



**IN THE CONCILIATION, MEDIATION & ARBITRATION
COMMISSION (CMAC)**

HELD AT SITEKI

REF:SWMZ 013/10

In the matter between:-

BHEKI MHLONGO & 160 OTHERS

APPLICANTS

And

T.Q.M. TEXTILES (PTY) LTD

RESPONDENT

CORAM:

ARBITRATOR

: MTHUNZI SHABANGU

FOR APPLICANT

: EPHRAEM DLAMINI

FOR RESPONDENT

: DANIEL MATSEBULA

AND MUZIE RAMALWA

NATURE OF DISPUTE

: UNDERPAYMENTS

DATE OF HEARING

**: 16TH JULY, 2010 AND
30TH JULY, 2010**

ARBITRATION AWARD

1. DETAILS OF HEARING AND REPRESENTATION

- 1.1 The arbitration was held at CMAC offices, Manzini on the 16th and 30th July, 2010. The proceedings were captured on electronic and manual records.
- 1.2 The Applicants before the Commission were Bheki Mhlongo and 160 Others whose full and further particulars appears on Annexure "A" to the Report of Dispute Form (i.e. CMAC Form 1). Their postal address is P.O. Box 308, Manzini.
- 1.3 The Respondent is T.Q.M. Textiles (Pty) Ltd, a company registered according to the company laws of Swaziland, with its postal address being P. O. Box 1864, Matsapha.
- 1.4 During the Arbitration process, the Applicants were represented by Mr. Ephraem Dlamini, a labour consultant, whilst the Respondent was represented by its Personnel officers, Mr. Daniel Matsebula and Muzie Ramalwa.

2. ISSUE TO BE DECIDED

- 2.1 The issue to be decided pertains the application of the appropriate Regulation of Wages Order to regulate the minimum wages of the Respondent's employees.

- 2.2 The Applicants claim that the Respondent wrongfully and unfairly applies The Regulation of Wages (Textile and Apparel Industry) Order instead of The Regulation of Wages (Manufacturing and Processing Industry) Order.
- 2.3 Consequently, through the Respondent's alleged wrongful and unfair labour practice of applying an improper wage regulation Order, the Applicants complain that they are being underpaid.
- 2.4 It was, however, agreed between the parties during a pre-arbitration hearing that it would be convenient for the Commission to first decide the question of the applicable Regulation of Wages Order in lieu of the relief (if any) to be awarded. After this agreement, I directed that the hearing should proceed on the issue of the applicable wages Order only, and the issue of relief to be reserved.

3. BACKGROUND TO THE ISSUE

- 3.1 The Applicants are employees of the Respondent, having been employed at different intervals between the years 2007, 2008 and 2009 and for different job capacities/designations. The

employment relationship between the parties still subsists. Their monthly wages are paid by the Respondent under the Regulation of Wages (Textile and Apparel Industry) Order. The Applicants are opposed to this arrangement and contend that their wages should be regulated by The Regulation of Wages (Manufacturing and Processing Industry) Order.

- 3.2 The Respondent, T.Q.M. Textiles (Pty) Ltd is the employer for all the Applicants. It is one of the textile production companies based in the Matsapha Industrial sites. The Respondent denies that the manufacturing and processing industry Order is the one applicable to the employment of its employees. It seeks to justify its stand by arguing that it is a baby of the manufacturing and processing industry, born after separation of the textile and apparel industry from the manufacturing and processing industry.

4. SURVEY OF EVIDENCE AND ARGUMENTS

The Applicant's Version;

- 4.1 Mr. Dlamini who represented the Applicants led three (3) witnesses in proof of the Applicants' case, being Pretty Mamba (AW1); Maxwell Lukhele (AW2) and Celumusa Zwane (AW3) in that sequence. Here below is a summary of the pertinent aspects of these witnesses' evidence for purposes of the issue to be determined.
- 4.2 AW1 testified under oath to the effect that she was employed by the Respondent on the 27th July, 2007 as a Laboratory Assistant. Her job function involves making dye solutions and doing samples. She says the whole department under which she is working falls under manufacturing and that thus the regulation of wages Order applicable to her is that for manufacturing and processing industry. To substantiate this point even further, she says her job designation does not appear from the textile and apparel wages regulation Order but only in the manufacturing and processing wages regulation Order, being Legal notice No.5 of 2008, at page S29 and paragraph 7 thereof. She consequently argued that she is underpaid insofar as she presently earns E241.11 per week instead of E270.35 per week as stipulated in the manufacturing and processing wages regulation Order.

