

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN/130/2015

ORDER

Before:

Shameer Janhangeer	Vice-President
Raffick Hossenbaccus	Member
Desiré Yves Albert Luckey	Member
Triboohun Raj Gunnoo	Member

In the matter of: -

Chemical Manufacturing and Connected Trades Employees Union

Applicant Union

and

Indian Oil (Mauritius) Ltd

Employer

The *Chemical Manufacturing and Connected Trades Employees Union* (“*CMCTEU*”) has made an application for an order of recognition in respect of workers employed by *Indian Oil (Mauritius) Ltd* (the “*Employer*”) pursuant to *section 38 (1)* of the *Employment Relations Act* (the “*Act*”). The *Applicant Union* claims to have over 30 per cent recognition in the bargaining unit applied for.

The *Applicant Union* was represented and assisted by its trade union advisor, Mr M. R. Chuttoo whereas the *Employer* was assisted by its Attorney-at-Law, Mr T. Ponanbalum.

The *Applicant Union* has stated its bargaining unit to be in the grades of equipment operative, hose man/operator and refuelling operator who are based at the Joint Into-Plane (JIP) Airport Site, Plaisance. The bargaining unit excludes employees with executive

managerial powers, foreign workers, employees having less than a year's service, administrative cadre and officers.

The *Employer* has submitted its grounds of objection to the application. It contends that the *Union* cannot claim to have more than 30 per cent representation of its employees as a few employees if any, are not permanently attached on the JIP Airport Site, Plaisance; and that the bargaining unit cannot be at Plaisance. However, it has also stated that there are only 5 employees posted at the Airport site who have joined the *Applicant Union*; and that the remaining of its 25 employees have confirmed that they are not members of this trade union.

The trade union advisor adduced evidence on behalf of the *Applicant Union*. Mr M.R. Chuttoo stated that the application made is for recognition of the trade union by *Indian Oil (Mauritius) Ltd* based at Plaisance. They have a membership of 5 workers in a bargaining unit of the same number. He contends that they satisfy the requirements of the *Act* and its *Code of Practice*. He confirmed the categories of the bargaining unit who in a nutshell are operatives and operators as well as the categories which are not represented by the trade union. Mr Chuttoo also produced a list, in the form of a signed petition, of the 5 workers who are members of the *Applicant Union* (Document A) and are permanently based at Plaisance. Although the document is dated 27 August 2015, the workers joined the trade union since January 2015 or 2014 in some cases but he did not have all the dates on which they joined. Despite what has been stated in their contracts of employment, Mr Chuttoo maintained that the workers are permanently at Plaisance.

Mr Raminder Singh, Vice-President Finance at *Indian Oil (Mauritius) Ltd*, deposed on behalf of the *Employer*. He stated that *Indian Oil* has manpower of 30 workers and that the *Applicant Union* does not have the required 30 per cent for recognition. The workers posted at the Airport are not permanently posted there and can be relocated to the main location as is the practice. He produced a contract of employment (Document B). It is not correct to say that the bargaining unit should be solely at Plaisance as they have other employees as well. He is not aware of any document nor of any application to show that the workers are attached to the union nor of any check-off being deducted from their salary.

Upon questions from the trade union advisor, Mr Singh explained that the other employees of the company at Mer Rouge are not part of any union and that all their issues are taken care of by management directly. The employees have been granted the annual increment as per the government increase as well as the internal increase this January itself.

The employees at Plaisance have not been moved so far but that does not stop the company from asking them to come over and work at Mer Rouge. Mr Singh also added that the company has not received any complaint or grievance from any of the employees in the recent past.

The *Applicant Union* in this matter is seeking an order for recognition as a bargaining agent on behalf of the bargaining unit of 5 workers in the categories of equipment operative, hose man/operator and refuelling operator based at the JIP Airport Site, Plaisance. It has produced a list of 5 workers wherein the employees have stated that they are members of the *CMCTEU*. The trade union contends having a complete membership in the bargaining unit applied for.

The *Employer*, on the other hand, does not agree to the posting of the bargaining unit and has produced the contract of employment of one the trade union members in support of its objection. Furthermore, as per the evidence of its representative its management prefers to deal directly with the issues raised by the employees than do have to deal with a trade union which only represents a minority of its workforce.

The right of a worker to join a trade union is a fundamental right which is embodied in our Constitution. Indeed, *section 13* of the *Constitution* provides:

13. Protection of freedom of assembly and association

(1) *Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and, in particular, to form or belong to, trade unions or other associations for the protection of his interests.*

(2) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -*

- (a) *in the interests of defence, public safety, public order, public morality or public health;*
- (b) *for the purpose of protecting the rights or freedoms of other persons; or*
- (c) *for the imposition of restrictions upon public officers,*

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

In relation to this fundamental right of the worker, it was held in the case of *Federation of Civil Service and Other Unions and Ors. v The State of Mauritius and Anor.* [2009 MR 101] that:

The right to belong to a trade union or other association for the protection of one's interest is expressly embodied in that section. Such a right can only be interfered with in the circumstances laid down in subsection (2). However, the new provisions have neither taken away nor diluted that right.

