

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/ RN 136/15

Before

Indiren Sivaramen	Vice-President
Esther Hanoomanjee	Member
Rabin Gungoo	Member
Georges Karl Louis	Member

In the matter of:-

Saltlake Resorts Ltd (Applicant)

And

**Organisation of Hotel, Private Club & Catering Workers Unity
(Respondent)**

The Applicant has made an application for an order to revoke the recognition of Respondent which is a recognised trade union at the Applicant. The 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.

Ms Shookhye deponed on behalf of the Applicant and she confirmed the correctness of the contents of the Statement of Case filed on behalf of the Applicant. She referred to a correspondence dated 8 September 2016 emanating from the Respondent and addressed to the Permanent Secretary of the “Ministry of Labour & Industrial Relations” (Annex 2 to the Statement of Case of Applicant). She stated that none of the issues raised in that document had been subject to prior discussion with the Applicant. At the meeting held at the Ministry, it was recommended that a meeting be held between the

two parties. A meeting was thus held on 28 September 2016 (“the first meeting”) and she produced a copy of the minutes of that meeting (Doc A). Whilst discussions were on between the parties, the Respondent lodged an application before this Tribunal for alleged breaches of the Procedure Agreement. She added that these matters pertaining to Articles 5(i) and 6 of the Procedure Agreement had already been raised during their first meeting with the union and were subject to ongoing negotiations between the parties. That application was subsequently withdrawn before the Tribunal by the union.

Ms Shookhye then referred to Annex 3 to the Statement of Case of Applicant (correspondence dated 11 October 2016 addressed to the same Ministry as above). She averred that the matters mentioned therein were being discussed with the Respondent. Annex 3 was also copied to the press. Ms Shookhye stated that Applicant was informed that complaints had been filed against the Applicant by Respondent’s negotiator, Mr Shanto, for alleged discrimination. Ms Sookhye produced a copy of the minutes of a meeting held on 24 October 2016 (Doc B).

Ms Shookhye then stated that on 12 October 2016 she was informed by the secretary of the General Manager (GM) that a union representative had gone directly to the GM office to raise a complaint. She stated that the latter was complaining that he had to clean nine rooms which were found in different blocks. Ms Shookhye also stated that an audio recording was “apparently” broadcasted on radio. She stated that it was Mr Shanto who referred to the existence of a recording. She stated that management sent a letter dated 12 October 2016 (copy produced and marked Doc C) to the Respondent to complain about non observance of the Procedure Agreement. She also produced copies of letters she would have received from workers and which were transmitted to the Respondent (Docs D to D10) and a copy of the reply received from the union (Doc E).

Ms Shookhye stated that there were 363 employees at the Applicant as at December 2016. According to records kept for the purposes of paying trade union fees, 62 employees are union members in the bargaining unit.

In cross-examination, Ms Shookhye stated that she did not inform Respondent that he would have to wait for 15 days as per the provision in the Procedure Agreement in relation to resolution of collective grievances. In relation to the letter of 8 September 2016, the Applicant did not say anything to the Respondent as to the procedure provided in the Procedure Agreement. Initially, Ms Shookhye accepted that the Applicant was negotiating with the Respondent at their meeting of 28 September 2016. Then upon further cross-examination, she stated that at the first meeting, parties were still at stage 1 (under Article 11C of the Procedure Agreement) so that they were then

not really negotiating on the issues raised. She also stated that at the meeting held at the Ministry the parties had agreed there on how they would proceed.

Ms Shookhye then stated that she in fact went to the office of the GM and accompanied the union representative back to her office to take cognizance of the latter's grievance. She confirmed that this was an individual grievance. Ms Shookhye confirmed that the issue of valets allegedly performing more than 10 rooms daily had been sorted out. She maintained that the copying of the letter of 11 October 2016 to the press amounted to a declaration to the press. She however stated that this was not a valid reason for Applicant not to meet the union representative and they went ahead with the negotiations. She stated that despite the Respondent bringing the Applicant into disrepute, the Applicant as a fair and responsible organisation, continued with the negotiations.

Ms Shookhye conceded that the recording she had referred to has never been produced to the management of the company. She agreed that Article 6 in the Procedure Agreement related to check-off. The Applicant has never made any application to the Tribunal for an order requiring Respondent to comply with a provision of the Procedure Agreement. She confirmed that the last alleged breach of the Procedure Agreement by the Respondent occurred on 5 November 2016 and that after 8 November 2016, there had been no breach of the Procedure Agreement. She also confirmed the joint statement made before this Tribunal on 8 November 2016 on behalf of both parties in another case involving the same parties (Annex B to Respondent's Statement of Case). About a month later however, Applicant decided to apply for revocation of recognition of Respondent just a few days before the expiry of the Procedure Agreement. The Procedure Agreement is now no longer in force.

