EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/ RN 149/18

Before

Indiren Sivaramen	**Vice-President**
Francis Supparayen	**Member**
Karen Veerapen	**Member**
Ghianeswar Gokhool	**Member**

In the matter of:-

Maritime Transport And Ports Employees Union (Applicant)

And

Mauritius Shipping Corporation Ltd (Respondent)

The present matter is an application made by the Applicant union under section 53(5) of the Employment Relations Act (the "Act") for an order directing the Respondent to start negotiations with the Applicant with a view to reaching a collective agreement. Both parties were assisted by Counsel and the Tribunal proceeded to hear the parties.

It is agreed that the Applicant represents the interest of "employees" of the Respondent and has recognition rights. Paragraph 2 of Applicant's Statement of Case to the effect that there is an agreed and established procedure between the parties that the salary structure and terms and conditions of service of the employees of Respondent are revised every three years is also admitted. Ex facie a copy of an option form circulated to employees (Doc 1 annexed to the Statement of Case of Applicant), there was a report on the Review of Pay and Organisation Structures and Conditions of Service dated October 2017 conducted by Pay and HR Consultancy Services Ltd. As per the evidence on record and Document 1 annexed to the Statement of Case of Respondent, option forms were received by the employees as from 22 December 2017 which was the Friday just before the 'long' week-end for Christmas. In a few cases, the forms were

received only on 26 December 2017 and all the options were to be exercised not later than Wednesday 27 December 2017, 3.00 pm. Nevertheless, it is suggested by Respondent that "each and every employee of MSCL Staff (underlining is ours) has unconditionally signed the option form and agreed to be governed by the terms and conditions of the above report." Copies of the said signed option forms were not produced however, except for one officer who is a member of the Applicant and the trade union representative at the Respondent.

It is averred by the Respondent that the new salary report has been implemented and that payments have been made and accepted by the employees. At the same time, it has been averred on behalf of Respondent that individual requests have been received from ten employees and representations on five specific issues have been made in a letter signed by the majority of employees at Respondent. So much so that an Errors and Omissions Committee has been set up and the Respondent avers in its Statement of Case that the Committee has already submitted its findings in relation to the ten employees and the latter have been informed accordingly.

It is important to note that it is not suggested by the Respondent that it was agreed with the Applicant that the salary report, if accepted by the Board of Directors would become binding or would be made a collective agreement between the parties. It is also nowhere averred that the Applicant agreed to the employees signing or encouraged the employees to sign the option forms. As per the own averments of Respondent in the letter dated 30 April 2018 emanating from Respondent (Document 6 annexed to the Statement of Case of Applicant), the "MTPEU" (which we understand to be the Applicant) had gathered the staff and asked them not to sign the option form.

The stand of the Respondent can also be found in the said letter of 30 April 2018 and is as follows:

"*The stand of Management is that it disagrees with that request* [to start bilateral negotiation on the salary structure] *and insists that the* [sic] *since the option form has already been accepted and signed by each and every employee, the Errors and Omissions Committee is the proper forum to consider any requests or representations.*

Thus, Management has no intention to enter into negotiation with the Union on the new Salary Report 2017 with a view to signing a new Collective Bargaining Agreement relating to the Report."

The last part of Respondent's Statement of Case reads as follows:

RESPONDENT'S RESPONSE TO THE DISPUTE LODGED BY THE DISPUTANT

For the reasons set out above:

(i) Management of the Mauritius Shipping Corporation Ltd will not enter into negotiation with the Maritime Transport and Port Employees Union on the new Salary Report 2017.

(ii) Management of the Mauritius Shipping Corporation Ltd is agreeable to start negotiations with a view to signing a new Collective Agreement with the Maritime Transport and Port Employees Union.

The stand of the Applicant is that a salary report is usually drawn up at the Respondent but that the said document has always been used as the proposal of Management for negotiation with the trade union. For the first time, it is being sought to implement a salary report without any negotiation with the trade union. The parties had meetings at the "Ministry of Labour" in relation to this issue. The Applicant allegedly submitted his counterproposals to the salary report in or about January 2018 and requested for negotiations between parties on Respondent's proposal. Then came the letter dated 30 April 2018 from Respondent addressed to the Ministry of Labour, Industrial Relations, Employment and Training and copied to the Applicant. A copy of the Procedural Agreement entered into between the two parties has also been produced before us.

The Tribunal has examined all the evidence on record including the submissions of both counsel. It is apposite at this stage to refer to section 53, including 53(5), of the Act under which the present application has been lodged. Section 53 of the Act reads as follows:

53. Bargaining procedure

(1) A recognised trade union, a group of recognised trade unions, a joint negotiating panel or an employer may initiate negotiations with a view to reaching a collective agreement by giving to the other party a notice in accordance with subsection (3).

