

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/RN/171/15

Before:

Indiren Sivaramen	- Vice-President
Vijay Kumar Mohit	- Member
Jay Komarduth Hurry	- Member
Renganaden Veeramootoo	- Member

In the matter of:-

Air Mauritius Managers Association (Applicant)

And

Air Mauritius Ltd (Respondent)

This is an application under Section 38(1) of the Employment Relations Act for an Order directing the Respondent to recognise the Applicant as sole bargaining agent in respect of Managers falling under the Management C Grade Staff, Technical Grade 4 Management Staff, Management MCC1 and MCO Grades of employees at the Respondent. The Applicant has filed an application and a statement of case in reply to Respondent's statement of case whilst the Respondent has filed a statement of case. The Respondent is objecting to recognition being granted to the Applicant and the Tribunal had to proceed with a hearing. Both the Applicant and the Respondent were assisted by Counsel.

Both parties have adduced evidence before the Tribunal. The Tribunal has examined the evidence adduced and the submissions of both Counsel. It is for the Applicant to make his case with sufficient evidence that will justify an order in his favour (**vide Private Enterprises Employees Union and Tropic Knits Ltd, ERT/RN 85/13; Organisation of Hotel, Private Club & Catering Workers Unity And Beau-Port Industries Ltd/Le Prince Maurice Hotel, ERT/RN 100/14**). The Applicant has the burden to show that he should be granted (sole) negotiating rights for the bargaining unit he claims he has the required representativeness. The bargaining unit is hotly contested in the present matter. Whilst the Applicant claims that he is entitled to consider Management C, Technical Grade 4, Management MCC1 and MCO grades as constituting a bargaining unit, the Respondent is challenging same. Respondent is averring among others that Applicant cannot segregate Management C from Management A and B and that the classes of employees as envisaged by the Applicant cannot constitute a bargaining unit.

Whilst the number of employees in the bargaining unit as described by Applicant is not disputed (vide paragraph D of Respondent's statement of case and paragraph 1 of Applicant's statement of case in reply to that of Respondent), the Tribunal has not been provided with an agreed list of those employees. The list of employees in an alleged bargaining unit is a basic document for ascertaining the representativeness of a trade union (just like in any balloting exercise). Doc A, which has been produced for the benefit of the Tribunal contains copies of membership forms and includes a "List of AMMA Members" (that is a list of alleged members of Applicant). The Applicant is relying on Doc B as being the list of all employees in the bargaining unit as described by him. This document appears to be a copy of an e-mail inviting employees for a "Management Engagement Session" and that document has been highlighted in green, pink and orange. Though evidence has been led to explain this document which has been described by Applicant's representative as "a list of attendance", the Tribunal is not satisfied with this document as being a reliable and updated list of employees in the bargaining unit as described by Applicant.

Firstly, this document is dated 20 May 2014 and does not refer at all to the particular grades of the employees. Very importantly, there is no list of employees in the alleged bargaining unit as at the date the application for recognition was made to the Respondent (that is on or around 14 July 2015) or as at the date the matter was being heard. The number of names highlighted in green (for MCO grade) on Doc B (with one name being highlighted twice) does not tally with the agreed number of MCO Grade staff. Another list bearing heading "List of MGC [which no doubt stands for Management C] and equiv." has been produced by Applicant's representative (Doc G2). The only date appearing on this list is 2 July 2014. Even if we assume that this document may emanate from Respondent, to complicate matters further this list refers to a lesser number of employees (91) than on Doc B. The Tribunal is unable to reconcile this list with Doc B (even if we exclude Technical Grade 4 Management staff) or with the admitted number of employees in the particular grades. Also, several names on Doc G2 do not tally exactly with names on Doc B. More importantly however, several names inserted on the "List of AMMA Members" (with corresponding copies of membership forms) do not form part at all, of the list of names appearing on Doc B. We may here refer for instance to names given at serial numbers 3, 46, 59 and 65 on the "List of AMMA Members" in Doc A. These names do not appear either on Doc G2 except for the name at serial number 46 on the "List of AMMA Members" in Doc A.

The alleged bargaining unit besides consisting of various grades comprise of employees holding various offices such as Investigators, Analysts, Project Leaders, Inspectors, Traders, Executives and so on as mentioned by Applicant's representative. In such a case, it is always wise to have an agreed list of the employees concerned (ideally). If this is not possible, the Applicant should ascertain that reliable evidence in relation to that list of employees (as applicable at the relevant time) is available on record. The Tribunal has perused other documents produced and there is nothing conclusive as to the list of employees in the alleged bargaining unit as at the date the application for recognition was made to the employer or as at the date of hearing (underlining is ours).

In the absence of an adequate list of employees, the Tribunal cannot ascertain the effective representativeness of the Applicant the more so that the Respondent has averred the following in paragraph E7 of his statement of case:

“Even if the Tribunal were to accede to the request of the Union to hear the application, Air Mauritius Limited avers that this Union does not have the required percentage for representativeness for recognition.”

Before considering any issues in relation to the membership forms (copies) produced, the Tribunal has to be satisfied first that the forms emanate from employees who are indeed in the bargaining unit as described by Applicant. The Tribunal must be in possession of a reliable and appropriately updated list of all employees in the bargaining unit as described and put forward by Applicant. The Applicant has failed to produce such evidence.

For the reasons given above, and without the Tribunal having to consider other issues, the application is set aside.

(Sd) Indiren Sivaramen
Vice-President

(Sd) Vijay Kumar Mohit
Member

(Sd) Jay Komarduth Hurry
Member

(Sd) Renganaden Veeramootoo
Member

16 November 2015