EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN/30/2015

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

and

Galvabond Ltd

Respondent

The Chemical Manufacturing and Connected Employees Union (the "*Applicant Union*") has informed the *Tribunal* by way of a letter dated 13 April 2015 under *section 54* of the *Employment Relations Act* (the "*Act*") that it is being subjected to unfair labour practice as explained therein. The *Applicant Union* is praying that the *Tribunal* orders to stop all unfair labour practice. The *Respondent*, Galvabond Ltd, is objecting to the present application. The *Applicant Union* was assisted by its trade union representative and the *Respondent* was assisted by Counsel.

The *Applicant Union* in its aforesaid letter has set out a collection of events in explaining how it is being subjected to unfair labour practice. Supporting documents have been annexed to the letter. The *Respondent*, on the other hand, has submitted a response dated 29 April 2014 to the *Applicant Union*'s letter wherein it has given its version in relation to the averments made therein with documents attached in support of the

averments made. Both parties have annexed as document a report of the *Commission for Conciliation and Mediation* (the "*CCM*").

Mr Reaz Chuttoo, Trade Unionist, adduced evidence on behalf of the *Applicant Union*. He stated that his union is recognised since more than 10 years with the company. On 18 June 2013, they submitted a proposal for collective bargaining to make a collective agreement. They met with the employer on 7 August 2014 who gave them a final proposal. The said proposals did not meet with their expectations and on 10 September 2014, they reported a dispute before the *Commission for Conciliation and Mediation* (the "*CCM*"). In October 2014, the employer stated that they shall not be proceeding inasmuch as the union does not have 30 % support for recognition and made an application before the *Tribunal*. They had 12 members at that point in time. On 12 January 2015, the *CCM* fixed a hearing to finalise the dispute. The employer addressed a letter to the *CCM* to ask that the case be kept in abeyance. The *CCM* having no other alternative came out with a report to say that the employer is keeping it in abeyance. The employer stated that they have entered a case before the *Tribunal* and that if it were the case, they should have received a letter to appear before the *Tribunal* which has not been the case up till now. The employer has therefore made a false declaration with the idea to stale the proceedings before the *CCM* and that it cannot proceed further. They consider this to be an unfair labour practice the more so that this is a dispute which dates back to 18 June 2013. It is in dispute as the employer made a counter proposal which they only had to discuss to reach an amicable agreement; however, the employer took it upon itself and decided that the union cannot no longer be recognised having less than 30 % support. At no moment in time did the employer come before the *CCM* to define the bargaining unit of the union.

In relation to the complaints of unfair bargaining practice, Mr Chuttoo stated that the employer has made a false statement that they have applied before the *Tribunal* for revocation of recognition. They stopped the case before the *CCM* on a unilateral decision. The *CCM* insisted that revocation of recognition is another case and that the dispute on collective bargaining must proceed. The employer did not proceed as the union has less than 30 % and blocked the process of collective bargaining.

The representative also stated that an employee of the Respondent who is also the President of the union has not benefitted from time-off. This is in relation to events on 20 November 2014 when an attempt to destabilize the union was made. There was a warning followed by time-off and all the facilities that a trade union leader is entitled to were completely cut. So if a trade union cannot proceed with collective bargaining, negotiations for better conditions of work, salary increases, the union has lost its reason to exist.