- 4.3 This witness maintained her stand and did not agree when it was suggested to her, during cross examination, that apparently some occupations or job designations needs to be transferred from the manufacturing and processing wages regulation Order to the textile and apparel wages regulation Order.
- 4.4 Ms Mamba went on to mention a number of other departments at T.Q.M. Textiles whose occupations are not mentioned under the textile and apparel wages regulation Order but only under the manufacturing and processing wages regulation Order. Such as Spinning, Water Treatment, Boiler, Laboratory, Dye-yarn, Dye-fabric, Stander Machine, Q.C Department, Packing, Production and Chemical scale departments.
- 4.5 She, however, conceded that T.Q.M. Textiles is a chain production textile company which at the end produces a fabric.
- 4.6 The second witness to take the witness stand was Maxwell Lukhele. Mr. Lukhele was employed by the Respondent since the 7th May, 2008 as a Quality Controller. He testified to the effect that his function entails observing the already processed fabric from the dyeing department. That

is, he checks the fabric's knittings, cuttings, measurements, ironing and grade it.

4.7 Mr. Lukhele further testified that he is being underpaid insofar as his wage is regulated by the textile and apparel wages regulation Order as opposed to the manufacturing and processing wages regulation Order. He says his job designation appears at page S42 of the manufacturing and processing industry wages regulation Order and that his current wage of E5.13 per hour is below the minimum wage stipulated in this Order which is E295.48 per week. This witness says his job designation does not appear in the textile and apparel industry Order since what appears in that order is the occupation of Quality Checker and not Quality Controller. He argued that to his understanding these two job descriptions differ.

4.8 Mr. Lukhele, corroborating the first witness, also conceded that T.Q.M. Textiles is a chain production textile industry whose end product is a fabric.

4.9 Mr. Dlamini, the Applicants' representative closed his case by calling one Celumusa Zwane as AW3 to the witness stand. Zwane is employed by the

Respondent as a Boiler operator. This job entails operating a boiler, i.e. boiling water and supplying boiled water to other departments of the Respondent's company as operations demands.

4.10 Mr. Zwane testified that he is not paid as per the minimum standards set in the manufacturing and processing wages regulation Order where his job designation appears at page S42. According to this Order, he says he should be earning E307.02 per week as opposed to the wage he presently earns of E241.11 per week. This witness, just like the first two witnesses, consequently complains that himself and his co-workers are being under-paid by the Respondent insofar as the Respondent uses the wrong wages regulation Order, being the textile and apparel wages regulation Order instead of the manufacturing and processing wages regulation Order, to govern its employees' wages. He denied that the job of Boiler operator does appear in the textile and apparel industry Order.

4.11 Just like his fellow two employees who testified before him, Mr. Zwane conceded that T.Q.M. Textiles (the Respondent) is a chain production textile industry whose end product is a fabric.

The Respondent's Version;

4.12 The Respondent called only one witness to rebut the Applicants' case in the person of Maureen Phindile Dlamini. This witness started-off by giving a background of the textile industry in Swaziland with her main focus being the Matsapha Industrial sites. A part of that history may not be pertinent for purposes of the issue for determination herein.

4.13 In summary, this witness gave evidence to the fact that she joined the textile industry in the year 2002 when she got employed by Taytex Investment Swaziland as Human Resource Manager. Taytex Investment Swaziland took over from Natex 2000. Natex 2000 used to produce yarn using raw cotton. Another factory from the same premises used the yarn to weave it to produce fabric. A third department would take the fabric and dye it to whatever colour, print it and finishes it to be ready for the market. This was more of a chain production process.

