

# EMPLOYMENT RELATIONS TRIBUNAL

**ERT/RN 03/17**

## ORDER

**Before:**

<b>Rashid Hossen</b>	–	<b>President</b>
<b>Esther Hanoomanjee (Mrs)</b>	–	<b>Member</b>
<b>Rabin Gungoo</b>	–	<b>Member</b>
<b>Renganaden Veeramootoo</b>	–	<b>Member</b>

**In the matter of:-**

**Union of Bus Industry Workers**

**(Applicant)**

**And**

**UBS Transport Ltd**

**(Respondent)**

The Applicant is applying to the Tribunal under Section 51(2) of the Employment Relations Act as amended for the making of a procedure agreement by way of an award.

The Respondent is resisting the application.

In support of its application, the Applicant avers:-

- It was granted recognition by an Order of the Tribunal on the 14<sup>th</sup> July 2016, as the Bargaining Agent for the respective bargaining unit, following a secret ballot held by the Employment Relations Tribunal on the 12<sup>th</sup> and 13<sup>th</sup> of July 2016.
- This secret ballot followed an application made by the Applicant to the Tribunal pursuant to Section 37 (Savings and Transitional Provisions) 4(a)(ii) of the Employment Relations (Amendment) Act 2013.
- On the 8<sup>th</sup> of August 2016, following the Order of the Employment Relations Tribunal, the Applicant wrote to the Respondent to request an official meeting with the Management of the Respondent with on the agenda of the meeting, *“The drawing up of a Procedure Agreement, as per Order delivered by the Employment Relations Tribunal.”*
- The Respondent never attended to this request for a meeting to draw up and sign a Procedure Agreement.
- On the 28<sup>th</sup> of November 2016 the Applicant sent a draft procedure agreement to be negotiated and signed between the Respondent and the Applicant.
- On the 30<sup>th</sup> November 2016, the Respondent responded to state that it will revert back to the Applicant.
- On the 16<sup>th</sup> of December the Applicant wrote to the Respondent to state that it wishes to know the *“formal stand on our proposal by the 28<sup>th</sup> of December 2016, failing which the union will consider that you are refusing to draw up and sign a Procedural Agreement. In such circumstances, the Union reserves its legal right to have recourse to any legal action it deems appropriate.”*
- On the 19<sup>th</sup> of December 2016, the Respondent replied to the Applicant to state that it *“cannot at this stage indicate a precise date on which a draft Procedure Agreement will be finalized.”*
- As at this date the Applicant has not received any further communication from the Respondent.
- Given the Respondent’s continued refusal, since the first notice of the Applicant on the 8<sup>th</sup> of August 2016, to meet with the Applicant to draw up, negotiate and sign a

Procedure Agreement, as proposed by the Applicant on 30<sup>th</sup> November 2016, the Applicant considers the Respondent has breached section 51(1) of the Act and is therefore applying, under section 51(2) of the Employment Relations Act, to the Tribunal for the making of a procedure agreement by way of an award.

The Respondent avers *inter alia* in its Statement of Case that:-

- On 18<sup>th</sup> July 2016 the Tribunal was informed that three unions namely ATTA, UBSEU and BITOU had requested to be accepted as bargaining agent in the Joint Negotiating Panel to represent the workers in the bargaining unit at UBS Transport Ltd the more so as those three unions are already recognized.
- On 8<sup>th</sup> August 2016 the Applicant requested for an official meeting with the Respondent to discuss several items among which the drawing up of a Procedure Agreement.
- The Respondent further adds that those three unions, ATTA, UBSEU and BITOU must be called as parties for the drawing up of a Procedure Agreement.

The Applicant is now objecting to the abovenamed unions be joined as parties or be put in presence of.

Mr S Mohamed for the Respondent argued that there cannot be piecemeal situations that lead to different procedure agreements. Given that no union reached above 50% representativeness following the ballot organized by the Tribunal on 12<sup>th</sup> and 13<sup>th</sup> of July 2016 no one has been granted sole recognition. According to him, all of the abovenamed unions are still recognized and can enter into negotiations and collective agreements. Counsel pleaded on logic and practicability that one Agreement be signed with all parties. He further added that if UBIW is the only union to negotiate it will make it a sole bargaining agent with sole recognition. He denied any refusal on the part of the Respondent to sign a Procedure Agreement with the Applicant as long as the abovenamed unions are joined in. Counsel based his argument on references made to the Hansard Report and jurisprudence that he undertook to forward "*during the course of the day*".

In contrast to the submission, not to say the rigmarole, of Mr S Mohamed, Mr A Domingue SC for the Respondent elegantly and succinctly addressed the Tribunal as follows:-

The Savings and Transitional Provisions which Parliament introduced in 2013 apply to those trade unions which were previously recognized by an employer prior to the commencement of the Act (Employment Relations (Amendment) Act 2013). He emphasized on the words “*subject to subsection (4)*” found in section 37(3) of the Act and which words precede “*the validity of the recognition of a trade union of workers which obtained recognition before the commencement of this Act shall remain unaffected.*” He added that there were formerly four trade unions which were then operating as a joint negotiating panel and since there was a disagreement as to whether the JNP continues or not, the UBIW seized the Tribunal with an application under section 37(4)(a)(ii). As a result of the application, a secret ballot was organized, the Tribunal ordered that the UBIW be recognized as the bargaining agent to represent the workers in the bargaining unit. Counsel submitted that the law did not provide for more than 50% votes.

We do not find any legal basis to conclude that the Savings and Transitional Provisions (supra) require a threshold of 50%. Workers were invited to choose their bargaining agent and this to the detriment of losing trade unions getting their status affected. Neither do we find anything in Hansard that would at least suggest that the Savings and Transitional Provisions (supra) must satisfy a 50% requirement, nor was the jurisprudence referred to by Counsel for the Respondent forthcoming. On the contrary, we find that Section 37(3) of the Act makes provision to the effect that the status of unions may be affected following the determination of the Tribunal after the exercise of the secret ballot referred to in Section 37 (Savings and Transitional Provisions) 4(b) of the Act.

The three other unions having no business of negotiations to do with the Respondent, they cannot therefore be put into cause.

The application being now outside delay, we remit it back to the parties to settle the matter in the light of our pronouncement. The Respondent and the Applicant have to proceed with the drawing up and signing of a procedure agreement.

*(sd) Rashid Hossen*  
(President)

*(sd) Esther Hanoomanjee (Mrs)*  
(Member)

*(sd) Rabin Gungoo*  
(Member)

*(sd) Renganaden Veeramootoo*  
(Member)

24<sup>th</sup> March 2017