

IN THE CONCILIATION, MEDIATION AND ARBITRATION COMMISSION

HELD AT MANZINI **DISPUTE NO: MNZ 586/06**

In the matter between:

SMAPISA **: APPLICANT**

And

MASTER GARMENT **: RESPONDENT**

CORAM

ARBITRATOR **: Bongani S. Dlamini**

For Applicant **: Mr Simon Mvubu**

For Respondent **: Mr Brazil Mfumo**

ARBITRATION AWARD

1. DETAILS OF HEARING & REPRESENTATION

1.1 This matter was initially set down for arbitration on the 16th January 2007. On this date, the parties requested that the matter be postponed to the 6th February 2007.

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1.2 On the 6th February 2007 the arbitration was conducted in the presence of all the parties.

1.3 The arbitration was conducted at CMAC offices, SNAT Building, Manzini at 10:00 Am.

1.4 The applicant union was represented by Mr Simon Mvubu whilst Mr Brazil Mfumo represented the respondent Company.

2. ISSUES IN DISPUTE

The issue giving rise to the dispute between the parties is the alleged failure by the respondent company to grant recognition of a staff Union established within respondent's enterprise.

3. HISTORICAL BACKGROUND OF MATTER

3.1 On or about the 26th June 2006 the applicant union, namely Swaziland Manufacturing & Processing Industry Staff Association (SMAPISA) reported a dispute against the respondent company, Master Garments (Proprietary) Limited.

3.2 After several aborted conciliation meetings, the dispute was finally conciliated on the 5th October 2006. The dispute remained unresolved after conciliation and the record indicates that the parties signed a Request for Arbitration form on the same date of conciliation ie the 5th October 2006.

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3.3 I was appointed as an Arbitrator on the 20th December 2006. I then allocated the 16th January 2007 as being the date for arbitration in the matter.

4. SUMMARY OF EVIDENCE : APPLICANT'S CASE

4.1 Mr Simon Mvubu submitted that on the 22nd May 2006, his Union presented a letter to the respondent requesting recognition of the Staff association hereinafter referred to as SMAPISA. This according to Mr Mvubu was done after the union in which he is President had amassed the requisite majority of 50 + 1 membership as stipulated *in* Section 42 of the Industrial Relations Act 2005 as

amended.

4.2 According to Mvubu, despite having sent the letter requesting recognition from the respondent Company, his union never received a response to such letter. This had then prompted the applicant union to report a dispute with the Conciliation, Mediation and Arbitration Commission (CMAC). Mr Mvubu concluded his submissions by stating that they had approached the Commission for a specific order compelling the respondent to recognise the applicant union. Mr Mvubu further requested that the respondent must be made to comply with the stop order forms which were duly endorsed by the respective members. These forms were authorising the respondent to deduct and remit to the applicant Union the sum of E20,00 being in respect of Union dues on each calendar month.

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4.3 RESPONDENT'S CASE

4.3.1 Mr Mfumo submitted that it is not true that the respondent company was served with the letter requesting recognition of the Staff association. According to Mfumo, the first time that the company heard of such letter was during Conciliation at CMAC offices.

4.3.2 Mr Mfumo also submitted that the company has a list of those employees which the company considers to be members of Staff. The essence of Mr Mfumo's submission was that the respondent company was not in agreement with the list of employees presented by the applicant which were said to be members of Staff. Mr Mfumo also disputed that the list of employees presented by the applicant Union made up a majority of the employees whom the respondent considered to be members of Staff.

5. ANALYSIS OF EVIDENCE

5.1 On the question relating to the receipt of the letter requesting recognition by the respondent, I ordered that evidence be led on this aspect. Indeed Mr Mvubu brought in one Mr John Stjutju Dlamini who is said to be the person who effected service of the letter upon Mr Brazil Mfumo at the latter's office in Matsapha.

5.2 After having heard and considered the evidence by Mr John Dlamini on behalf of the applicant Union, I then delivered a written preliminary ruling in favour of the applicant on the 6th February 2007. The effect of this ruling was that the respondent

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company had properly been served with the application letter requesting recognition by the applicant Union.

5.3 What now has to be decided is whether the list of employees submitted by Mr Mvubu do constitute members of Staff and, if the answer be on the affirmative, whether such employees do constitute a majority of employees as envisaged in the Industrial Relations Act.

5.4 Mr Mfumo submitted a list of 40 employees who, according to him qualify to be members of Staff. From the list submitted by Mr Mfumo on behalf of the respondent, twelve of such employees were also contained in Mr Mvubu's list. In other words the parties agreed that twelve of the affected employees were indeed members of the Staff.

