

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 51/2016

ORDER

Before: -

Shameer Janhangeer	-	Vice-President
Vijay Kumar Mohit	-	Member
Jay Komarduth Hurry	-	Member
Khalad Oochotoya	-	Member

In the matter of: -

PRIVATE ENTERPRISES EMPLOYEES UNION

Applicant

and

NATIONAL WOMEN'S COUNCIL

Respondent

The Private Enterprises Employees Union has applied for an order to be recognised as a bargaining agent pursuant to *section 38 (1)* of the *Employment Relations Act* on the ground that the trade union represents not less than 30 per cent of the bargaining unit of *Home Economic Instructress ("HEIs")* at the National Women's Council.

The *Applicant* trade union was represented by Mr Mohamed Reaz Chuttoo, Trade Unionist. Whereas the National Women's Council was assisted by Counsel, Mr Samoorgum Tirvassen.

The Respondent has submitted a statement of case in the present matter wherein it is resisting the application. The grounds on which the present application is being resisted are as follows:

- (1) *The Home Economic Instructress are paid on session basis and as such are not governed by the Employment Rights Act and the Employment Relations Act.*
- (2) *The Home Economic Instructress are not eligible to be members of any Trade Union as per the provisions of s. 13 of the Employment Relations Act.*
- (3) *The Home Economics Instructress have confirmed in writing that they are not members of the Private Enterprises Employees Union.*

Annexed to the Respondent's statement of case is a letter dated 8 October 2015 from the *Applicant* trade union (Annex 1) and a document from the National Women's Council dated 16 May 2016 (Annex 2).

Mr Chuttoo, Trade Unionist, stated that on 8 October 2015, a request was made to the National Women's Council for recognition of the Private Enterprises Employees Union to represent the interests of *HEIs* as a defined bargaining unit. The application, in a letter dated 9 June 2016, was rejected on the basis of a survey carried out by the National Women's Council showing that no *HEIs* are members of the aforesaid Union. Application was made to the ERT on 12 July 2016. The Union maintains that the *HEIs* are members of the Union and that they have not signed any withdrawal form that they are not members of the Union.

Mr Chuttoo produced a document signed by seventeen *HEIs* on 6 August 2016 (Document A). At the date of the application, there were 9 members. The Union now has 15 members as per its application dated 12 July 2016. He produced a bundle of 15 Union membership forms (Document B, Documents B₁ to B₁₅). Mr Chuttoo also stated that the names of the 15 members appear on the list annexed to the Respondent's statement of case. The workers are paid on a sessional basis but they are monthly paid workers and they have an employer/employee relation. He produced a letter from the National Women's Council dated 17 August 2009 (Document C); photocopies of 3 pay slips (Documents D₁ to D₃). The *HEIs* are employees of the National Women's Council.

Mr Chuttoo was also questioned by Counsel appearing for the Respondent. He notably stated that there is bad faith by the employer because the employees were compelled to sign a form that there were no longer members of the Union, basing himself on the document dated 6 August 2016. He maintained that this was the case as stated in the aforesaid letter "*Nous bann*

sousignes, travailler National Women Council pe inform le Prezidan ki patron pe fer pression lor nou sign enn papier pou sorti dans sindika". He did not agree that the law does not provide that workers or persons who work, employed or paid on a sessional basis do not fall within the category to be admitted as members.

Mrs Ah Nien-Kotadoo, Secretary of the National Women's Council, was called to adduce evidence on behalf of the Respondent. She stated that the *HEIs* provide their services to the *Home Economics Section of the Ministry of Gender Equality, Child Development and Family Welfare* (the "*Ministry*"). They dispense courses at women's centers, committee centers, social welfare centers in pastry, food preservation, everything related to home economics and related courses. Their services are retained on a sessional basis, having a maximum of 40 sessions a month. After 4 months they go to another venue determined by the head of the respective section. There are 21 *HEIs* paid Rs 200 per session. They are not entitled to benefits in terms of sick leave, causal leave or whatever; they are only refunded their travelling expenses.

