (2)* of the Act which states:

42. Time-off facilities

(2) *A procedure agreement shall, as far as possible, stipulate the extent, duration and conditions of paid time-off, taking into consideration –*

(a) *the size of the trade union to which the officer or the negotiator belongs and the type and volume of activities carried out by the trade union;*

(b) *the additional responsibilities of an officer or negotiator of trade union at the level of a federation or a confederation.*

However, the right of an officer or a negotiator to be granted such facilities is to be found at *section 42 (1)* of the Act, which states as follows:

(1) *An officer or a negotiator shall be granted reasonable time-off without loss of pay for the purposes of performing his trade union functions and activities, subject to the exigencies of his employment and in a manner which does not impair the smooth operation of his workplace.*

Moreover, it cannot be overlooked that the worker's right to freedom of association under *section 29* of the Act includes participation in lawful activities of his trade union. This provision states:

29. Right of workers to freedom of association

(1) *Every worker shall have the right –*

...

(c) subject to section 42, to take part, outside working hours or with the consent of the employer within working hours, in the lawful activities of a trade union of which he is a member;

The importance of this right of the worker cannot be underestimated, the more so it benefits from statutory protection in the form of *section 31 (1)(b)(ii), (2)(a)* of the Act:

31. Protection against discrimination and victimisation

(1) No person shall –

(b) discriminate against, victimise or otherwise prejudice –

(ii) a worker for his failure or refusal to perform an act which he may not lawfully require that worker to do, or for disclosing any information that the worker is lawfully entitled or required to disclose to another person, or for his involvement in trade union activities.

(2) (a) A person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(The underlining has been added)

As to what would constitute trade union activities referred to in *section 31 (2)(b) (ii)* has been given clear meaning under *section 31 (3)* of the Act, which lists various circumstances in which a worker would be deemed to be involved in a trade union activity.

The Applicant is mainly relying on *Article 5 (iv)* of the *Procedure Agreement* in support of his contention that the officers should have been granted paid time-off from the employer for the purpose of attending the press conference. This states as follows:

The Company agrees that employees who attend as accredited representatives of the Union, meetings agreed upon between the Union and the management concerning negotiation or application of this agreement, shall suffer no loss to pay for attending any such meeting, seminar, conference and trade union activity during working hours. Representatives will have to attend work before and after meetings when practically possible.

The preceding paragraph to this clause is also of relevance to the issue of the granting of time-off by the employer. This, in particular, provides as follows:

Further, employees shall not engage in any union activity while on the employer's time or on the employer's property except with the express permission of management.

In the present case, the request for time-off for four representatives was made through a letter dated 25 August 2014 signed by Mr A. Shanto as Negotiator on behalf of the Applicant Union informing the Human Resource Manager of the Respondent Company that a Press Conference has been scheduled on Friday 29 August 2014 as from 9.30 am at the seat of the Trade Union. The Human Resource Manager replied in an email dated 27 August 2014 stating that the request for time-off cannot be entertained. Although no reason was stated for the refusal of the request, the Respondent has mainly contended before the Tribunal that a press conference is not a trade union activity. Learned Counsel for the Employer has notably submitted that the word "conference" in the *Procedure Agreement* would mean a conference to explain a trade union subject or a subject related to their contract of employment. He humbly submitted that a press conference is not covered by *section 42* of the *Act*.

The provisions of the *Procedure Agreement* cited in relation to the granting of time-off to trade union representatives require that the management gives express permission for an employee to engage in a union activity while on the employer's time or property. Accredited representatives shall further suffer no loss of pay for attending any meeting,

seminar, conference and trade union activity concerning negotiation or application of the *Procedure Agreement* during working hours.

Article 5 (iv) of the *Procedure Agreement* appears to be more generously worded than what has been provided by *section 42 (1)* of the *Act*, which allows for reasonable time-off without loss of pay to be granted 'subject to the exigencies of the worker's employment and in a manner which does not impair the smooth operation of his workplace'. The activity must however concern the negotiation or application of the *Procedure Agreement*.

However, the issue remains whether a press conference is a trade union activity for which time-off should have been granted on the 29 August 2014. Although there is a comprehensive list of activities listed in *section 31 (3)* of the *Act*, which ranges from being a member of an officer of a trade union to a worker having represented workers under the Occupational Safety and Health Act, it would be apposite to note that the activity of communication with the press or other media is not expressly included.

The following commentary (at *paragraph 1.8006*) from *Sweet & Maxwell's Encyclopedia of Employment Law* by Robert Upex (General Editor) (Sweet & Maxwell 1992) illustrates the importance of time-off facilities in relation to the functioning of a trade union:

Trade unions rely heavily on lay representatives to perform industrial relation functions at workplace level. These functions commonly include representing members, engaging in consultation and negotiation with management on matters left to local determination, and meeting representatives of other unions to discuss matters of common concern. Time off work to perform these functions is an important facility for such representatives.

Moreover, the following passage (at *paragraph 1.8007*) is also relevant to note:

In common with the entitlement of trade union officials to time off for trade union duties discussed in para. 1.8006, trade union members are granted a right to time off only with permission; if an employer refuses to allow time off in circumstances where it should have been granted, the member's sole remedy is to complain to an industrial tribunal.

It may also be appropriate to note from the *Acas Code of Practice on Time Off for Trade Union Duties and Activities (TSO 2009)* which is meant to 'provide practical time-off guidance on time-off to be permitted by an employer' in England, the following examples of what trade union activities can be:

37. The activities of a trade union member can be, for example:

- attending workplace meetings to discuss and vote on the outcome of negotiations with the employer. Where relevant, and with the employer's agreement, this can include attending such workplace meetings at the employer's neighbouring locations.*
- meeting full time officers to discuss issues relevant to the workplace*
- voting in union elections*
- having access to services provided by a Union Learning representative.*

38. Where the member is acting as a representative of a recognised union, activities can be, for example, taking part in:

- branch, area or regional meetings of the union where the business of the union is under discussion*
- meetings of official policy making bodies such as the executive committee or annual conference*
- meetings with full time officers to discuss issues relevant to the workplace.*

It is clear from this guidance that a trade union having a press conference is not listed as an example of a trade union activity. It may also be relevant to refer to *paragraph 37* of the *Code of Practice* made under *section 35* of the *Act* meant for the effective organisation of a trade union that:

37. To ensure that their organisation is effective, trade unions of workers shall also –

...

- (b) *encourage their members to attend trade union meetings and to take part fully in trade union activities by holding branch meetings at times and places convenient to the majority;*

In the circumstances, the attending of a press conference is not a trade union activity which could be accommodated under the aforementioned provisions of the *Act* or which would fall under *Article 5 (iv)* of the *Procedure Agreement*.

The Tribunal therefore cannot accede to the application by the Syndicat des Travailleurs des Etablissements Privés for an order requiring the Compagnie Sucrière de Bel Ombre Ltd to comply with a provision of the *Procedure Agreement* under *section 51 (8)* of the *Act*.

The Application is therefore accordingly set aside.

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

SD.....
Vijay Kumar Mohit
(Member)

SD.....
Rabin Gungoo
(Member)

SD.....
Renganaden Veeramootoo
(Member)

Date: 29th September 2014