Ms Shookhye then conceded that the Applicant is trying to avoid entering into a new procedure agreement with the Respondent.

In re-examination, Ms Shookhye averred this time that the union representative allegedly came to see the GM because his co-workers had been assigned the cleaning of rooms in different blocks and they are tiring themselves out. It was also put to her by counsel that in December she was convened by the police in respect of an allegation of discriminatory action and she agreed.

The Respondent did not adduce evidence before the Tribunal.

The Tribunal has examined all the evidence on record including documents produced and the submissions of both counsel. The Tribunal will consider the alleged "breaches" of the Procedure Agreement.

Letter of 8 September 2016

There is evidence that the issues in the said letter had not been raised with management prior to the said letter and that there were no discussions between the parties on the issues mentioned. The issues in the letter of 8 September 2016 relate to the following:

1. *Role of the head of security department.*
2. *Whether permission is at the discretion of head of department.*
3. *Whether gardeners should be compel to perform as valet des chambres/housekeeping work.*
4. *Whether the company should consider positively “off day” of Muslim employees to be on a Friday.*
5. *Whether H.R. department shall continue intimidating employees as follows “ceki dan sindika pa pu gayn ogmantasyo”.*
6. *Whether the company should continue to use religious instrument for commercial purpose.*
7. *A.O.B.*

Article 11C of the Procedure Agreement read as follows:

C. COLLECTIVE GRIEVANCES/ APPREHENDED LABOUR DISPUTE

Stage 1

In the event of there being a grievance or apprehended dispute affecting some or all employees, the issue should be reported to management, in writing, accompanied with the relevant supporting documents, if any, of the nature of the grievance or apprehended dispute. The Human Resources Manager shall communicate the Company’s stand within 15 days of being so notified.

Stage 2

1. *Should the grievance or apprehended dispute remain unresolved, the parties shall have meaningful negotiations during a period not exceeding 90 days or such longer period as may be agreed between parties.*
2. *At any time within that period but not later than 20 days before the expiry of the 90 days or any such longer period as agreed by the parties, any party may seek the assistance of the Conciliation service provided by the Ministry of Labour, Industrial Relations and Employment as specified under section 68 of the Employment Relations Act 2008.*
3. *Any agreement reached during the conciliation will have the effect of a Collective Agreement as specified in sections 55 and 56 of the Employment Relations Act 2008.*

4. *The Collective Agreement should be signed and registered within 30 days of the date of signing of that agreement, with the Employment Relations Tribunal and the Ministry of Labour, Industrial Relations and Employment.*
5. *At any point in time during the 90 days' of negotiation period if a state of deadlock has been reached, any party may report the dispute to the Commission for Conciliation and Mediation.*

Stage 3

If there is no agreement at Stage 3 both parties may agree to refer the dispute for voluntary arbitration to the Employment Relations Tribunal or to an arbitrator appointed by them as per section 63 of the Employment Relations Act.

The Respondent should have followed the procedure laid down at Stage 1 under Article 11C of the Procedure Agreement. However, the Tribunal notes that the Applicant did participate in the meeting of 16 September 2016 at the Ministry. The Applicant participated in the meeting and even agreed to have a meeting with the Respondent on 28 September 2016 to address issues referred to in the said letter of 8 September 2016.

It is apposite to note that the Applicant had by then already given notice to Respondent by way of a letter dated 7 September 2016 (Annex 5 to Applicant's Statement of Case) that it was terminating their Procedure Agreement in accordance with Article 14 of the Procedure Agreement.

A further meeting was even held on 24 October 2016 between the parties. According to management, all matters raised at the two meetings between the parties had been solved.

Based on the evidence adduced, the Tribunal has to decide whether the recognition of the Respondent is to be revoked. This requires that the evidence as a whole be considered and not merely separate pieces of evidence. The Tribunal will thus later analyse the whole evidence adduced including evidence under this heading.