Mrs Ah Nien-Kotadoo also stated that they receive claims from the *Ministry* and then effect payment made through the bank. Upon receiving the application for recognition, the Respondent decided to call the *HEIs* to state whether they are members of the Union or not. They were not compelled to fill the form dated 16 May 2016 (Annex 2 of the Respondent's statement of case). They did not have any other meetings after.

The Respondent's representative, following questions put by Mr Chuttoo, notably stated that what the *HEIs* do during their sessions falls under the responsibility of the *Home Economics Section* of the *Ministry*. She produced a letter dated 21 May 1998 from the National Women's Council (Document E). The *HEIs* do not have a scheme of duties and they are only paid by the Respondent; they have no control mechanism upon them. The *Home Economic Organisers* and the *Home Economic Officers* are from the *Ministry*. The *HEIs* are mostly at Form V level and they followed a 3-day training course from the *Ministry*. Their work is organised by the *Home Economics Unit* of the *Ministry*. She also produced a letter dated 25 September 2015 from the National Women's Council (Document F).

Counsel for the Respondent has submitted mostly in relation to his grounds of objection. He contended that the National Women's Council is not the employer in this matter referring to the letter of dated 21 May 1998 whereby the services of the a *HEI* was retained on

a sessional basis, instructions were given for the addressee to report to the *Home Economics Organiser* and told that their work session will be organised in accordance with the programme to be prepared by the *Home Economic Officers*, who fall under the establishment of the *Ministry*. Counsel notably produced extracts of the *Pay Research Bureau Report* and the *Civil Establishment Order* in support of his arguments.

Relying on *section 40* of the *Employment Rights Act*, Counsel submitted that in law the *HEIs* do not fall within the definition of a worker. Relying on *section 13* of the *Employment Relations Act*, he listed the category of workers entitled to be members of a trade union and contended that the *HEIs* do not fall within this category. He also cited the order of the Tribunal in *Private Enterprises Employees Union and Tropic Knits Ltd* (ERT/RN 85/2013) in relation to *section 13* of the *Act* and the definition of a worker.

The *Applicant* trade union in the present matter is seeking recognition as a bargaining agent on behalf of the bargaining unit of *HEIs* who are employed at the National Women's Council. In contention of its application, it has produced 15 membership forms of the workers who form this bargaining unit. The National Women's Council is objecting to the present application on the grounds put forward in its statement of case.

It has been contented that the *HEIs* are paid on a sessional basis and are not governed by the *Employment Rights Act* or the *Employment Relations Act*. Although, it has not been disputed that they are sessional workers working up to 40 hours per week, it would be misleading to state that they do not fall under the aforementioned legislations in view of the interpretation given to a 'worker' under the *Employment Relations Act*:

"worker" –

- (a) means a person who has entered into or who works under a contract of employment, or a contract of apprenticeship with an employer, other than a contract of apprenticeship regulated under the *Mauritius Institute of Training and Development Act*, whether by way of casual work, manual labour, clerical work or otherwise and however remunerated;
- (b) includes –
 - (i) a former worker;
 - (ii) a person who has accepted an offer of employment.

This definition is not completely different from the interpretation given to ‘*worker*’ under the *Employment Rights Act* wherein a part-time worker and a share worker are included in the meaning under *section 2* of the aforesaid *Act*.

It cannot also be overlooked that the National Women’s Council is a parastatal body falling under the aegis of the *Ministry*, whose pay and grading structure is determined by the *Pay Research Bureau* in its reports.

In view of the broad definition of a ‘*worker*’ under the aforementioned legislations, the Tribunal cannot find that the *HEIs* forming the bargaining unit in the present matter are not governed under the two *Acts*.

