

EMPLOYMENT RELATIONS TRIBUNAL

RULING

ERT/RN 117/2016

Before:

Shameer Janhangeer	-	Vice-President
Esther Hanoomanjee (Mrs)	-	Member
Rajesvari Narasingam Ramdoo (Mrs)	-	Member
Renganaden Veeramootoo	-	Member

In the matter of:

Private Enterprises Employees Union

Applicant

and

Mammouth Trading Company Limited

Respondent

The present matter is an application by the Private Enterprises Employees Union under *section 38 (1) of the Employment Relations Act (the "Act")* asking for an order of recognition in relation to employees of Mammouth Trading Company Limited.

The Applicant Trade Union was assisted by its trade union representative, Mr R. Chuttoo. Whereas the Respondent Employer was assisted by Counsel Mr S. Oozeer.

The Respondent has, in its Statement of Case, raised a preliminary objection as follows:

The Applicant cannot proceed with the present application inasmuch as, inter alia,

- (i) *the Applicant wrongly applied in writing to the Respondent for recognition under section 37(1) of the Employment Relations Act 2008.*
- (ii) *the Applicant failed to disclose in what capacity the application was being made, that is, whether as a bargaining agent or as a joint negotiating panel or as a sole bargaining agent.*
- (iii) *this present application is made in breach of section 38(10) of the Employment Relations Act 2008 inasmuch as, a previous application **Re: Private Enterprises Employees Union and Mammouth Trading Company Limited ERT/RN 26/16** was set aside on the 20th April 2016.*

Respondent therefore moves that the application be set aside.

Counsel for the Respondent, in his submissions, has referred to the letter dated 24 May 2016 (enclosed as Annex 1 of the Union's application), whereby the Union formally wrote to management applying for recognition under *section 37 (1)* of the Act. He submitted that the application was made under the wrong section as *section 37* applies to the criteria for recognition. There has been no application made under *section 36* of the Act to the Employer and that there is no such thing as formal recognition under *section 37 (1)* of the Act. He also referred to the reply of the Employer dated 18 August 2016 (enclosed as Annex 2 of the Union's application) whereby the Union was informed that the application does not satisfy the requirements under the applicable law which is *section 36*.

On the second limb of his submissions, Mr Oozeer referred to the Union's application before the Tribunal dated 4 October 2016 wherein the Union has not stated if it is asking for recognition as a bargaining agent or sole bargaining agent. Referring to the letter dated 24 May 2016, he noted that the Union stated that it has the support of not less than 30% the workforce, i.e. 377 workers, all over Mauritius. The law says that the Union has to provide the number and category of members in the bargaining unit and that it does not provide that this be done by elimination. He also submitted that the burden is on the Union to do so.

On the third aspect of the preliminary objection, Counsel referred to the record of the case in ERT/RN 26/2016 (enclosed as Annex 2 of the Statement of Case of the Respondent) whereby, on the 20 April 2016, a previous application by the Private Enterprises Employees

Union was set aside. This he submitted was a determination of the Tribunal citing *section 38 (10)* of the Act.

Mr Chuttoo gave a reply to the submissions of the Respondent. He stated that whether the application be under *section 37 (1)* or *(2)*, *section 36* must be satisfied. He stated that the philosophy of the law is to protect workers and divulge only their numbers but not their names. He also stated that they are not obliged under the law to state how many members they have under each category. He also referred to the reply of the Respondent dated 18 August 2016, whereby *section 37 (2)* of the Act is being referred to, whereas the application is under *section 37 (1)* of the Act.

On the second point of the preliminary objection, Mr Chuttoo stated that it is clear that the application has been made as a bargaining agent. The letter dated 24 May 2016 was under *section 37 (1)* which means bargaining agent. He stated that it is important to have good faith between the parties to have sound industrial relations.

As regards the third point raised, Mr Chuttoo stated that there has been no order or determination of the Tribunal in the previous application made by the Union before the Tribunal. How could there have been a determination when the Union withdrew the case and there was no hearing? According to him, it is clear that the point does not stand.

In the present matter, it has not been disputed that the trade union in making its application to the employer via a letter dated 24 May 2016 has stated same to be under *section 37 (1)* of the Act. It may also be noted this has also been clearly stated in the Union's reply to the Respondent's Statement of Case that the '*Application was made under Section 37(1) of the Employment Relations Act as all the criteria for recognition of trade union were met*'.