Following questions by Counsel for the Respondent, Mr Chuttoo maintained that the employer made a false declaration before the *CCM* in relation to the application for revocation of recognition. He did not receive a copy of the letter dated 29 April 2015 from the employer whereas the union did copy its letter dated 13 April 2015 to the employer. The unfair labour practice is the attempt of the employer before the *CCM* with success to block the process of collective negotiations by stating that they have applied to revoke recognition. The prejudice suffered is the staling of the collective bargaining. All along the process, management have made (such) attempts. Firstly, the law states 90 days of meaningful negotiations, the employer took a year; secondly, the employer came up with a proposal stating 'this is my final proposal', this is not negotiating in good faith; thirdly, a warning was given to the President of the union by Galvabond Ltd as he (the President) did not say anything to a colleague who was smoking; fourthly, for time-off demands for the union to meet to decide and discuss what is going on at Galvabond Ltd, only the President did not receive any time-off; and fifthly, which he regards as the fatal blow for which the *CCM* was unable to do anything; they came to say that the union represents less than 30 % and therefore cannot negotiate with them. They had 12 members, then 2 workers lost their employment; and with only 10 members, they came back with the issue of revocation of recognition. Until there is an order from the *Tribunal*, the employer cannot say that a union has lost recognition. Mr Chuttoo did admit that the issue of time-off was not stated in the union's application letter dated 13 April 2015 nor was it stated in relation to the warning.

With regard to where it is stated that the employer has decided to revoke the recognition of the union, Mr Chuttoo stated that this was said before the *CCM* where the employer stated that they cannot proceed with the case as the union is under represented. Mr Chuttoo referred to paragraph 6 of the report of the *CCM* on the issue that an application for revocation was made before the *Tribunal*.

Regarding the final proposal of the employer to the collective agreement, Mr Chuttoo related that this was told to Mr Steve Bourbon although he could not show where this was stated in the letter. This was around August 2014. The demand for revocation of recognition came afterwards. According to him, the employer forwarded an application for revocation of recognition in October 2014 before the *Tribunal*. The *Tribunal* in the application for access to information to put in writing how many members he has. He recognised that the case before the *Tribunal* was for access to information. All that has been written in the application letter dated 13 April 2015 has been written in all good faith and he confirms that they have not tried to mask the truth in any way. He did not agree that the union has less than 30 % support in the bargaining unit. There have been 4 or 5

meetings with the employer wherein they have felt humiliated nor were there any concrete discussions.

Mr Anwar Joonas, Company Director, was called to adduce evidence on behalf of the *Respondent*. He stated that he is aware of the letter dated 13 April 2015 from the *Applicant Union* wherein an order is being sought from the *Tribunal* to stop any unfair labour practice. A reply dated 29 April 2015 was made wherein the *Respondent* gave its version of the events. He confirmed as to the veracity and the truthfulness of the contents of the letter dated 29 April 2015. An application for access to information was made before the *Tribunal* in October 2014. There was no intention from the *Respondent* to destabilize or intimidate anyone; it was a matter of keeping discipline in the enterprise. He stated that in the letter dated 10 February 2015, they asked if it were possible to revoke the recognition of the union citing 'Tribunal to consider our motion to file for revocation and we would appreciate to have your earliest reply concerning this matter'. This is why he is awaiting an answer. He is ready to submit another document to make an application. He does not agree with Mr Chuttoo that a false statement was made before the *CCM* in referring to the letter. He does not agree that the act culminating to the declaration before the *CCM* amounts to unfair labour practice. He informed the *CCM* that they made a demand, were awaiting a reply and that the matter be kept in abeyance before the *CCM* for them to eventually know which way they should go. He referred to the observations of the *CCM* in their report. According to him, the union does not have the required support but only the *Tribunal* may order the revocation of the union. He has acted in good faith. He denies that he tried to destabilise the union or to stop negotiations.

Upon questions from the representative of the *Applicant Union*, Mr Joonas notably stated that he sent a letter (dated 10 February 2015) stating that given that there is no support he is asking for revocation and was awaiting a response from the *Tribunal* to say that the demand must be made in a certain way. The Chairperson of the *CCM* may have stated that the case of revocation of recognition has nothing to do with the dispute before the *CCM*, but he made it clear that as the union does not have the required support he has asked the *Tribunal* to rule on this issue. He would not negotiate until he has a reply and had no objection that the *CCM* makes a report. He does not agree that if he did not stop negotiations before the *CCM*, they could have reached an agreement. According to him, the union does not have the required support. A proposal for a collective agreement was submitted to the Manager of Galvabond Ltd on 18 June (2013) for consideration. Mr Joonas referred to the said letter whereby the proposal is in relation to a collective agreement for workers under the bargaining unit with details and the wage structure given.

