

# EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN/37/2015

## ORDER

Before:

Shameer Janhangeer	Vice-President
Ramprakash Ramkissen	Member
Desiré Yves Albert Luckey	Member
Khalad Oochotoya	Member

In the matter of: -

**Galvabond Ltd**

*Applicant*

and

**Chemical Manufacturing and Connected Trades Employees Union**

*Respondent*

The *Applicant* in the present matter is seeking an order for revocation of recognition of the *Respondent* Trade Union pursuant to *section 39 (1)* of the *Employment Relations Act 2008* (the “*Act*”). The *Respondent* is resisting the application. Both parties have submitted a statement of case in relation to the application. The *Applicant* was assisted by Counsel and the *Respondent* by its Trade Union Representative.

The *Applicant* in its statement of case has notably averred that it made an application for access to information on the number of employees affiliated to the Union under *section 41* of the *Act*. The Union, by letter dated 23 January 2015, informed them that it had 10 members instead of 12 as previously stated. It has been stated that there are

37 employees at the *Applicant* Company and 2 with managerial powers who are excluded from the bargaining unit of the enterprise. The *Applicant* contends that the Union no longer meets the criteria of representativeness under *section 37 (1)* of the *Act* not having the support of at least 30 per cent of the workers in the bargaining unit of the enterprise. Letters in support of the averments have been annexed to the *Applicant's* statement of case.

The *Respondent* Union, in its statement of case, set the background to its recognition by the *Applicant* Company in 2002 with the *Factory Workers Union* merging into the *Chemical Manufacturing and Connected Trades Employees Union* ("*CMCTEU*") which became the Union representing the workers at *Galvabond Ltd*. The Union has averred that the employer has not defined the categories of workers of the enterprise forming part of the bargaining unit. The Union has always represented the categories of attendants, operators and foreman solely. The categories of administrative employees - such as clerk, accountant, maintenance officer, senior foreman, compliance officer or personnel officer - have never been represented by the Union. It has further been averred that employees with less than a years' service and above 65 years do not form part of the bargaining unit. The Union has annexed letters/documents in support of its averments that it has always represented the aforesaid categories of the bargaining unit. The Union therefore contends that the total number of workers in the bargaining unit is 22 which is over 30 per cent support with its membership of 10 workers in the enterprise.

Mr Anwar Joonas, Director at *Galvabond Ltd*, adduced evidence on behalf of the *Applicant* Company. He confirmed the averments made in his statement of case. He understands that all of the employees represent the bargaining unit. He referred to a letter dated 18 June 2013 from the Union wherein it is stated '*please receive proposal of the union for a collective agreement between union and company covering all workers forming part under the bargaining unit of the union that is all employees except those with executive managerial powers*'. It is to this letter he is basing himself to say that the Union represents all the employees. Referring to a letter dated 1 July 2008 from the Union wherein certain

categories are referred to, he stated that in the whole it says '*to be paid to all workers*'. The enterprise comprises 39 employees including 2 with managerial powers. He does not agree that the Union does not represent the category of administrative employees referring to the letter dated 15 July 2013 (produced as Document A). There is no definition to the effect that the Union does not represent employees having less than a years' service and employees aged more than 65 years. He does not agree that the Union has 22 workers in its bargaining unit. He produced a copy of a letter dated 14 May 2015 (Document B) wherein a member has stated that he has resigned from the Union. He also produced an application to cease deduction of Union subscription form (Document C). As the Union does not meet the criteria nor does it have the numbers, he is asking for its revocation of recognition.

Mr Anwar Joonas, following questions from the Trade Union Representative, notably stated that it is clear that the Union represents all the workers referring to a letter dated 18 June 2013. He has only known Mr Reeaz Chuttoo to be the negotiator for workers. On being asked if the Union has negotiated on behalf of workers other than manual workers with *Galvabond Ltd*, he stated that the Union must focus on some and not others and that he has been told that the Union represents all the workers. Referring to a letter dated 1 July 2008 (Annex 2 of the Respondent's Statement of Case), he stated that the Union refers to all workers; he admitted that paragraph 2 of the letter refers to manual workers. Referring to a dispute before the *Industrial Relations Commission* (the "IRC") in 2002, he stated that the dispute concerned all workers at that time and he did not agree that it was only manual workers who were exposed. He insisted that the *Factory Workers Union* represented all the workers except the management. He did not also agree that the Union represents only manual workers in referring to a letter dated 7 August 2014 from *Galvabond Ltd* wherein the wage structure proposed was for the categories of manual workers.

In relation to the list of workers submitted by the *Applicant Company* (Annex 4 of the *Applicant's* Statement of Case), Mr Anwar Joonas stated that a maintenance officer Mr Jean Laval Bruneau Fanor works part time at Galvabond Ltd; he is not aware if Mr Celine Cyril Walter is aged 74 or that if the Union represented him; confirmed that the Accounts

Officer Mr Serge Allain Riche and Accountant Mr Laval Yan Fook Cheong work at the company; and he insisted that the Union represents all the employees.