4.14 Ms Dlamini testified that Natex 2000 used to pay its employees using the manufacturing and processing wages regulation Order, something which ended around 2003 after Taytex

Investment Swaziland had taken over the operations from Natex 2000. This change aggrieved the employees since the take over company inherited the former company employees and they started complaining about this sudden change of the wages regulation Orders.

4.15 The workers' complaints continued till an official from the department of labour, a department under the former Ministry of Enterprise and Employment (now Ministry of Labour and Social Security), one Ms Khabo Dlamini was invited to the textile factories to explain the reason for the change from the manufacturing and processing wages regulation Order to the textile and apparel wages regulation Order. According to this witness, a mass meeting of all the workers was convened wherein the said Khabo Dlamini explained as to how the Swaziland Textiles Exporters Association in collaboration with the Wages Council and the labour department had deliberated upon this issue and resolved that a textile and apparel industry wages regulation Order be gazzetted.

4.16 Ms Dlamini testified that the textile industry is involved in a chain textile production process. She

says T.Q.M. Textiles and Taytex Investment Swaziland for example are independent factories but are within the same premises and are involved in a chain production process in that the one firm passes on the product to the other firm for continuation of processing. Taytex makes the yarn which is taken to the knitting house or factory. Some yarn is taken to T.Q.M. Textiles for dyeing. After knitting, the fabric is also taken to T.Q.M. Textiles for dyeing and finishing. From the finishing department, the fabric is taken to the sewing outlet which is also in the chain of textile factories. Other factories involved in the chain are Tex-Ray Swaziland, Leartart, Kassumi and Union Washing.

4.17 Ms Dlamini then argued that T.Q.M. Textiles, by reason of being a party to the chain of textile factories automatically falls under the textile and apparel industry whose wages are regulated by the textile and apparel wages regulation Order.

4.18 This witness also mentioned a number of job designations obtainable at T.Q.M. Textiles which appears in the textile and apparel wages regulation Order. These include Casual Labourer, Learner Mechanic, Learner Packer, Learner

Mechanic B, General Labourer, Driver/Messenger, Mechanic 2, Office Clerk, Dispatch Clerk, Quality Controller, Handyman, Laboratory Technician, Mechanic Grade 1.

5. ANALYSIS OF THE EVIDENCE AND ARGUMENTS

- 5.1 It is common cause that T.Q.M. Textiles (Respondent) presently applies the textile and apparel industry wages regulation Order to regulate the remuneration of all its employees without differentiation.
- 5.2 It is also common cause that T.Q.M. Textiles is a party to a chain of textile factories involved in a chain production process and is not, therefore, an independent textile production company.
- 5.3 It is common cause, further, that some of the occupations of T.Q.M. employees do not appear in the textile and apparel wages regulation Order but in the manufacturing and processing wages regulation Order. It is of significant note, however, that from my perusal of both the above mentioned wages regulation Orders, I noted that out of the three occupations or job designations of the three Applicants' witnesses, being that of

Laboratory Assistant, Quality Controller and Boiler Operator, only one occupation, being that of Laboratory Assistant, does not appear in the textile and apparel wages regulation Order. The other two do appear.

5.4 It is therefore not true to say that the occupation of Quality Controller and Boiler operator do not appear in the textile and apparel wages regulation Order but only appear in the manufacturing and processing wages regulation Order as testified by AW2 and 3. The correct proposition is that these occupations appear in both wages regulation Orders. The occupation of 'Quality Controller' appears as such in the 2004 textile and apparel wages regulation Order but in the 2009 Order it is reflected as a 'Quality Checker'. The job description or definition is exactly the same; it is only the slight change of name that occurred in the latter Order.

5.5 Furthermore, it is common cause that notwithstanding the fact that the occupations of Quality Controller/Checker and Boiler operator entails the same description in both the textile and apparel wages regulation Order and the manufacturing and processing wages regulation

Order, the remuneration for these occupations in each Order is not the same. The manufacturing and processing Order offers a higher pay for these occupations as opposed to the textile and apparel Order.

