

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 899

Before:

Rashid HOSSEN	-	President
Binnodh RAMBURN	-	Member
Rajendranath SUMPETH	-	Member

In the matter of:-

The Food & Beverages Industry Employees Union

And

The International Distillers (Mauritius Ltd)

This is a dispute referred by the Minister of Labour, Industrial Relations and Employment in accordance with **Section 82 (1) (f) of the Industrial Relations Act 1973** as amended.

The parties to the dispute are:-

- (i) The Food & Beverages Industry Employees Union- (Applicant)**
- (ii) The International Distillers (Mauritius Ltd) – (Respondent)**

The point in dispute is the following:-

“Whether the Procedural Agreement should be signed or otherwise”.

In its Statement of Case, the Applicant avers:

1. The Applicant Union has obtained recognition at the Respondent since 23rd April 2002.
2. Since recognition, the Respondent has been reluctant to enter into any negotiation with the Applicant until and unless a Procedural Agreement has been agreed and signed.
3. The applicant avers that it has attempted to negotiate with the Respondent in order to agree upon a Procedural Agreement, however negotiations have proved fruitless.
4. The Applicant further avers that it had previously declared an industrial dispute, and the matter was referred to the Industrial Relation Commission. One of the terms of reference was “whether the Procedural Agreement should be signed or otherwise”. The Applicant avers that even at the Industrial Relations Commission, the parties could not agree on a Procedural Agreement. The recommendation of the Industrial Relations Commission dated 18 November 2004 is annexed as Doc 1.
5. The Applicant avers that it is essential that a Procedural Agreement be agreed upon and signed in order to cover the matters raised in the Third Schedule of the Industrial Relations Act, and in order to regulate and promote good industrial relations and social dialogue.
6. The Applicant annexes as Doc 2 a Procedural Agreement that it proposes.
7. The Applicant prays that a Procedural Agreement be signed.

The Respondent also filed a Statement of Case which reads:-

1. The Respondent disagrees with Article 5(v)(b) which reads as follows: “*Once in every month, the management will – subject to the exigencies of the service and/or the then prevailing circumstances – grant paid time off facilities as from noon to a maximum of two accredited union representatives to attend the union executive meeting*”.

2. The reasons of disagreement are as follows:
 - (i) The Union representative may use their local leave entitlements to attend union executive meetings which is not related to the Respondent's activities and relate in general to union matters.
 - (ii) The Respondent is already allowing one union delegate time off facility to attend union activities and/or industrial relations matters provided that such activities pertain to the Respondent as per article 5(v)(a) and
 - (iii) The Union should make arrangement to carry out meeting outside working hours or during week-end.

3. In the circumstances, it is urgent and necessary that the application be set aside.

Informal meetings were held chaired by the President of the Permanent Arbitration Tribunal with a view to settle the various differences, if not to narrow down issues.

At its meeting of the 19th November 2008, both parties informed the Tribunal that an agreement had been reached, save and except on the issue of time off whereby both parties invited the Tribunal for an award.

Article 5(v)(b) of the Procedural Agreement reads as follows:- *"Once in every month, the management will – subject to the exigencies of the service and/or the then prevailing circumstances – grant paid time off facilities as from noon to a maximum of two accredited union representatives to attend the union executive meeting"*.

The right to engage in trade Union activities is clearly laid down in **Section 49 of the Industrial Relations Act (1973)** as amended:-

“ Rights of employees

- (1) Every employee shall, as between himself and his employer, have the right-
 - (a) to be a member of a trade union;
 - (b) not to be a member or to refuse to be a member of a trade union; and

- (c) to take part, at the appropriate time, in the activities of a trade union of which he is a member, including the right to seek appointment or election as an officer of the trade union, and to hold office as such.
- (2) No employer shall refuse to engage an employee or dismiss, penalize or otherwise discriminate against an employee by reason of his having exercised, his exercising, or wishing or being likely to exercise any right under subsection(1).
- (3) Nothing in this section shall be construed as preventing an employee from encouraging an employee to join a trade union which has negotiating rights in respect of that employee.
- (4) In this section –
“*appropriate time*” means time which –
(a) is outside the working hours of an employee; or
(b) is within the working hours of an employee and which, in accordance with arrangements with his employer, is consented to by, or on behalf of, the employer;
“*working hours*” means any time when under his contract of employment, an employee is required to be at work.
- (5) Any employer who fails to comply with subsection (2) shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 6 months and to a fine not exceeding 2,000 rupees.”

Paragraphs 5, 6, 11 and 96 of the Code of Practice 3rd Schedule to the Industrial Relations Act appear relevant:-

“

5. Where a trade union has negotiating rights, management shall –
(a) jointly with the trade union maintain effective arrangements for negotiation, consultation and communication, and for setting grievances and disputes;
(b) take all reasonable steps to ensure that managers observe collective agreements and use agreed procedures; and
(c) make clear to employees that it welcomes their membership of the recognized trade union and their participation in the trade union's activities.

6. Where a trade union has representational status, management shall –
- (a) maintain effective arrangements for consultation, communication and for settling individual grievances of members of the trade union, and ensure that those arrangements fully satisfy the rights of representation of the trade union, whether established by law or by agreement;
 - (b) take all reasonable steps to ensure that managers use those arrangements; and
 - (c) make clear to employees that it respects their rights to join a registered trade union and to take part in its activities, which include seeking recognition for negotiating purposes.
11. To ensure that their organization is effective, trade unions of employees shall also-
- (a) employ enough full-time officers to maintain adequate contact with management and with their members in every establishment where the trade union has negotiating rights, and with any employers' association concerned;
 - (b) encourage their members to attend union meetings and to take part fully in union activities by holding branch meetings at times and places convenient to the majority; and
 - (c) maintain effective procedures for settling disputes within the union.

96. The facilities needed by work-place representatives will depend on their function. The nature and extent of these facilities shall be agreed between trade unions and management. As a minimum, they shall be given –
- (a) time off from the job to the extent reasonably required for their relations functions, permission not being unreasonably withheld; and
 - (b) maintenance of earnings while carrying out those functions.”

We are of the view that workplace representatives need to be effective and therefore be properly trained and kept informed. Attending union activities can enhance this objective, subject of course to the exigencies of the service.

We find therefore nothing unreasonable with respect to para.5(v)(b) of the Procedural Agreement.

We accordingly invite the parties to proceed with the signing of the procedural agreement.

We award accordingly.

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(sd) Rashid HOSEN
President

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(sd) Binnodh RAMBURN
Member

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(sd) Rajendranath SUMPUTH
Member

Date: 30 January 2009