

IN THE EMPLOYMENT RELATIONS COURT
AT SUVA
APPELLATE JURISDICTION

ERCA No. 24 of 2019

BETWEEN

SHAHABUD DEAN TRANSPORT LTD

APPELLANT

AND

TRANSPORT WORKERS UNION

RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. N. Tofinga for the Appellant
Mr. K. Kumar for the Respondent

Date of Hearing : 21 October 2021

Date of Judgment : 3 January 2024

JUDGMENT

EMPLOYMENT LAW

Appeal – Union recognition and bargaining – Disclosure of membership – Orders to disclose information – Sections 148, 149, 151, 153, 154 and 157, Employment Relations Act 2007

1. This is an appeal by the employer against the order of the Employment Relations Tribunal dated 16 August 2019, by which the appellant was ordered to embark on a process of collective bargaining with the respondent.
2. The controversy arose after the respondent sought to initiate bargaining on behalf of some of its members who were employed with the appellant. The respondent wrote to the appellant by letter dated 1 May 2018 annexing a proposed agreement for union recognition and collective bargaining, but gave no details of the workers it represented. By its letter, the respondent claimed to represent 18 workers employed by the appellant.
3. By letter dated 9 May 2018, the appellant replied asking for the names of its workers who had taken up membership with the respondent, while affirming that it respected the right of the employees to engage in collective bargaining. The respondent did not disclose the information sought by the appellant, allegedly for fear of reprisal by the employer.
4. As the matter, turned into a stalemate, the respondent applied to the tribunal by notice of motion of motion filed on 30 May 2018 seeking orders to compel the appellant to comply with sections 148, 149, 153, 154 and 157 of the Employment Relations Act 2007 and order it to desist from discriminating or victimising members of the union. The application was supported by the affidavit of the respondent's treasurer, Mohammed Ajeem.
5. The respondent's affidavit stated that the appellant's management was questioning workers regarding its membership and had circulated two letters for their signature. The first letter stated that they did not wish to be members. Any workers who refused to sign the first letter, was required to tender his resignation by signing the second letter.

6. The affidavit cited an instance in which an employee who admitted to taking union membership was victimised by the appellant. The affidavit says that the respondent has not shown a willingness to enter into good faith collective bargaining.
7. The appellant filed an affidavit through its accountant, Dinesh Reddy. The affidavit states that the respondent has failed to identify which of the appellant's workers have joined the respondent. The affidavit denied that the appellant has resorted to the actions complained of by the union. The respondent said that it cannot enter into collective bargaining without knowing whom the union represents, and denied being in breach of any provision of the Act.
8. The resident magistrate held an inquiry on 28 November 2018. Counsel for both parties made submissions. On 29 March 2019, the resident magistrate ordered the appellant to provide a list of all its employees within 14 days. The respondent was also directed to file a list of its members who are employed by the appellant, within the same time frame. Final orders were to be made on a later date.
9. Both parties tendered the required information. By order dated 16 August 2019, the resident magistrate directed the appellant to embark on the process of collective bargaining prescribed by the Employment Relations Act and ordered costs to be paid to the respondent.
10. The appellant raised eight grounds of appeal. They are mainly to the effect that the tribunal ordered the employer to comply with sections 148, 149, 153 154 and 157 of the Employment Relations Act when there was no evidence to show that the employer was in breach of those provisions, that the tribunal erred in ordering the appellant to comply with section 149 and that the union had not established a right to represent the workers as required by law or a *locus standi* to represent the appellant's workers.
11. The appellant's contention is that the resident magistrate's findings are not supported by evidence. The appellant's objection from the outset is that it cannot

engage with the union without knowing whether any of its workers have taken up union membership.

12. On a directive by the resident magistrate, both parties tendered information to the resident magistrate. The union provided details of membership taken by the appellant's workers. Copies of letters to the employer to authorise the deduction of subscription payments were also tendered. Some of these workers are said to have left subsequently. The record contains the documentation which the parties made available to the tribunal.
13. On the basis of the information provided by the parties, the resident magistrate has reached a conclusion. The appellant does not say which of the resident magistrate's findings are erroneous in that they are not based on evidence.
14. On a consideration of the material before court, it is evident that interference with the findings of the resident magistrate is not warranted. The appeal is dismissed.

ORDER

- A. The appeal is dismissed.
- B. The appellant is to pay the respondent \$1,500.00 as costs summarily assessed within 21 days of this judgment.

Delivered at **Suva** on this 3rd day of **January, 2024**.



M. Javed Mansoor
Judge