The application in the present matter is being made under *section 54* of the *Act*. A general duty is conferred upon the parties not to have any recourse to any form of unfair labour practice during collective bargaining. The *section* also provides under which circumstances an aggrieved party may make an application before the *Tribunal* as follows:

> ***54. Unfair labour practices***
>
> ***…***
>
> *(2) Where any party considers that there has been any form of unfair labour practice during collective bargaining, the aggrieved party may apply to the Tribunal for an order directing the other party to refrain from having recourse to such practice and the Tribunal, on hearing the parties, shall within 30 days of the date of receipt of the application, make such order as it thinks fit.*

The respective version of events submitted by the parties in the matter shows that on 18th June 2013, the *Applicant Union* sent a proposal for a collective agreement to the management of Galvabond Ltd by way of a letter dated 18 June 2013. They were meetings between the two parties in May and June of 2014. On 3 June 2014, the management tabled a proposal to maintain the salary scale but give a 5 % salary increase to all employees as from January 2014; however, this was rejected outright. At a meeting on 16 June 2014, management stated that it could not commit to salary increases of 10 % as from January 2014 and 8 % as from January 2015 amongst other demands being concerned with the general economic slowdown affecting the country and more particularly the construction sector in which it operates. A proposal in writing was sent to the union on 7 August 2014 setting a new wage structure and increase in meal allowance.

A dispute was thereafter reported to the *CCM* by the *Applicant Union* on 10 September 2014. The issues in dispute concerned the proposals for a new collective agreement, namely meal allowance; attendance bonus; wages on an agreed wage structure; increase in wages after 10 years' service; long-term service award; vacation leave after 10 years' service; and marriage leave. The *Commission*, in its report dated 23 March 2015, found that the points in dispute have remained undetermined. It was moreover observed, at paragraph 6 of the report, that the process to revoke the recognition of the trade union must be made before the *Tribunal* under *section 39 (1)(b)* of the *Act*; and that 'the employer asked for the case to be kept in abeyance before the *Commission* pending the case before the *Tribunal* and the union objected to same.' Upon the stand of the employer that it no longer wishes to negotiate, the *Commission* was requested to come out with its report.

It was not disputed that Galvabond Ltd made an application for access to information before the *Tribunal* on 31 October 2014. The *Applicant Union*, in relation to the said application, stated having 12 members which was over 30 % of required union membership. In its response, the Respondent has stated having 41 employees, excluding 2 with managerial powers, which equates to less than 30 % support for the union.

In relation to the facts of the present matter, the representative of the *Applicant Union* has elaborated on two main issues in relation to collective bargaining negotiations between themselves and the *Respondent*.

The first issue is the false declaration of the employer before the *CCM* that the *Applicant Union* does not have the required support for recognition and that a case has been entered before the *Tribunal*. This false declaration has stalled the dispute reported before the *CCM*.

The evidence in the present matter has borne out that one of the reasons why the matter before the *CCM* was left undetermined was the stand of the employer in relation to whether the *Applicant Union* still has the required support for recognition and whether the employer can continue to negotiate with the union. The employer proposed that the matter be kept in abeyance pending the determination of the *Tribunal* on the issue of revocation of recognition.

Although, the *Applicant Union* claims that it is false to say that the employer has applied for revocation of recognition before the *Tribunal* and thus stalled the dispute before the *CCM*, the proceedings have shown that a letter dated 10 February 2015 was sent to the *Tribunal* by the manager of Galvabond Ltd wherein the *Tribunal* was informed that 'the Union does not meet the criteria as per Sec 37(1) of the Employment Relations Act 2008 in terms of the bargaining unit and we would therefore appreciate that the Tribunal consider our motion to file for revocation of recognition'. It may be noted that this letter was copied to the *CCM* but not to the *Applicant Union*.

