

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/ RN 45/24

Before

Indiren Sivaramen	Acting President
Greetanand Beelattoo	Member
Kirsley E. Bagwan	Member
Venusha Autar Hemrazsing	Member

In the matter of:-

Export and Other Enterprises Employees Union (Applicant)

And

Tropical Cubes Co. Ltd (Respondent)

The present matter is an application made by the Applicant union under section 36(5) of the Employment Relations Act, as amended (the “Act”), for an order directing the Respondent to recognise the Applicant as bargaining agent in a bargaining unit consisting of employees of the Respondent in the following categories: driver, cleaner, factory worker, supervisor, operator and helper except managerial grade, located at Royal Road, Morcellement St André. The Applicant made an application dated 4 March 2024 as per section 36 of the Act to the Respondent seeking for recognition for the said bargaining unit. There was an exchange of correspondences, and the Respondent in an email of 18 April 2024, whose content was to a large extent similar to an earlier letter which Respondent had sent to the Applicant on 15 April 2024, replied that the Respondent would not be opposed to the request for recognition but would first need to be provided with the list of employees of the company who are members of the union and who pay a membership fee to the union, together with a copy of corresponding Check-off Agreements or similar document evidencing their adherence to the union.

The Applicant then made the present application. The Respondent has filed a Statement of Case and the Tribunal proceeded to hear the matter. It is apposite to note that in the Statement of Case of Respondent, it was averred that the Respondent did not object to the Applicant's request for recognition so that the present application would be procedurally flawed. The Tribunal would simply refer to section 36(3) of the Act which reads as follows:

36(3) An employer shall, within 45 days of receipt of the application, inform the trade union or group of trade unions in writing in the form set out in the Sixth Schedule whether he –

- (a) recognizes the trade union or the group of trade unions as a bargaining agent;*
- or*
- (b) refuses to recognize the trade union or group of trade unions as a bargaining agent and state the reasons thereof.*

Thus, an employer may either recognize an applicant trade union or refuse to recognize an applicant trade union.

In any event, in the present case it was agreed between parties that the issue was one of representativeness of the Applicant. Both parties moved that a secret ballot be conducted so that the Tribunal may determine and be satisfied that the Applicant has indeed the required representativeness for recognition as bargaining agent. The Respondent also undertook to provide the list of employees of Respondent in the bargaining unit.

In the light of all the evidence adduced and the stand of both parties before it, the Tribunal ordered that, in the interest of good industrial relations, it would conduct a secret ballot exercise at the premises of the Respondent in relation to the employees in the relevant bargaining unit.

The secret ballot was organised and supervised by the Tribunal at the workplace of the Respondent at Royal Road, Morcellement St André on Monday 17 June 2024. The list of employees in the relevant bargaining unit was agreed by both parties and the representatives of both parties signed the said list. There was a total number of forty-six (46) employees in the relevant bargaining unit as agreed by both parties and forty (40) employees participated in the secret ballot. Thirty-five (35) employees were in favour of the recognition of Applicant as their bargaining agent in the bargaining unit at the Respondent whilst five (5) employees were against the recognition of the Applicant as their bargaining agent at the Respondent. There was no void ballot paper. The Applicant thus secured the support of 76.1% of the workers in the bargaining unit.

Section 38(13) of the Act reads as follows:

38(13) Subject to section 37, where an application is made under section 36(5) or 37(4), the Tribunal shall-

(a) make an order granting recognition to the trade union as a bargaining agent, joint negotiating panel or sole bargaining agent, as the case may be;

(b) ...

In the light of all the evidence on record including the results of the secret ballot and as there is no other point in dispute between the parties, the Tribunal orders that the Respondent is to recognise the Applicant as sole bargaining agent with sole bargaining rights in the bargaining unit consisting of employees of Respondent in the following categories: driver, cleaner, factory worker, supervisor, operator and helper except managerial grade, located at Royal Road, Morcellement St André. The Respondent and the Applicant are to meet at such time and on such occasions as the circumstances may reasonably require for the purpose of collective bargaining.

By virtue of section 38(15)(b) of the Act, as amended, a copy of this order shall also be submitted to the supervising officer of the Ministry of Labour, Human Resource Development and Training for record purposes.

(SD) Indiren Sivaramen

Acting President

(SD) Greetanand Beelatoo

Member

(SD) Kirsley E. Bagwan

Member

(SD) Venusha Autar Hemrazsing

Member

18 June 2024