

CASE NO. 2316

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Fiji
presented by**

- **the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) and**
- **on behalf of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE)**

Allegations: The complainant alleges that the Government failed to enforce a compulsory order for the recognition of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE) as the majority union in the Turtle Island Resort, and did not counter attempts by the employer to avoid recognition of the NUHCTIE through delaying tactics, as well as efforts to prevent workers from joining the union through anti-union dismissals and interference

- 491.** In a communication dated 8 January 2004 the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) submitted a complaint on behalf of its affiliated organization, the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE).
- 492.** The Government sent its observations in communications dated 12 February and 7 April 2004.
- 493.** Fiji has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 494.** In its communication dated 8 January 2004, the IUF states on behalf of its affiliated organization, the NUHCTIE, that the latter made an application for voluntary recognition to the management of the Turtle Island Resort on 7 November 2002. Following inaction on the part of management, the union applied one month later for compulsory recognition to the Ministry of Labour, Industrial Relations and Productivity. On 22 January 2003, the Government issued a Compulsory Recognition Order against Turtle Island Resort with retroactive effect to 7 November 2002. Management repeatedly refused to enforce this Order and the Turtle Island Resort was charged on 28 May 2003 for non-compliance with the Compulsory Recognition Order and violation of sections 12(1) and 12(3) of the Trade Unions (Recognition) Act, 1998.

- 495.** The complainant alleges that despite the continued refusal of management to effectively recognize the NUHCTIE, the Ministry decided to withdraw the charge in November 2003 (Case No. 56/03 *Ministry of Labour, Industrial Relations v. Turtle Island Resort*).
- 496.** The complainant adds that the current situation must be considered against the background of repeated attempts by the employer to prevent workers from joining the union, cases of unfair dismissal of union members and the setting up of a staff association. According to the complainant, the employer has repeatedly used delaying tactics to avoid having to meet with union leaders and to recognize NUHCTIE, while the Ministry of Labour, Industrial Relations and Productivity has failed to counter these anti-union measures in violation of Convention No. 98. The complainant further alleges that the employer dismissed at various times a number of workers who refused to withdraw from their union membership and that despite NUHCTIE's efforts, the relevant authorities have not intervened to oppose this. Finally, the complainant alleges that the employer has repeatedly and publicly promoted a staff association. In particular, through a letter dated 10 December 2002 and signed by the Turtle Island General Manager, the management allegedly promoted a staff association and expressed the wish that other employers "do follow our lead and develop staff associations which we firmly believe to be far more effective ...". Again, according to the complainant, no intervention has been made by the Government, in violation of Article 2 of Convention No. 98
- 497.** The complainant requests that this complaint be examined with the aim that the Compulsory Recognition Order be enforced.

B. The Government's reply

- 498.** In its communications dated 12 February and 7 April 2004, the Government provides the chronology of events in this case. According to the Government, on 7 November 2002, the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE) applied for voluntary recognition. On 7 December 2002, after failing to receive such recognition, the union applied for issuance of a Compulsory Recognition Order. On 21 January 2003, the records of both the employer and the union were verified to establish the percentage membership. On 22 January 2003, the Compulsory Recognition Order was issued with effect from 7 November 2002.
- 499.** The Government adds that on 28 March 2003, the NUHCTIE lodged a complaint that management had refused to allow them on the island to meet workers. The employer was charged on 20 May 2003. The complaint (and the charges made) concerned the management's refusal to allow the NUHCTIE on the island to meet with trade union members. However, this refusal did not constitute a breach of the Compulsory Recognition Order or an offence against section 12 of the Trade Unions (Recognition) Act, 1998. Moreover, there was no evidence to show that the employer had refused to discuss the log of claims with the NUHCTIE.
- 500.** The Government further adds that the case was first called on 20 June 2003 and subsequent adjournments were granted until the case was formally withdrawn on 7 November 2003 on grounds that the NUHCTIE had made false allegations. On 11 November 2003, the union vide its letter voiced its concern regarding the withdrawal of the case. On 20 November 2003 the union wrote a reminder to the Ministry of Labour, Industrial Relations and Productivity wherein they also mentioned that they would recommend to the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), Asia and Pacific to report this case to IUF Geneva. On 24 November 2003, the Ministry wrote to the union to inform it of the circumstances under which it had withdrawn the charges against Turtle Island Resort.

501. The Government adds that the workers are guaranteed protection in the country under the 1997 Constitution and the labour legislation while any breach or non-compliance by either party with such legislation is viewed seriously by the Ministry of Labour, Industrial Relations and Productivity. The Government adds that despite this, the NUHCTIE has still to date not filed a formal complaint to the Ministry on the employer's failure to comply with the Compulsory Recognition Order. The Government suggests that the union be advised to report on any non-compliance to the Ministry for remedial action.