The letter dated 24 May 2016 bears the heading '**Application for Recognition as per Section 37(1) of the Employment Relations Act**'. It would be pertinent to note the relevant aspect of the aforesaid letter addressed to the Employer indicating the section under which the application was made:

In line with provisions of the Employment Relations Act (2008) the Private Enterprises Employees Union (PEEU) is kindly making a formal application for recognition, under Section 37(1).

In an application for recognition of a trade union, one cannot overlook *section 36 (1)* of the Act. This reads as follows:

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(1) A trade union or a group of trade unions of workers acting jointly may apply in writing to an employer for recognition as a bargaining agent, or as a joint negotiating panel, or as a sole bargaining agent, for a bargaining unit.

On the other hand, *section 37* refers to the '**Criteria for recognition of trade union of workers**' and at *subsection (1)* provides as follows:

(1) Subject to subsections (2) and (3), a trade union shall be entitled to recognition as a bargaining agent for a bargaining unit in an enterprise or industry, where it has the support of not less than 30 per cent and not more than 50 per cent of the workers in the bargaining unit of the enterprise or industry.

Although, the Union may claim that the requirements for recognition under *section 37 (1)* have been satisfied and that the requirements of *section 36* have been complied with, it would have been proper for the Union to have written to the Employer under *section 36* when applying for recognition.

It must also be noted that *section 36 (1)* of the Act cannot be read in isolation. Indeed, there are certain requirements attached to an application made under the aforesaid *section* of the law:

36. Application for recognition

...

(2) An application under subsection (1) shall be accompanied by –

(a) a copy of the certificate of registration of each trade union;

(b) a copy of the agreement between or among the trade unions in the case of a group of trade unions acting jointly; and

(c) the number and category of members that each of the trade unions has in the bargaining unit.

In this context, the Union in its letter dated 24 May 2016 addressed to the Employer has put forward the categories of employees which do not form part of the bargaining unit. However, no list of the categories of members forming the bargaining unit has been enclosed to the application letter addressed to the Employer.

The Employer also contends that the Applicant Trade Union has not disclosed whether it is applying for recognition as a bargaining agent, a joint negotiating panel or as a sole bargaining agent. Although, the Union has contended that it is obvious from their application that they are applying as a bargaining agent, it is pertinent to note the requirements set forth in *section 36 (1)* of the Act whereby the purpose of the application for recognition must be stated.

It may also be noted that the Applicant, in the present matter, has omitted to disclose whether it is seeking an order for recognition as a bargaining agent or as a sole bargaining agent in its application made under *section 38 (1)* of the Act to the Tribunal.

As regards the third point of the preliminary objection raised, it would be pertinent to consider *section 38 (10)* of the Act as to whether the Tribunal made a determination in setting aside a previous application for recognition in ERT/RN 26/2016.

Section 38 (10) of the Act provides as follows:

(10) Where recognition has been ordered or determined under this section, no claim for recognition or revocation or variation of recognition in the same bargaining unit shall be entertained before the expiry of a period of 12 months commencing on the date of the order or determination, as the case may be.

It has not been disputed that the aforesaid case was set aside upon the withdrawal of the Union in relation to its then application. As per the record of the proceedings of 20 April 2016 in the aforesaid case, the matter was called for mention wherein it was withdrawn upon certain observations made by the Tribunal as to the Union's application. In fact, the

proceedings do reflect that Mr Oozeer, Counsel for the Respondent stated '*Just to be in order, a fresh application would be more appropriate*'. Following which Mr Chuttoo eventually stated that '*Ok, I withdraw the case, for a new application*'.

It therefore cannot be said that there has been a determination of recognition under *section 38* of the Act as is required under *section 38 (10)* of the Act.

In the circumstances, the Tribunal finds that the Respondent has succeeded on the first two points of the preliminary objection raised in relation to the present application made before the Tribunal under *section 38 (1)* of the Act by the Applicant Trade Union.

The matter is therefore set aside.

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Shameer Janhangeer
(Vice-President)

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Esther Hanoomanjee (Mrs)
(Member)

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Rajesvari Narasingam Ramdoo (Mrs)
(Member)

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Renganaden Veeramootoo
(Member)

Date: 25 November 2016

