

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/ RN 53/24

Before

Indiren Sivaramen	Acting President
Anundraj Seethanna	Member
Awadhkoomarsing Balluck	Member
Divya Rani Deonanan	Member

In the matter of: -

Sugar Industry Labourers Union (SILU)

Plantation Workers Union (PWU) (Applicants)

Artisans and General Workers Union (AGWU)

And

Landscape (Mauritius) Ltd (Respondent)

This is a joint application made by the Applicants under section 59 of the Employment Relations Act, as amended (hereinafter referred to as “the Act”) to extend to the Respondent all the terms, with the exception of clauses 9 and 10, of the Collective Agreement dated 15 December 2023 between SIT Land Holdings Ltd and the Joint Negotiating Panel (JNP) comprising of (i) Sugar Industry Labourers Union, (ii) Plantation Workers Union, and (iii) Artisans and General Workers Union, representing agricultural workers forming part of the agricultural workers bargaining unit. The Respondent is resisting the application. The Applicants and Respondent were assisted by Counsel and the Tribunal proceeded to hear the parties.

Mr Ramjuttun, Negotiator, deposed on behalf of all the Applicants and he solemnly affirmed to the correctness of the contents of the application and documents produced. He stated that the Applicants are moving for an extension of the Collective Agreement which the JNP had signed with SIT Land Holdings Ltd except for clauses 9 and 10 of the said agreement. He stated that the Respondent had stopped his sugar cane activity in 2021 so that clauses 9 and 10 (which related to "Cutting and/or loading of canes" and "Rates of pay for cutting and/or loading of canes") would not apply in the case of the Respondent. Following the cessation of the sugar cane activity, some employees have accepted an offer for an early termination of contract scheme. However, nineteen employees have refused the offer. There was another offer made to the remaining workers to work at another entity, ENL Agri Limited, which wanted to outsource certain activities relating to sugar cane but for reasons which have been explained by the representative of Applicants, this offer was also not accepted. There was finally another offer for the workers to be redeployed on the industrial sites of the Respondent to maintain external grounds. An additional allowance was also proposed for such redeployment but this offer was also turned down by the workers.

Much emphasis was laid, inter alia, on the Sugar Industry (Agricultural Workers)(Remuneration) Regulations 2019, section 20 of the Sugar Industry Efficiency Act and section 112 of the Workers' Rights Act. Evidence was also adduced to show that other entities managed to continue with their sugar activities whereas the Respondent unilaterally decided to cease its sugar activities.

Evidence adduced on behalf of the Respondent was to the effect that SIT Land Holdings Ltd is a public company with some 15,000 shareholders. The Head of Human Resource deposed on behalf of the Respondent and his evidence was to the effect that the Respondent wanted to preserve the terms and conditions of employment of the workers. He stated that the trade unions were informed that the Bagatelle cluster (workers concerned in the present matter) was operating at a loss and that it would not be possible to grant the increase in salary which was being sought. He referred to the two offers made to the workers and which were turned down by the workers. He stated that the Respondent was not agreeable for an extension of the collective agreement entered into by SIT Land Holdings Ltd and the JNP to the workers of the Respondent. However, he stated that he was open to have negotiations with the trade unions for a win-win situation. He stated that the Respondent was not in the same activity and was not doing sugar cane activity. In cross-examination, he agreed that the workers are being paid as per the Sugar Industry (Agricultural Workers) (Remuneration) Regulations 2019 and that the workers are still employed as field workers (male/female). He stated that he did not think that the three criteria mentioned in the law were present in the present matter.

The Head of Finance then deposed and he stated that for the nineteen workers, the Respondent had to incur a fixed cost of around Rs 7 millions per year. Extension of the

relevant collective agreement to those employees would only add further to that fixed cost. He stated that over ten years the Respondent had to disburse some Rs 150 millions from other clusters to finance the Bagatelle cluster. He stated that the Respondent could no longer fund the losses incurred. He referred to some revenue which was obtained following the leasing of part of the land of the Respondent. He also deponed on the old sugar cane ratoons which existed on the land of the Respondent so that production was affected. He also referred to the cost for replacing these old sugar cane ratoons.

The Tribunal has examined all the evidence adduced, the Statements of Case filed and relevant documents and the written submissions of Counsel for both the Applicants and the Respondent. The relevant section of the law is section 59 of the Act which reads as follows:

59. Extension of collective agreement to another employer

(1) *Where a collective agreement is in force in respect of an employer in an industry, any trade union may apply to the Tribunal for an order to extend the agreement or part thereof to another employer in that industry by whom the trade union is recognised and, on hearing the application, the Tribunal may grant or refuse the order.*

(2) *No order shall be made under subsection (1), unless the Tribunal is satisfied that*

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(a) *the employer and workers to whom the collective agreement is to be extended are engaged in the same activity as that carried out by those covered by the collective agreement;*

(b) *the extension of the collective agreement is desirable in the interest of uniformity of terms and conditions of employment;*

(c) *the terms of the collective agreement are not prejudicial to the viability of the enterprise concerned in the industry.*

(3) *Any application made under subsection (1) shall be determined within 60 days of the date of receipt of the application.*

Whilst much evidence has been adduced on the workers, on their remuneration which is as per the Sugar Industry (Agricultural Workers) (Remuneration) Regulations 2019, their designation as field workers (male/female) and to provisions of the law which afford protection to the relevant workers, no evidence has been adduced as to whether the Respondent is engaged in the same activity as SIT Land Holdings Ltd. The Tribunal bears in mind the definition of “worker” in the Sugar Industry (Agricultural Workers)(Remuneration Order) Regulations 1983, as amended, the definition of “worker” under section 111 of the Workers’ Rights Act, and regulation 2(2) of the Sugar Industry (Agricultural Workers) (Remuneration) Regulations 2019 which provides the circumstances where an employee shall be deemed to be employed in the sugar industry.

However, section 59(2) of the Act requires, not only that the worker but also, that the employer to whom the collective agreement is to be extended is engaged in the same activity as that carried out by those covered by the collective agreement. The evidence suggests clearly that the Respondent is no longer engaged in sugar cane activity. Thus, by virtue of section 59(2) of the Act, no order under section 59 can be made in the present matter.

The Order of the Tribunal is based exclusively on the application of section 59 of the Act and is in no way to be considered as a pronouncement on the status of the relevant group of workers or in any way as affecting any acquired rights of the said workers.

For all the reasons given above, the Tribunal cannot grant the order prayed for and the application is set aside.

(SD) Indiren Sivaramen

Acting President

(SD) Anundraj Seethanna

Member

(SD) Awadhkoomarsing Balluck

Member

(SD) Divya Rani Deonanan

Member

12 July 2024