C. The Committee's conclusions

502. *The Committee notes that this case concerns allegations that the Government failed to enforce a compulsory order for the recognition of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE) as the majority union in the Turtle Island Resort, and did not counter attempts by the employer to avoid recognition of the NUHCTIE through delaying tactics, as well as efforts to prevent workers from joining the union through anti-union dismissals and interference.*

503. *The Committee notes that on 7 November 2002, the NUHCTIE made an application for voluntary recognition to the management of the Turtle Island Resort. Following inaction on the part of management, the union applied to the Ministry of Labour, Industrial Relations and Productivity for compulsory recognition. After making the necessary verifications, the Ministry issued, on 22 January 2003, a Compulsory Recognition Order against Turtle Island Resort with retroactive effect to 7 November 2002. On 28 March 2003, the NUHCTIE, faced with management's continuing refusal to recognize the union, lodged a complaint for failure to implement the Compulsory Recognition Order, in violation of sections 12(1) and 12(3) of the Trade Unions (Recognition) Act, 1998 (which provide that an employer who fails to comply with the provisions of a compulsory recognition order commits an offence and is liable to a fine). Charges were brought against the employer on 28 May 2003. However, the case was formally withdrawn on 7 November 2003 on grounds that the NUHCTIE had made false allegations. In particular, according to the Government, the complaint lodged by NUHCTIE and the charges pressed related to the refusal of the management to allow the union representatives to enter the resort and meet with trade union members. However, this refusal did not constitute a breach of the Compulsory Recognition Order or an offence against section 12 of the Trade Unions (Recognition) Act, 1998. Moreover, there was no evidence to show that the employer had refused to discuss with the union. According to the Government, the NUHCTIE has to date not filed a formal complaint on the employer's failure to comply with the Compulsory Recognition Order. In the absence of any further information, the Committee is unable to pronounce itself on the withdrawal of the charges brought against the management of Turtle Island Resort.*

504. *The Committee observes that the request for the recognition of the NUHCTIE as the majority union at the Turtle Island Resort dates back to November 2002 and that a Compulsory Recognition Order has been issued in this respect. The Committee recalls that the competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that union for collective bargaining purposes [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 824]. The Committee therefore requests the Government to take all necessary measures of inspection, conciliation and enforcement, in accordance with national law, with a view to ensuring the implementation of the Compulsory Recognition Order, and to keep it informed in this respect.*

505. *The Committee also notes that, according to the Government, the refusal by management to grant union representatives access to the workplace to meet with trade union members did not constitute a breach of the Compulsory Recognition Order or an offence against section 12 of the Trade Unions (Recognition) Act, 1998. The Committee recalls that according to Paragraphs 9(3), 12, 13 and 17(1) of the Workers' Representatives Recommendation, 1971 (No. 143), it is recommended that the facilities to be afforded to workers' representatives include access to the workplace and to the management of the undertaking as may be necessary for the proper exercise of their functions. Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking. The granting of such facilities should not impair the efficient operation of the undertaking concerned. In a case concerning the right of trade union leaders to enter an industrial free trade zone, the Committee drew the Government's attention to the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces. Governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers, in order to apprise them of the potential advantages of unionization [see **Digest**, op. cit., paras. 957 and 954]. The Committee therefore requests the Government to take all necessary measures so as to ensure that the NUHCTIE enjoys the facilities necessary for the proper exercise of its functions, including access to the Turtle Island Resort and the possibility to meet with management and trade union members without impairing the efficient operation of the undertaking. The Committee requests to be kept informed in this respect.*

506. *The Committee notes that the Government has not replied to the allegations concerning its alleged failure to counter repeated attempts by the employer to prevent workers from joining the union through ant-union dismissals and acts of interference such as the promotion of a staff association. The Committee emphasizes that no person should be prejudiced in his or her employment by reason of membership of a trade union, even if that trade union is not recognized by the employer as representing the majority of workers concerned, and that it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see **Digest**, op. cit., paras. 693 and 696]. The Committee also recalls that Article 2 of Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities [see **Digest**, op. cit., para. 759]. It takes note of the comments made by the Committee of Experts on the Application of Conventions and Recommendations as well as the discussion which took place at the Conference Committee on the Application of Standards in 2002, on the basis of which, the Government has been repeatedly requested to adopt the necessary measures, including sufficiently effective and dissuasive sanctions, so as to guarantee adequate protection to workers' organizations against acts of interference by employers or their organizations [see Report of the Committee of Experts on the Application of Conventions and Recommendations to the International Labour Conference, 92nd Session, 2004 and Report of the Committee on the Application of Standards, **Provisional Record** No. 28, Part Two, International Labour Conference, 90th Session, 2002]. Deploring that the Government has not yet taken any such action despite repeated requests, the Committee urges it to take all necessary measures, including legislation, so as to investigate and put an end to any acts of anti-union discrimination and interference in this case. The Committee requests to be kept informed in this respect.*

The Committee's recommendations

507. *In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:*

- (a) *Noting that the request for the recognition of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE) as the majority union at the Turtle Island Resort dates back to November 2002 and that a Compulsory Recognition Order has been issued in this framework, the Committee requests the Government to take all necessary measures of inspection, conciliation and enforcement, in accordance with national law, with a view to ensuring the implementation of the Compulsory Recognition Order, and to keep it informed in this respect.*
- (b) *The Committee requests the Government to take all necessary measures so as to ensure that the NUHCTIE enjoys the facilities necessary for the proper exercise of its functions, including access to the Turtle Island Resort and the possibility to meet with management and trade union members without impairing the efficient operation of the undertaking. The Committee requests to be kept informed in this respect.*
- (c) *Deploring that the Government has not yet taken any action to guarantee protection against acts of interference despite repeated requests, the Committee urges it to take all necessary measures, including legislation, so as to investigate and put an end to any acts of anti-union discrimination and interference in this case. The Committee requests to be kept informed in this respect.*