EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/RN 122/16

Before:	**Indiren Sivaramen**	**-**	**Vice-President**
	Ramprakash Ramkissen	**-**	**Member**
	Rajesvari Narasingam Ramdoo	**-**	**Member**
	Khalad Oochotoya	**-**	**Member**

In the matter of:-

Compagnie Sucrière de Bel Ombre Ltd (Applicant)

And

Syndicat des Travailleurs des Etablissements Privés (Respondent)

The Applicant has made an application under section 39(1)(b) of the Employment Relations Act (the "Act") for an order to revoke the recognition of Respondent as bargaining agent of the Sylviculture Department of Applicant. This application is resisted by the Respondent and each party has filed a Statement of Case. Both parties were assisted by counsel and the Tribunal proceeded to hear the matter.

Mr Thomas deposed on behalf of the Applicant and he stated that the Respondent union has been recognised since 14 July 2015. He referred to six letters (resignation from the union) which were made available to the Applicant and he produced copies of these letters (Doc A to A5). He conceded that he did not know about the actual representativeness of the Respondent. He however averred in re-examination that he

has reason to believe in good faith that the Respondent does not have the required representativeness. For the time being, there is no procedure agreement entered into between the parties.

The Respondent did not adduce any evidence before the Tribunal.

The Tribunal has examined all the evidence on record including documents produced and the submissions of both counsel. Firstly, there is no averment or even a suggestion that the Respondent has obtained recognition as bargaining agent by fraud or misrepresentation. The Tribunal will quote extensively from the Statement of Case of Applicant and more particularly paragraphs 3 to 8:

3. Following the convocation, the Respondent sent a formal application for recognition to the Applicant by letter dated 24th April 2015, whereby the former stated to have met the 30% threshold requirement under section 37(1) of the Employment Relations Act 2008 (the ERA 2008). 22 individuals out of the 58 employees forming part of the Sylviculture cluster of the Applicant formed part of the Trade Union.

4. The Applicant therefore gave official recognition to the Respondent as Trade Union of the Sylviculture on the 14th July 2015.

5. The Applicant states that following the recognition of the Respondent, negotiations started as to the signature of a procedural agreement. Whilst parties were negotiating on the terms of the agreement, the Respondent refused to include a "check off" clause in the procedural agreement.

6. The Applicant was surprised by this refusal as the Respondent had no objection to include a "check off" clause in respect of another cluster of the Applicant, whereby the Respondent is also a recognised trade union.

7. Whilst enquiring as to the reasons for such a refusal, it came to the attention of the Applicant that 6 out of the 22 individuals mentioned at paragraph 3 above, resigned from the Trade Union; thereby bringing the representativeness of the trade union to 27.6%, which is well below the minimum legal threshold requirement to be recognized as a trade union [s.37[1] ERA 2008].

8. The Applicant in all good faith requested the Respondent to submit a certified list of its members for the said cluster before proceeding with the signature of the procedural agreement, but up to now the Respondent has refused and failed to do so.

The Tribunal finds that the least said on paragraphs 6 and 7 mentioned above, the better it will be for the Applicant. Mr Thomas did not depone as to how exactly the six letters were made available to Applicant. We are left with paragraph 7 of the Statement

of Case of Applicant and we thus assume that it was when the Applicant was "enquiring" as to the reasons for the refusal of the union to include a check-off clause in the Procedural Agreement. Later, Mr Thomas accepted that the Respondent has the right not to enter into a check-off agreement. All six letters (Docs A to A5) have been typed, have exactly the same contents, bear the same date with only the name (and signature) of the maker being different in each letter.

The only ground put forward for the present application is "a default of the Respondent to meet the minimum legal threshold of 30% required under section 37(1) ERA [Employment Relations Act] 2008" as laid down at paragraph 9 of the Statement of Case of Applicant. Mr Thomas agreed that the case for the Applicant is simply that the Respondent no longer has the requisite 30% representativeness. The application is thus based on alleged change in representativeness. There is currently no procedure agreement entered into between the parties.

Section 39(1) of the Act provides as follows:

"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.*"

Thus, in the case of an application made by another trade union, only change in representativeness may be invoked for seeking the revocation of the recognition of an already recognised trade union. Our law does not provide for workers in the bargaining unit to make an application under section 39 (above) to apply for the revocation of the recognition of a trade union. As regards an application made by the employer, section 39(1)(b) of the Act provides that the Tribunal may make an order to revoke the recognition of a recognised trade union "for any default or failure to comply with any provisions of a procedure agreement."

As an aid to interpretation, we may refer to the punctuation used. There is no semicolon (like in subsection 39(1)(a) just before the "or") or any comma after "default" which may suggest that "default" is to be read on its own and independently of "or failure to comply with any provisions of a procedure agreement."

On the contrary, it appears clear that both “default” and “failure” relate to the provisions of any procedure agreement existing between the parties. Likewise, the word “any” will apply to both “default” and “failure”.

Also, section 39(1)(b) of the Act relates to the revocation (or variation) of recognition (that is of bargaining rights) already granted to a trade union of workers. The Tribunal is of the view that “default” as used in that section cannot be interpreted in wide terms independently of the latter part of the provision.

Had the legislator intended that an employer may make an application for revocation of the recognition of a trade union on the ground of change in representativeness *per se*, he would have stated so in clear terms.

The Tribunal will finally quote from the case of **Galvabond Ltd and Chemical Manufacturing and Connected Trades Employees Union, ERT/RN/37/2015**, where the Tribunal stated the following:

“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.

…

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.(…)"

We find no reason to depart from such reasoning.

For all the reasons given above, the Tribunal cannot make an order for the revocation of the recognition of Respondent based on the ground on which the present application has been made. The application is thus set aside.

(sd)Indiren Sivaramen

Vice-President

(sd)Ramprakash Ramkissen

Member

(sd)Rajesvari Narasingam Ramdoo

Member

(sd)Khalad Oochotoya

Member

15 December 2016