(2) Where there exists a collective agreement, the parties to the agreement may initiate negotiations with a view to renewing or revising it by giving the other party a notice in accordance with subsection (3).

(3) The notice shall –

(a) be in writing and signed by the party giving the notice;

(b) specify each of the parties to be involved in the negotiations;

(c) set out a summary of the issues to be discussed; and

(d) specify the bargaining unit.

(4) Any party served with a notice under subsection (1) or (2) shall be under the duty to start negotiations within 30 days of the date of receipt of the notice or such longer period as may be agreed by the parties.

(5) Where any party refuses to start negotiations within the delay specified in this section, the other party may apply to the Tribunal for an order directing the other party to start negotiations and the Tribunal, on hearing the parties, shall within 30 days of the date of receipt of the application, make such order as it thinks fit.

(6) …

Section 53(5) of the Act is obviously linked with sub-sections (1), (2), (3) and (4) above. The recognised trade union must give a notice in accordance with section 53(3) of the Act. This requires, inter alia, that the notice shall specify the bargaining unit. Counsel for Applicant submitted that Documents 3, 4 and 5 annexed to the Statement of Case of Applicant show that all the requirements of the notice had been met. The Tribunal will not agree with this submission. True it is that there were repeated requests for negotiation and that a copy of counterproposals (Doc 3 annexed to Applicant's Statement of Case) made by the union has been produced, yet there is no indication as to the exact bargaining unit for which negotiation was sought. Indeed, the Procedural Agreement (produced by the representative of the Applicant) refers at Article 3 to the following:

Article 3: Recognition and Scope

The Company recognizes the Union as bargaining agent for its employees given in the list herewith annexed for the purpose of collective bargaining with regard to rates of pay, wages, hours of work and other conditions of employment.

There was however no list annexed to the copy of the Procedural Agreement (Doc A) produced before us. However, in the counterproposals (Document 3 annexed to the Statement of Case of Applicant), we can read at paragraph 2 the following:

2. The MTPEU stand is that:

1. Collective bargaining implies <u>full negotiation</u> on:

i. <u>all the issues</u> contained in the Pay and HR Consultancy Services Ltd Report as submitted to the Union as the MSCL proposals; and

ii. on the conditions approved by the board as laid down in paragraph 1.1.

(underlining is ours)

The Tribunal has not been provided with a copy of the Pay and HR Consultancy Services Ltd Report. The Tribunal has been left in the dark as to the precise bargaining unit which the Applicant represents and also for which bargaining unit negotiation was being sought for. Can the Applicant represent, for instance, all the employees at Respondent including management? Since the Tribunal is not satisfied that the requests for negotiations were in accordance with section 53(3) of the Act, the Tribunal cannot grant an order directing the Respondent to start negotiations.

The Tribunal however would fail in its duties if it were to leave matters at that. We are in the realm of employment relations and the Tribunal has wide powers to deal with matters before it including for the expeditious determination of a matter. This application relates to "collective bargaining" which is a key means for good and harmonious employment relations. The Act lays much emphasis on collective bargaining and the **Code of Practice (4th Schedule to the Act**) provides detailed provisions in relation to "Bargaining in good faith" (sections 112 to 118). Even International Conventions like the **Collective Bargaining Convention, 1981 (No. 154)** (at its Article 5) provide as an aim that "bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining."

The legislation in U.K, for example, seeks to prevent "*an employer going over the heads of the union with direct offers to workers, in order to achieve the result that one or more terms will not be determined by collective agreement with the union if offers are accepted*" (**vide Kostal UK Ltd v Dunkley and others [2018] IRLR 428**). In the present case, there was unchallenged evidence on record that previously management was negotiating with the union even following the drawing of a report which was then being used as the proposal of the Respondent. No explanation has been given why this procedure has changed this time. Also, the "Response" of the Respondent in its Statement of Case is revealing. Whilst acknowledging its willingness to start negotiations with a view to signing a new collective agreement with the union, the Respondent, at the same time, appears to be saying that what has already been done, be it rightly or wrongly, has to be accepted now. This is bound to lead to friction and hinder good employment relations. The Tribunal trusts that the parties will bear in mind the above observations and that parties will allow collective bargaining so that the parties may at long last have a proper collective agreement in place.

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

SD Indiren Sivaramen

Vice-President

SD Francis Supparayen

Member

SD Karen Veerapen

Member

SD Ghianeswar Gokhool

Member

16 November 2018