Mr Mohamad Reeaz Chuttoo, Trade Union Advisor, deponed on behalf of the *Respondent* Union. He stated that the *Factory Workers Union* was recognised at the company to represent the workers. In 2002, the aforesaid Union merged with the *Chemical Manufacturing and Allied Industries Employees Union* which later changed its name into that of the present *Respondent* Union. He produced a copy of an agreement made before the *IRC* between the management of *Galvabond Ltd* and the *Factory Workers Union* dated 7 August 2002 (Document D). Since the existence of the *Factory Workers Union* till now, there have been no demands made other than that made on behalf of manual workers.

As regards a letter dated 18 June 2013 from the Union (Annex 3 of the Respondent's Statement of Case) wherein the bargaining unit has been stated as '*all employees except those with executive managerial powers*', Mr Chuttoo explained that this was written by the secretary of the Union Mr Ramnarain in that sense. However, all the proposals made were in relation to workers over a years' service save for workers above the normal retirement age. He pointed out that workers from the latter category are on a one to one agreement. If all the non-manual workers are removed from the list of employees, there are 22 workers; with 10 members, the Union has over 30 % support. According to the law, his Union has the right to represent all workers but they had made their request for recognition in relation to the bargaining unit they were asked to represent. It is not a hard and fast rule for the Union to represent only manual workers, but it is only manual workers who decided to unionize.

Mr Chuttoo was questioned by Counsel for the *Applicant*. He was shown a letter dated 15 July 2011 (Document A) signed by the Secretary of the Union Mr Moonesawmy asking for a salary review for all employees. To this, Mr Chuttoo stated that the word '*manual*' to employees may have been omitted in the letter. Referring to a letter dated 1 July 2008 from the Union (Annex 2 of the Respondent's Statement of Case), he stated that

there was no need to insert the word '*manual*' in the letter. He also recognised that the word '*manual*' was not stated in the letter dated 18 June 2013 from the Union. He had no documents to show that the *Factory Workers Union* merged into the *Chemical Manufacturing and Allied Industries Employees Union*, which thereafter became the present Union. He had no document to show which category of employees was represented by the Union upon its recognition by Galvabond Ltd as he was not there at the time. On being asked where in the agreement he produced (Documents D) is it mentioned that workers concerned are manual workers, Mr Chuttoo stated that as per the name of the Union it refers to factory workers; and the reference to galvanizing procedures in the document means workers only galvanizing steel.

The *Applicant* Company has made the present application for revocation of recognition of the Union pursuant to *section 39 (1)* of the *Act* on the ground that the Union no longer meets the criteria of representativeness under *section 37 (1)* of the *Act* having less than 30 per cent support of the workers in the bargaining unit.

It may be noted that *section 39* of the *Act* reads as follows:

**39. *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.*

...

The pertinent issue in the present proceedings has been the composition of the bargaining unit which the *CMCTEU* represents as a bargaining agent vis-à-vis the employer, Galvabond Ltd. It has not been disputed that there are in total 39 employees at the company, 2 of which have executive managerial powers. The *Applicant* Company contends that the bargaining unit of the *Respondent* Union is made up of the whole of the 37 employees; whereas the Union has maintained that it only represents the categories of manual workers in the enterprise, excluding those with less than a year's service and those above the normal retirement age, which equates to 22 employees in the bargaining unit. As at the time of the application, the Union had a membership of 10 workers in the enterprise.

The present application is one that has been made by Galvabond Ltd, who is the employer in the present matter. As per *section 39* of the *Act*, an employer can only make an application for revocation of recognition of a trade union of workers where there has been a 'default or failure to comply with any provisions of a procedure agreement' (vide *section 39 (1)(b)* of the *Act*).

The *Applicant* Company has not relied on any procedure agreement or any provision thereof in support of the present application. Nor has any default of a procedure agreement been invoked by the *Applicant*. It has contended all through out, as per various letters referred to, that the *Respondent* Union represents all workers in the enterprise except those with executive managerial powers.

The grounds of the present application, as apparent from the *Applicant's* statement of case and throughout the proceedings, rest mainly on the representativeness of the *Respondent* Union in as much as it no longer meets the criteria of representativeness under *section 37* of the *Act*. However, under *section 39 (1)(a)* of the *Act*, the Tribunal may only make an order to revoke the recognition of another Trade Union upon an application made by a Trade Union.

In the circumstances, the Tribunal cannot make an order for the revocation of the recognition of the *CMCTEU* on the grounds of the present application and in the absence of any default or failure to comply with any provisions of a procedure agreement made between the two parties to this application.

Despite the animosity that appears to exist between the two parties, the Tribunal would wish to remind that the *CMCTEU* still retains its status as a bargaining agent for the relevant bargaining unit vis-à-vis the employer. The parties are therefore urged to endeavor towards and maintain a spirit of harmonious employment relationship at the workplace, to do their utmost to bargain in good faith and to negotiate in a reasonable, fair and honest manner. It cannot be overlooked that there is a common interest for both the employer and the recognised Trade Union in the success of the enterprise.

The application is therefore set aside.

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

**SD Ramprakash Ramkissen  
(Member)**

**SD Desiré Yves Albert Luckey  
(Member)**

**SD Khalad Oochotoya  
(Member)**

**Date: 26<sup>th</sup> June 2015**