Previous case lodged by the Respondent before the ERT against the Applicant for alleged breaches of the Procedure Agreement

Ms Shookhye referred to an application lodged by the Respondent before the Tribunal against the Applicant (detailed in paragraph 7 of Applicant's Statement of Case). She averred that the application referred to matters which had been raised at the first meeting held between the parties and which were subject to ongoing negotiations. Counsel for Applicant in his submissions did not lay emphasis, and we believe, rightly

so, on this alleged breach. Indeed, the Procedure Agreement (Annex 1 to the Statement of Case of Applicant) does not cater specifically for the procedure to be followed for an alleged breach of the agreement itself. Reference is made in paragraph 7 of the Statement of Case of Applicant to an alleged breach of Article 11C of the Procedure Agreement. Article 11 however relates to individual grievance and collective grievances/dispute procedures which will affect an individual employee or a small group of employees in the first case or a large group of employees or the whole work-force in the second case. Article 11 does not contemplate breaches of the Procedure Agreement affecting the trade union as a party to the agreement. This is why Article 11C under Stage 2 at paragraph 3, for example, provides that any agreement reached at Stage 2 will have the effect of a collective agreement.

Also, the manner in which Article 11C of the Procedure Agreement has been drafted, more particularly clause 5 at Stage 2 and Stage 3, suggests that ultimately the grievance or apprehended dispute may be subject to arbitration. There would thus be an award from the Tribunal or an arbitrator as opposed to an order made when an application is made by a trade union or an employer directly to the Tribunal in relation to procedure agreements. There is nothing which indicates that the lodging of the case before the Tribunal per se amounted to a breach of the Procedure Agreement.

Trade union representative going to the office of the General Manager to voice out a grievance in alleged breach of Article 11B of the Procedure Agreement

We have deliberately refrained from mentioning in the sub-heading above whether the alleged grievance was an individual grievance or a collective grievance. Indeed, at paragraph 10 of Applicant's Statement of Case, there is reference to the fact that the representative of Respondent would have voiced out an individual grievance. In chief, Ms Shookhye did state that the representative voiced out his (underlining is ours) personal grievance. In cross-examination, she confirmed that this was an individual grievance. However, in re-examination, Ms Shookhye stated that the issue raised by the representative pertained to employees and was not personal to the latter.

The evidence of Ms Shookhye on this issue has been most unsatisfactory. It is also not clear from the evidence of Ms Shookhye whether the said representative actually went to the office of the General Manager and voiced out a grievance or whether the latter had intended to voice out a grievance. The Tribunal has not been convinced with the testimony of Ms Shookhye on this issue and in any event is not satisfied on a balance of probabilities that the Respondent, that is the trade union, has committed any breach of Article 11B of the Procedure Agreement.

Workers allegedly withdrawing from the Respondent whilst Respondent would have refused to acknowledge same

The Applicant is here relying on Article 6 of the Procedure Agreement which reads as follows:

ARTICLE 6 CHECK-OFF

The Company agrees to a check-off system provided that in the case of deduction from salaries/wages for this purpose, the employer shall receive written authority from the individual employees.

This authority may be withdrawn in writing, which shall cease to have effect on the last day of the sixth month following the month in which written notice is given by the employee of his intention to cease to pay dues to the trade union.

Provided that written authority received from an individual employee before the coming into force of the present agreement shall continue to be valid. This agreement is made under the Employment Relations Act and a copy of the agreement registered with the Tribunal. The whole amount of deduction accruing to T/Union shall be remitted by the 10th of the following month at latest by the Company.

Copies of letters allegedly emanating from workers have been produced (Docs D to D10). The dates of these letters are not clear from the said copies but as per the Statement of Case of Applicant, the letters would have been received as from August 2016. One of these letters was even addressed to the HR Manager. The covering letters sent by Applicant (referred to in the letter of reply from the union - Annex 4 to the Statement of Case of Applicant) have however not been produced. The Tribunal is left in the dark as to what the Applicant wanted to convey to the Respondent the more so that Respondent in his reply addresses the issue of resignations as members of the union.

There is no evidence of a breach of Article 6 of the Procedure Agreement which relates to check-off (and not resignation from a trade union) and which provides, inter alia, when an authority for check-off shall cease to have effect.