5.5 Mr Mvubu on the other hand had submitted a list of 23 employees whom he said are members of the applicant Union. This means the dispute would now be confined to 11 employees.

5.6 At the arbitration hearing, a decision was taken that these 11 employees be visited at the respondent's enterprise for purposes of establishing the exact nature of their jobs. The names of the eleven people to which this dispute relate to are;

- a) Nonhlanhla Ndzinisa
- b) Stanford Ndzinisa

- c) Kholiwe Ngwenya
- d) Vusi Dlamini
- e) Thulisite Dlamini
- f) Clement Malungisa Manana
- g) Anthony Magagula
- h) Nelly Dlamini
- i) Bhekithemba Maseko
- j) Shaka Mavuso
- k) Nonhlanhla Motsa

5.7 Whilst attending the inspection *in loco* at the respondent's enterprise, it was established that the following employees had left employment with the respondent;

- a) Vusi Dlamini
- b) Clement Manana
- c) Anthony Magagula

5.8 All the above 3 employees were not listed by Mr Mfumo as being members of Staff. This then reduces Mr Mvubu's list of disputed employees to 8 employees.

5.9 On being asked what their respective jobs are, the table below indicates the responses obtained from the employees.

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|-----------------------|--------------------|
| 1. Nonhlanhla Fakudze | -Team Leader |
| 2. Stanford Ndzinisa | - Team Leader |
| 3. Kholiwe Ngwenya | -Sorter / Cutting |
| 4. Thulisile Dlamini | - Machine Operator |
| 5. Nelly Dlamini | - Machine Operator |
| 6. Bhekithemba Maseko | - Mechanic |
| 7. Shaka Mavuso | - Team Leader |
| 8. Nonhlanhla Motsa | - Team Leader |

6. ANALYSIS OF EVIDENCE AND ARGUMENT SUBMITTED

6.1 Section 2 of the Industrial Relations Act, 2000 (as amended) defines a member of staff as an employee who;

- a) "Has authority on behalf of the employer to employ, transfer, suspend, lay off, recall, promote, dismiss, reward, discipline other employees or authorise such action, when the exercise thereof is not solely of a routine nature or clerical nature, but requires the use of an independent judgement.
- b) Participates in the making of general company policy.
- c) Works in a capacity which requires the employee to have full knowledge of the financial position of the employer.

- d) Has free personal access to other confidential information substantially affecting the conduct of the business of the employer."

6.2 From the list of 8 people submitted by Mr Mvubu, clearly four of these cannot be said to be

members of the Staff. These employees are Kholiwe Ngwenya (Sorter / Cutter) ; Thulisile Dlamini (Machine Operator) ; Nelly Dlamini (Machine Operator) and Bhekithemba Maseko (Mechanic). This then reduces applicant's members to 16 in number. This would mean that applicant's members are below the required mark of 50% since the respondent is said to be having 40 employees who are members of Staff. The position that respondent Company has 40 employees who are members of Staff was never at any stage disputed by Mr Mvubu.

6.3 Section 42(5) of the Industrial Relations Act (as amended) provides that;

"if not less than fifty percent of the employees in respect of which the trade union or staff association seeks recognition are fully paid up members of the organisation concerned, the employer shall, within thirty (30) days of receipt of the application and in writing –

a) grant recognition to the applicant; or

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b) if the employer is in doubt, and advises the applicant so in writing, the parties shall go for a verification count.

c) if the employer decides not to grant such recognition, the employer shall lodge with the Court the reasons for the refusal to grant recognition and serve a copy thereof on the ... industry staff association..."

6.4 Clearly the applicant has failed to demonstrate that it meets the requisite number of employees for purposes of compelling the respondent to comply with Section 42(5) (a) of the Act.

6.5 This having being said, one must point out that the respondent's conduct of refusing to respond to applicant's letter requesting recognition clearly demonstrated unacceptable conduct and a flagrant disregard of the law. The respondent is better advised to desist from such conduct as it may attract negative consequences to the company in future.

7. AWARD

The award I make is that the application brought by the applicant association in which the latter seeks recognition as a Staff association in terms of Section 42(5) of the Industrial Relations Act 2000, (as amended) is hereby dismissed.

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DATED AT NHLANGANO ON THIS / 3 DAY OF MARCH 2007

BONGANI SYDNEY DLAMINI (ARBITRATOR)

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