

CONCILIATION, MEDIATION & ARBITRATION COMMISSION (CMAC)

In the Arbitration matter between : REF : MNZ 169/06

SMAWU : Applicant

And

Swazi Wire Industries : Respondent

Coram:

Selby T. Magagula : Arbitrator

Mr Sabelo Msimango : For Applicant

ARBITRATION AWARD

1. Parties and hearing:-

The Applicant is Swaziland Manufacturing and Allied Workers Union (SMAWU) of P. O. Box 2379, Manzini. I will hereafter refer to as the Applicant, the Union or simply as SMAWU and was represented by Sabelo Msimango.

On the other hand the Respondent is Swazi Wire Industries (Pty) Ltd of P. O. Box 9 Matsapha, who I will hereafter refer to as the Respondent or simply as Swazi Wire Industries who had no representation at the arbitration even after two occasions where invitations were made to turn and the arbitration continued exparte.

1. explained the stages and the process to the Applicant in order to ensure that he is aware of what is required from him and what to expect from the arbitrator, hence the procedure was utilized during the process.

2. Issues in Dispute:

The arbitration relates to an alleged refusal by the Respondent to grant recognition to the Applicant. The Applicant reported a dispute with the Commission in terms of section 76 of the Industrial Relations Act 2000 as amended and the matter was conciliated upon and it remained unresolved, hence a Certificate No:226/06 was issued as proof therein.

The parties then requested for arbitration in terms of section 85 (3) of the Industrial Relations Act 2000 as amended and I was appointed arbitrator on 31st May, 2006.

3. Background of the dispute:

It is common cause that the Applicant applied for recognition by the Respondent on 10/01/06. The arbitration was persuaded by the Applicant during her opening statement to compel the Respondent to grant them recognition.

On the other hand the Respondent failed to attend arbitration and there was no message sent or written letter to the effect as to why he did not attend.

4. Issues to be decided:

The question that I have to determine is whether or not the Respondent conducted himself in a fairly and lawful manner in failing to recognize the Applicant. It is therefore inevitable that a quick recount of the facts as outlined by the witness in his evidence is done in order to arrive at my decision.

5. Overview of Evidence:

The Applicant's case is to the effect that they were recruiting employees from the Respondent to become their members and they finally got more than fifty percent membership. The Applicant stated that they applied for recognition in terms of section 42 of the Industrial Relations Act 2000 as amended. A copy of the application

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was submitted during the arbitration as documentary evidence. The Applicant continued to say that the Respondent failed to reply and the twenty-one days period required by the Law expired and they then lodged a dispute. The Applicant stated that the matter was conciliated and the Respondent refused to grant recognition. The Applicant further stated that section 42 of the Industrial Relations Act 2000 as amended outlined that check off forms are adequate proof for recognition. He stated that the Respondent has seventy-five unionisable employees and he submitted the list of their members who had signed the check off forms as documentary evidence.

6. Analysis of evidence

The Respondent failed to attend arbitration on two occasions as can be seen on the attendance register.

On the other hand the Applicant submitted a list of the Respondent's unionisable employees, which showed that at the time of the application for recognition there were seventy-five employees. The Applicant then submitted the check off forms for those employees who have joined the union. We then cross checked the check-off forms and the Respondent's list and found out that out of the seventy-five (75) employees, forty six (46) of them had joined the union. The law states that if fifty percent of the employees have joined the union, then the employer shall grant recognition. In this case the membership of the union is sixty one percent (61%), hence there should not be any doubt for recognition.

7. Award

Having considered all the evidence and arguments of the Applicant I am satisfied that the applicant has met the requirements of the Law in as far as recognition is concerned.

In the circumstances therefore I hereby award as follows:-(a)That the Respondent grants recognition to the Applicant. (b)That the Recognition be effective from 21st September 2006.

Selby T. Magaqula Date : 06 FEB 2007

Arbitrator .