Letter dated 11 October 2016 was sent to the Ministry of Labour, Industrial Relations and Employment complaining about matters that were allegedly part of ongoing negotiations in breach of Article 11C of the Procedure Agreement

The main issue in the above letter dated 11 October 2016 (Annex 3 to the Statement of Case of Applicant) concerns complaints from several valets that they were allegedly

being imposed to perform more than 10 rooms daily. The second issue concerned a female valet who had resumed work after 14 weeks of maternity leave and who would not have a fixed time to wean her baby. The second issue is clearly an individual grievance so that Article 11C of the Procedure Agreement cannot be invoked by the Applicant. Whilst Ms Shookhye averred that these matters were already subject to ongoing negotiations between the parties, this is not borne out by the minutes of proceedings of the meeting held on 28 September 2016 (Doc A). It is only at the meeting of 24 October 2016 (after the letter of 11 October 2016) as per Doc B that we find the following:

“Matters raised by the Union:

....

Point 13: Regarding the number of rooms allocated to the valets.

Mgt stand / Response

Mgt has already find a solution and the valets will have only 9 rooms to do.”

The Respondent has not admitted in his Statement of Case that the negotiator’s letter of 11 October 2016 related to issues which were already being discussed between the parties. In fact, this is specifically denied at paragraph 12 of Respondent’s Statement of Case even though the Tribunal bears in mind that the representative of Respondent did not depone before the Tribunal.

In his letter of 12 October 2016 (Doc C), the Applicant drew the attention of Respondent to alleged breaches of the Procedure Agreement and stressed under this limb that the delay of 15 days under Stage 1 of Article 11C of the Procedure Agreement had not been complied with. Applicant however also invited Respondent “to continue the negotiation the Management (and I am sure you do too) hopes to be fruitful”.

The argument of Applicant that the delay of 15 days had not been complied with cannot stand if Applicant pretends that the issues in the letter of 11 October 2016 were already subject to ongoing negotiations. Negotiations which need to be meaningful start as from Stage 2, that is, after Stage 1. Also, negotiations had already started between the parties on other issues as from 28 September 2016 as per Doc A. Indeed, from Doc A, it is clear that for some issues, decisions were arrived at by management after hearing Respondent’s representatives. If the issue of number of rooms allocated to valets was indeed under discussion between the parties as suggested by Applicant, the delay of 15 days (above) will not apply.

The issue with respect to the number of rooms allocated to valets was discussed between the parties on 24 October 2016. A solution was found as per the minutes of the meeting and according to Ms Shookhye the matters raised were eventually solved.

On the basis of the evidence led by the Applicant, the Tribunal finds no evidence of any breach of Article 11C of the Procedure Agreement.

The letter of 11 October 2016 was also copied to the press

It is averred that the letter was copied to the press in breach of Article 8 of the Procedure Agreement. The relevant part of that Article reads as follows:

ARTICLE 8 – COMMUNICATION

...

Communication with Media

- a) *Any communication to the press, radio and television in respect of this Agreement or any subsequent negotiations resulting from it shall be signed and issued jointly by accredited representatives of the Company and the Union.*
- b) *Subject to the above, the parties may however issue communiqués and hold press conferences separately to address matters concerning industrial relations.*
- c) *The parties undertake not to make any declaration to the media likely to affect adversely any ongoing negotiation.*

Reference has also been made “en passant” to Article 10 of the Procedure Agreement during submissions even though same has not been relied upon in the Statement of Case of Applicant. Article 10 provides as follows:

ARTICLE 10 – DISCLOSURE OF INFORMATION

The parties shall not disclose information that:

1. *is prohibited to be released by law or by order of any court;*
2. *may cause prejudice to the interests of the Company or to an employee;*
3. *is personal information relating to the privacy of an employee, unless the employee consents to the disclosure of that information.*

Though there is evidence that Annex 3 to the Statement of Case of Applicant was copied to the press, there is no evidence that it was actually received by the press. There is also no evidence that Annex 3 was actually used or acted upon in any manner whatsoever by the press. From Doc A and in the absence of any other meeting between the parties before the 24 October 2016, there is no evidence that the two issues as formulated in Annex 3 (above) were subject to ongoing negotiations between the parties. The Applicant has not adduced any evidence either to show how the alleged “declaration” (if any) was likely to affect any ongoing negotiation. On the contrary, the evidence adduced suggests that there were negotiations between the parties even after Annex 3 was allegedly copied to the press so much so that the matters were finally resolved according to Ms Shookhye.

The Tribunal thus cannot find that the Respondent has made a declaration to the media likely to affect adversely any ongoing negotiation.

Annex 3 (above) certainly does not contain information falling within information contemplated under Article 10 of the Procedure Agreement. Information contemplated under Article 10 would relate for example to strategic decisions and other confidential information. For these reasons, the Tribunal is not satisfied even on a balance of probabilities that there was any default or failure on the part of the Respondent to comply with Articles 8 or 10 of the Procedure Agreement.