Although it has not been expressly put forward as a ground to resist the present application, it has been argued that the National Women’s Council is not the employer in the present matter in view of the fact that the work of the *HEIs* are organised by the *Home Economics Section* of the *Ministry*.

In this context, it would be apposite to note the interpretation given to an ‘*employer*’ under the *Employment Relations Act*:

“employer” includes a person, an enterprise, the State, a statutory corporation, a body of persons employing a worker, or a group of employers or a trade union of employers;

It should also be noted that under the *Employment Rights Act* (as amended by *Act No. 6 of 2013*), an ‘*employer*’ is taken to mean as follows:

“employer”, subject to section 33 –

(a) means a person who employs a worker and is responsible for the payment of remuneration to the worker;

(b) Includes –

- (i) *A job contractor;*
- (ii) *A person, other than another shareworker, who shares the profit or gross earnings of a shareworker;*

The National Women's Council is a statutory body established under the *National Women's Council Act (Act 27 of 1985)* which provides that the Council shall be a body corporate having its set objects, managed and administered by a *National Committee* comprising the *Permanent Secretary* of the *Ministry* who shall be the President of the Council.

It should also be noted that the National Women's Council is empowered under *section 5* of its enacting legislation to appoint '*such staff as it considers necessary for the purposes of the Act*' on terms and conditions set by the Minister responsible for the subject of women's rights.

Although it has clearly been stated in the letter dated 21 May 1998 that the *HEI* is to '*report to the Home Economics Organiser*' and that their '*work sessions will be in accordance with the programme to be prepared by the Home Economic Officers*', it cannot be overlooked that they are paid on a monthly basis by the National Women's Council as per pay slips produced and have been recruited by the Council itself.

The letter also clearly shows that the Council is directing the *HEI* to report to the relevant section of the *Ministry*, thereby delegating its power of control over the worker. This is moreover consistent with the *National Women's Council Act*, whereby the Minister sets the terms and conditions of staff appointed by the Council.

The Tribunal, for the purpose of the present application, cannot therefore find that the National Women's Council is not the employer of the concerned *HEIs* in the present matter.

The argument that the *HEIs* are not entitled to be members of the trade union pursuant to *section 13* of the *Employment Relations Act* has also been put forward. As has been already considered, it cannot be said that the *HEIs* are not workers and nor can it therefore be said that they do not satisfy the aforementioned *section* which sets lenient conditions for a person to be

entitled to be a member of a trade union. In this context, the fundamental rights and freedoms of a person to join a trade union as embodied in *section 13* of the *Constitution* cannot also be overlooked.

The main ground resisting the present application in this matter is in relation to the representativeness of the *HEIs* in the bargaining unit inasmuch as per the Respondent's statement of case, they have confirmed in writing that they are not members of the *Applicant* trade union. In support of its contention, the representative of the Council referred to a document dated 16 May 2016 whereby nineteen of a list of 22 *HEIs* confirmed that they are not members of any trade union.

In light of this, the Tribunal proceeded to organise and supervise a secret balloting exercise in the relevant bargaining unit. The balloting exercise revealed the *Applicant* trade union to have a vast majority support among the current 21 *HEIs* forming the bargaining unit.

The Tribunal, having considered that the grounds of objection put forward are not valid, cannot therefore find that the *Private Enterprises Employees Union* is not entitled to recognition by the National Women's Council in the present matter.

The Tribunal, being satisfied that the *Applicant* trade union has produced evidence that it is eligible for recognition and having considered the outcome of the secret ballot organised in the relevant bargaining unit, therefore orders that the Private Enterprises Employees Union be granted recognition as a sole bargaining agent with the National Women's Council in respect of the bargaining unit of *HEIs*. The Private Enterprises Employees Union and the National Women's Council are to meet at specified intervals and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.

The Tribunal orders accordingly.

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

.....
Vijay Kumar Mohit
(Member)

.....
Jay Komarduth Hurry
(Member)

.....
Khalad Oochotoya
(Member)

Date: 8th September 2016