The new provisions aforementioned in the *Federation of Civil Service and Other Unions* case were those of Act 13 of 2003 which amended the then *Industrial Relations Act*. The current law which is the *Employment Relations Act (Act No. 32 of 2008)* came into effect as from 2 February 2009 (*Proclamation No.4 of 2009*). The Act has in section 29 endorsed, reiterated and elaborated the right of workers to freedom of association in no uncertain terms. However, the scope of this fundamental right has been revisited by an amendment to the Act in 2013 (*Act 5 of 2013*) which now allows a worker '*the right to join only one trade union, of his own choice, in the enterprise where he is employed or his bargaining unit*'.

The *Employer* is also contesting the location of the workers in the bargaining unit. Although, its representative has conceded that none of the workers have been moved so far despite of the practice that they may be relocated, the terms of the contract of employment must be duly considered to clear any ambiguity in the posting of the members of the *Applicant Union*.

In this context, it would be appropriate to consider the clause pertaining to the "Posting" of the worker. This reads as follows:

3. Posting

You will operate at Joint Into-Plane installation at SSR International Airport. However, you will have to move to other locations or otherwise as and when instructed by Management.

Other relevant clauses of the contract of employment produced reads as follows:

4. Reporting Relationship

*You will report to the **Operations Manager** at IndianOil Terminal, Mer Rouge regarding IndianOil's administrative matters. However, you shall report to **JIP Manager** at SSR*

International Airport Fuel Depot or to any other person designated by Management for your duty.

5. Main Duties and Responsibilities

Your main duties and responsibilities will be as per descriptions which will be given to you by the JIP Manager and which may from time to time be varied to suit the exigencies of the business.

6. Normal Working Days and Hours

The normal hours in the company are 45 hours a week. You will be required to work on a shift system as set by the JIP.

The above quoted terms of the contract of employment clearly show that as a general rule the worker is based and operates at the Joint Into-Plane Installation at the SSR International Airport Fuelling Depot and is bound to report to the JIP Manager for his main duties and responsibilities. Moreover, the working time of the employee is set by the JIP Manager. The worker's main duties, responsibilities and working hours therefore do pertain to his work at the JIP Airport Installation in Plaisance.

Another concern of the *Employer* has been that given its 30 manpower workforce, the *Applicant Union* cannot have the necessary 30 per cent support for recognition with its membership of 5 employees.

As per the application before the Tribunal, the *CMCTEU* is seeking recognition in respect of a bargaining unit having the support of 5 workers located at the JIP Airport Site. Although, the initial application made to the *Employer* did include the Mer Rouge employees of *Indian Oil (Mauritius) Ltd*, the application to the Tribunal has been made solely in relation to the bargaining unit situate at Plaisance. A trade union is entitled to recognition in respect of a bargaining unit in an enterprise, which under *section 2* of the *Act* includes a unit of production.

Furthermore, the *Employer* has not demonstrated nor shown that the categories of workers the trade union represents are also linked to or are similar to categories of workers employed by *Indian Oil (Mauritius) Ltd* at Mer Rouge. In this regard, it would be appropriate to note the following from the *Code of Practice* to be found in the *Forth Schedule* of the *Act*:

89. *Collective bargaining in an enterprise is conducted in relation to defined groups of workers which can appropriately be covered by one negotiating process.*

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.*

Despite the fact that the bargaining unit is an unduly small one, it must be noted that the *CMCTEU* is a confederate union representing the interests of workers in a range of private companies in Mauritius and is affiliated to other federal unions in the country (vide letter of application dated 13 March 2015 addressed to the *Employer*). As per the *Returns of Trade Unions Registered in the Permanent Register* published in *General Notice No. 1521 of 2014*, it has a total membership of 1166 workers.

In the circumstances, the Tribunal pursuant to *section 38 (2)* of the *Act* is satisfied that the *Applicant Union* has produced evidence that it is wholly representative of the workers in the bargaining unit in respect of which it has applied for recognition as a bargaining agent.

The Tribunal therefore makes an order granting recognition to the *Chemical Manufacturing and Connected Trades Employees Union by Indian Oil (Mauritius) Ltd* as sole bargaining agent for the employees in the categories of equipment operative, hose man/operator and refuelling operator located at JIP Airport Site, Plaisance. It must also be noted that the bargaining unit excludes employees with executive managerial powers, foreign workers, employees having less than a year's service, administrative cadre and officers.

The Tribunal would also wish to add that the *Applicant Union* can only represent the interest of the workers in the aforementioned bargaining unit insofar as they are posted at the JIP Airport Site in Plaisance as per its application.

The *Chemical Manufacturing and Connected Trades Employees Union* and *Indian Oil (Mauritius) Ltd* are therefore required to meet at specified intervals or at such time and such occasions as the circumstances may reasonably require for the purpose of collective bargaining.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Raffick Hossenbaccus
(Member)

(Sd) Desiré Yves Albert Luckey
(Member)

(Sd) Triboohun Raj Gunnoo
(Member)

Date: 9th September 2015