Respondent allegedly causing a recording to be broadcasted on radio

It is apposite here to refer to paragraph 14 of Applicant’s Statement of Case which reads as follows:

“On the 5th November 2016, during ongoing negotiations between the Applicant and the Respondent, the Respondent caused a recording of an alleged conversation between a representative of the Applicant with members of the Respondent to be broadcasted on radio contrary to and in breach of Article 8 of the Procedure Agreement. The recording was recorded without the knowledge and consent of the Applicant and was apparently edited with the consequence that the context and identities of the persons speaking could not be ascertained, before it was broadcasted. This Respondent’s conduct in that regard is most objectionable and destroys the spirit of openness, trust, honesty, mutual respect and understanding expected from employment relations at the workplace.”

The Tribunal has analysed carefully the evidence of Ms Shookhye and the latter never referred to the Respondent causing a recording to be broadcasted on the radio. The alleged recording has not been produced and the Tribunal has been left guessing as to the contents of such a recording if it ever existed. Ms Shookhye tried to avoid answering whether she actually heard the alleged recording. However, she later had to concede that the recording has never been produced to management. She only heard

about such a recording. She then candidly stated that the Applicant could not react to the alleged recording since same had not been produced to management. Yet, she wants this Tribunal to act on her evidence to find that Respondent caused a recording to be broadcasted on a radio. There is no such evidence on record. The Tribunal finds that Applicant has failed to adduce sufficient evidence under this limb to prove on a balance of probabilities that there has been any default or failure on the part of the Respondent to comply with the relevant provisions of the Procedure Agreement.

The Tribunal will now proceed to consider two issues which were raised in the present case and which do not fall under “default or failure to comply with any provisions of a procedure agreement”.

Alleged change in representativeness of Respondent

The Tribunal notes that the Applicant has omitted, presumably deliberately (in the light of the argument put forward to try to justify why this Tribunal should also contemplate the above ground before deciding whether to revoke the recognition of Respondent), to mention under which section of the law the present application has been made to the Tribunal. The Applicant is not relying on the Procedure Agreement here. The Applicant has instead come up with an ingenious argument to suggest that if a trade union has to satisfy an eligibility criterion to be recognised, then if that criterion no longer exists, the trade union can no longer be considered as a recognised trade union. The Tribunal has duly considered this argument but finds that same cannot stand in the light of clear provisions in the Act in relation to revocation of recognition of a trade union of workers. Indeed, section 39 of the Act provides as follows:

“39. Revocation or variation of recognition of trade union of workers

(1) 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.

(2) Where an application is made under subsection (1), the recognition of the trade union or joint negotiating panel shall remain in force until the Tribunal makes an order.

(3) ...

Section 39(1)(b) of the Act is the relevant provision under which an employer may make an application to the Tribunal for revocation of the recognition of a trade union. An

employer can thus only make an application to the Tribunal to revoke the recognition of a trade union of workers where there has been “any default or failure to comply with any provisions of a procedure agreement” (**vide ERT/RN 122/16, Compagnie Sucrière de Bel Ombre Ltd and Syndicat des Travailleurs des Etablissements Privés; ERT/RN 37/15 Galvabond Ltd and Chemical Manufacturing and Connected Trades Employees Union**). The Applicant cannot, in the present case, seek the revocation of the recognition of Respondent by invoking an alleged change in representativeness.

In any event, no evidence has been adduced as to the number of workers in the bargaining unit. Also, the only evidence adduced as to the number of workers who are allegedly members of the union in the bargaining unit pertains to records kept by the employer for the purposes of paying trade union fees. We understand this to mean records kept of the number of workers who pay their fees by check-off.

A joint statement made on behalf of Applicant and Respondent in another case (case ERT/RN/ 111/16) before the Tribunal

Annex B (to the Statement of Case of Respondent) which is not challenged refers to the minutes of proceedings in another case involving the same parties. Both parties were assisted by counsel and that case was withdrawn before the Tribunal on 8 November 2016 (by then, the Applicant had already given written notice to the Respondent that it was terminating the Procedure Agreement). The joint statement made in that case reads as follows:

“MR RAMDENEÉ: *Mr. President, there is a joint motion to be made in this matter which is as follows-*

The present procedure agreement signed by the parties terminates in December 2016. Both parties agree that instead of limiting discussions and negotiations to issues arising out of the procedure agreement which will only last until December 2016 they will negotiate the terms of a new procedure agreement that they shall enter into upon termination of the present procedure agreement. The parties acknowledge that there needs to be a new procedure agreement between the parties when the current procedure agreement is terminated as prescribed under the law and the provisions of the current procedure agreement.