Whether this may be construed as a proper application for revocation of recognition under *section 39* of the *Act* is another matter. The fact remains that there was no application for revocation of recognition before the *Tribunal* nor was any application submitted by the *Respondent* in relation to same.

In any event, these issues relate to the dispute before the *CCM*. The *Tribunal* in this instance is not sitting on appeal on the dispute before the *CCM* and nor is it empowered to review its proceedings. The *CCM* is governed by its own procedures and has its own applicable laws under the *Act*. The *Tribunal* cannot therefore find that there has been any unfair labour practice in relation to the dispute reported by the *Applicant Union* before the *CCM* nor in relation to any false statement that may have been made by the *Respondent* before it.

The representative of the *Applicant Union* has also stated that the employer has taken a year to reply to their proposals dated 13 June 2013. Furthermore, the written proposal of the employer dated 7 August 2014 has been qualified as final.

The version of the respective parties submitted before the *Tribunal* has shown that between the initial proposal of the *Applicant Union* and the written proposal of the employer there have been meetings and discussions. The version put in by Galvabond Ltd shows that meetings between the two parties were held on 14 May, 3 June and 16 June of 2014 to discuss the demands tabled by the union. The letter dated 7 August 2014, annexed as Document B to the *Respondent*'s response dated 29 April 2015, does not specify that its proposal is final. The facts of the matter have moreover shown that a labour dispute on the issues relating to the negotiations was thereafter reported to the *CCM* on 15 September 2014. The *Tribunal* cannot therefore find that the *Respondent* has undermined the bargaining process in this regard.

The second major issue relates to the averment that the President of the *Applicant Union*, who is also employed at the *Respondent* company, had not been given time-off. The representative of the *Applicant Union* also related to events of 20 November 2014 where the President of the union was given a warning for not saying anything to a colleague who was smoking. The said person was also not given time-off to allow him to discuss issues relating to the workplace with his union.

Although, the representative of the *Applicant Union* has felt that the warning given to Mr Steve Bourbon was unjustified and that this has allegedly destabilized the union, management in this matter has given its version on the events in relation thereto. It has not been shown that the warning was which given to the employee, who also happens to be the President of the *Applicant Union*, was in relation or in the context of the ongoing collective agreement negotiations between the union and the employer. The employer's version of

what took place on 19 November 2014 as set out in its response clearly has not related the incident to the then ongoing negotiations between the two parties. The *Tribunal* cannot therefore be satisfied that the incident involving the President of *Applicant Union* is related to the collective bargaining negotiations and that it has undermined same.

In relation to this issue, it has also been insisted that Mr Steve Bourbon is not being given time-off by the employer. The *Respondent* has stated, in its response, that the employee is being allowed to attend the monthly executive meetings of the union. The *Act* pursuant to *section 42* allows for an officer or negotiator to be granted reasonable time-off without loss of pay for the purposes of performing his trade union functions and activities. This is subject to exigencies of employment and in a manner which does not impair the smooth operation of the workplace.

The conditions for time-off are normally regulated under the procedure agreement. If ever the provisions of the procedure agreement relating to time-off are not being respected, it is open for the aggrieved party to apply for an order to comply with the provisions of the procedure agreement before the *Tribunal* under *section 51 (8)* of the *Act*. The *Tribunal* cannot therefore, in the present matter before it, find whether time-off has been unreasonably withheld or that this withholding, if ever, would amount to an unfair labour practice.

The *Tribunal* cannot also accept that the facilities the trade union leader is entitled to have been cut as was stated by the *Applicant Union's* representative before the *Tribunal* in the absence of any averment made thereto in the union's letter dated 13 April 2015.

In the circumstances, the *Tribunal* cannot find that there has been any form of unfair labour practice by the *Respondent* in relation to the issues raised by the *Applicant Union* in the present matter.

The application is therefore set aside.

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

Sd.....
Raffick Hossenbaccus
(Member)

Sd.....
Desiré Yves Albert Luckey
(Member)

Sd.....
Triboohun Raj Gunnoo
(Member)

Date: 14th May 2015