

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 34/2017

RULING

Before:

Shameer Janhangeer	Vice-President
Marie Désirée Lily Lactive (Ms)	Member
Abdool Feroze Acharauz	Member
Kevin C. Lukeeram	Member

In the matter of: -

Artisans & General Workers' Union

Applicant

and

SOGE International Limited

Respondent

The Artisans & General Workers' Union has made an application to the Tribunal for recognition as a bargaining agent in respect of a bargaining unit of employees in the manual grade employed at SOGE International Limited pursuant to *section 38* of the *Employment Relations Act 2008* (the "Act").

The Applicant Trade Union was assisted by its President and representative, Mr Lall Dewnath. Whereas, the Respondent was assisted by Counsel Mrs Roovisha Seetohul.

The Respondent Employer has raised a preliminary objection to the present application. This states as follows:

The Applicant has failed to disclose in what capacity the application was being made, that is whether as a bargaining agent, as a joint negotiating panel or as a sole bargaining agent and moves that the application be set aside.

Mr Deoduth Somna, Director of the Respondent, adduced evidence for the purpose of the argument. He produced a letter dated 9 December 2016 (Document A) which he had received from the Artisans & General Workers' Union in December. He also read out the contents of the letter. The Union did not indicate in what capacity it is requesting recognition. It has not indicated whether it is as a bargaining agent or a sole bargaining agent. Under cross-examination, the witness notably stated that there is no mention in the letter that the manual grade workers have joined a group of union or have joined a joint negotiating panel. He also agreed that it is clear that the Union is asking for recognition as a trade union and not as a group of trade union.

Counsel for the Respondent has submitted in relation to *section 36 (1)* of the *Act*. Referring to the letter produced as Document A, the Applicant has failed to indicate whether it is a bargaining agent, a joint negotiating panel or a sole bargaining agent. Although it has been stated in the letter that most employees have joined the Union, the requirement as indicated in the law has not been met with. The requirement is set under *section 36 (1)* and is mandatory. The Union cannot rely on the contents of the letter as drafted for the employer to speculate in what capacity the Union is applying for recognition. Counsel relied on the ruling of the Tribunal in *Private Enterprises Employees Union and Mammouth Trading Company Limited [ERT/RN 117/2016]* in support of her submissions. Counsel stated that they cannot be satisfied with the vague contents of the letter whereby the employer is left to speculate in what capacity the Union is seeking recognition. It is Counsel's submission that the Union should have abided by *section 36 (1)* of the *Act*.

Mr L. Dewnath, representing the Applicant Union, made a statement to the Tribunal. He stated that it is clear from his letter that they have organised workers at the company. They applied for recognition according to *section 36 (1)* of the *Act* and also provided information as per *section 36 (2)* of the *Act*. It is understood that they applied as a bargaining agent and not as a group of unions. They did not apply as a joint negotiating panel. The application has been made only by the Artisans & General Workers' Union.

The Tribunal, pursuant to the preliminary objection that has been raised by the Respondent, has to determine whether the Applicant Union has complied with the requirements of *section 36 (1)* of the Act when it applied to the Respondent for recognition.

It has not been disputed that on 9 December 2016, the Union made an application for recognition to the employer, SOGE International Limited by way of letter. The relevant aspect of the application letter reads as follows:

RE: Application for Recognition

I am writing to inform you that most of your employees have joined the Artisans and general Workers Union of the above named address.

In this regard, I am requesting you to duly consider the aforesaid matter in conformity with Sub-Part B, Section 36 (1) of the Employment Relations Act of 2008.

We have organized workers only in the Manual Grade.

I am submitting to you the following as per Section 36 (2) (a) (c) of the Employment Relations Act 2008.

- 1. Please find herewith enclosed a copy of the certificate of registration of the Artisans and General Workers Union.*
- 2. The Total number of workers who have joined the union is 12.*
- 3. Most of the workers are categorized as sorters and helpers.*

The present objection is based on the requirements provided for in *section 36 (1)* of the Act. This reads as follows:

36. Application for recognition

(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.

Under the aforesaid *section* of the Act, it has been provided that a trade union may apply to an employer in writing for recognition as a bargaining agent, or as a joint negotiating panel, or as a sole bargaining agent. It is clear from the contents of the letter that the Applicant

Union has failed to disclose in what capacity it is applying for recognition. The application letter clearly does not state whether the Union is applying for recognition as a bargaining agent, or as a joint negotiating panel, or as a sole bargaining agent.

It would also be pertinent to note that the use of the words '*most of your employees*' in the letter would lend one to believe that the Union has a membership of the majority of the employees. This could imply that the Union is seeking recognition as a sole bargaining agent. However, this is not the case as per the statement of the Union's representative who stated that it is understood that the application was made as a bargaining agent.

It may also be noted that as per *section 36 (1)* of the *Act*, the application is made in writing to the employer for recognition for a bargaining unit. Referring to the letter as reproduced, the Union has only stated that they have organised workers in the manual grade and have omitted to state that the bargaining unit applied for is the manual grade of employees.

It would thus be incumbent on the Union to state in what capacity it is applying for recognition and not to leave it to one's imagination as to the capacity it has applied for recognition to the employer. It is also important to state what the bargaining unit actually is. The application made must be certain as to its contents and must satisfy the requirements of *section 36 (1)* of the *Act*.

In the circumstances, the Tribunal finds that the preliminary objection raised by the Respondent must succeed.

The application is therefore set aside.

**SD Shameer Janhangeer
(Vice-President)**

**SD Marie Désirée Lily Lactive (Ms)
(Member)**

**SD Abdool Feroze Acharauz
(Member)**

**SD Kevin C. Lukeeram
(Member)**

Date: 5th May 2017