In light of the agreement made by the parties the application is accordingly withdrawn.

The present application is made by way of a letter dated 2 December 2016 (received on 7 December 2016 as per the file) and the Statement of Case of Applicant is dated and was filed on 13 December 2016. Ms Shookhye agreed that there was a joint statement made on behalf of both parties on 8 November 2016 and that Applicant was still willing

to renegotiate a new Procedure Agreement with Respondent. Despite the difficult relationship between the Respondent's negotiator and management, Applicant agreed to renegotiate a new Procedure Agreement with Respondent. Ms Shookhye confirmed that there was no further breach of the Procedure Agreement as from the joint statement made on 8 November 2016. In re-examination, it was put to her that after 8 November 2016 she was convened by the police in December in respect of an allegation of "discriminatory actions" and she agreed. She stated that the (prior) breaches have happened and management analyzed what had happened in the past and decided to go through the present application.

There is no reference at all in the Statement of Case of Applicant to any alleged police declaration or complaint which the representative of Respondent would have made. More importantly, there is no averment of any such declaration (or complaint) having been made in bad faith by the Respondent.

The present application goes against the joint statement made before the President of the Tribunal in case **ERT/ RN 111/16**. Moreover, this application is based on alleged events (as per the Statement of Case of Applicant) which occurred before 8 November 2016. The Tribunal has much difficulty in reconciling this application with the evidence adduced including evidence that negotiations would have continued between the parties and matters raised would have been solved. Ms Shookhye hinted that the real issue was not the Respondent (that is the trade union) but that the issue was the relationship between the negotiator and management. Counsel for Respondent has submitted that even if there were any breaches of the Procedure Agreement, the Applicant would have acquiesced to the breaches. This is subject to the letter dated 12 October 2016 emanating from the Applicant (Doc C). The Applicant however was prepared, be it, in Doc C or before the Tribunal in case **ERT/ RN 111/16** to continue negotiations with Respondent.

Revoking the recognition of a trade union is a drastic measure the more so in a case where there would be no other recognised trade union in a bargaining unit. The Tribunal however will not hesitate to proceed to a revocation should the circumstances of a case require same. In arriving at any decision under section 39 of the Act, the Tribunal will have regard to all the circumstances of the case and may have regard to any relevant principles laid down in section 97 of the Act.

For the reasons given above, the Tribunal is not satisfied, apart from the letter of 8 September 2016 which contains issues which should have been reported to management first, even on a balance of probabilities that there has been any default or failure on the part of Respondent to comply with any provisions of the Procedure Agreement. The Applicant however attended on 16 September 2016 the meeting organized at the relevant Ministry and participated in another meeting with the

Respondent to discuss issues raised in the letter of 8 September 2016. Also, according to Ms Shookhye, issues raised would have been solved ultimately. The Tribunal finds that the breach is certainly not one which would warrant the revocation of the recognition of Respondent. The Tribunal bears in mind all the circumstances of the case including the fact that parties were having meetings to discuss issues raised, were agreeable even on 8 November 2016 to enter into a new procedure agreement, that there was no issue as such with the Respondent but a relationship issue between the negotiator and management and principles and best practices of good employment relations and find that it would not be proper and judicious to revoke the recognition of Respondent. The Respondent however has to see to it that there is no recurrence of any breach of the Procedure Agreement on his side.

Moreover, whilst Applicant would have given notice of termination (3 months' notice) of the Procedure Agreement by way of letter dated 7 September 2016, the present application which is dated 2 December 2016 was received by the Tribunal on 7 December 2016. The application was made a few days before the Procedure Agreement came to an end and received on the eve of the agreement coming to an end (only as from 8 December 2016 as per Annex 5 to the Statement of Case of Applicant). This thus avoids the added difficulty which the Tribunal would have faced if the application was received by the Tribunal after the Procedure Agreement had already lapsed.

However, as at today there is no procedure agreement between the parties and they should thus negotiate to enter into a new agreement. Both parties should see to it that relationship issues be relegated to the background and that the interests of workers and that of the organization be upheld.

For the reasons given above, the application is thus set aside.

SD Indiren Sivaramen

Vice-President

SD Esther Hanoomanjee

Member

SD Rabin Gungoo

Member

SD Georges Karl Louis

Member

20 February 2017