5.6 The minimum wage for a Quality Controller/Checker in the textile and apparel Order is E248.58 per week and yet in the manufacturing and processing Order it is E295.48 per week. For a Boiler operator, the first schedule in the textile and apparel Order omitted to stipulate the minimum wage but the manufacturing and processing Order offers E307.02 per week. The employer (or Respondent), per the evidence led, pays E241.11 per week for this occupation.

5.7 As already said, the description of a Quality Controller and Boiler operator in the textile and apparel wages regulation Order is the same as that given in the manufacturing and processing wages regulation Order. Consequently, there seems to be no justification for the differentiation when it comes to remuneration. This unexplained demarcation qualifies to be labeled as an unfair discrimination in contravention of Convention 111(1)(b) of the International Labour

Conventions(ILO). This Convention prohibits distinctions, exclusions or preferences which have the effect of **nullifying or impairing equality of opportunity or treatment in employment or occupations.**

See: Discrimination (Employment and Occupation) Convention, 1958.

- 5.8 ILO Conventions and Recommendations have a legal or binding force and effect in this Kingdom. In the case of **Zodwa Kingsley and 10 Others vs. Swaziland Development Compamy Limited - Appeal Case No. 11/2003 (Industrial Court of Appeal)**, their lordships, in a unanimous judgment, observed that:

“...the Conventions and Recommendations of the International Labour Organisation apply in the Kingdom of Swaziland and must be adhered to and be applied in conjunction with the Labour legislation of Swaziland.”
(At page 5 thereof).

- 5.9 Furthermore, in the case of **Lidlelantfongeni Staff Association (L.I.S.A.) vs. Swaziland National Provident Fund Board, Industrial Appeal Case No.15/2004 (Industrial Court of**

Appeal), the Learned Appeal Judges stated that:

“...it is common cause that the Conventions and Recommendations of the International Labour Organization are part of the labour laws of Swaziland.” (At page 10 thereof).

See also: Standard Bank of Swaziland Limited vs. Wiseman Simelane, Appeal Case No. 25/2001 (Industrial Court of Appeal).

5.10 One last point which is also undisputed is the fact that a long list of occupations which obtain at the Respondent's company, do appear in the textile and apparel wages regulation Order inasmuch as others appear in the manufacturing and processing wages regulation Order. These were mentioned by RW1 and AW1 respectively. This fact has a great effect on the issue for determination because it appears that the Respondent's company encompasses occupations both from the textile and apparel industry as well as from the manufacturing and processing industry. For this reason, the undenied fact that T.Q.M. Textiles is a company involved in a chain of textile production companies finds further support.

5.11 The overlapping of these occupations may not be much of a problem. The Respondent's operations, inasmuch as it is a textile company, may not be frowned at for mere reason of using machines that are mainly used in the manufacturing and processing industry. But what the law surely disapproves is to allow the employer to fall for a wages regulation Order that suits her to regulate the remuneration even of employees whose occupations appear in both wages regulation Orders.

5.12 The reason for this disapproval is simply that such a scenario perpetrates unfair discrimination and impairs the equality of opportunities and treatment in employment or occupations. If a Quality Controller employed in a manufacturing and processing industry earns a minimum wage of E295.48 per week and a Boiler employed in the same industry earns E307.02 per week, a Quality Controller and/or Boiler operator employed in a textile and apparel industry should not be placed at a disadvantageous position than the one employed in the same occupation but at a manufacturing and processing industry. Moreso because the job descriptions of these

occupations, as per the reading of both Orders, are the same.

5.13 Such a discrimination is undoubtedly unfair and inequitable, and offends the spirit of **Section 4 (1) (b) of The Industrial Relations Act, 2000 (as amended)**, which says it is the objective and purpose of the Industrial Relations Act to ***“promote fairness and equity in labour relations.”*** This proposition finds further support from the case of **Usuthu Pulp Company vs. The President of the Industrial Court and 2 Others, Appeal case No. 54/2009 (Supreme Court of Swaziland)** where the notion that the Industrial Court is a Court of equity rather than a court of law was endorsed. (At page 30 thereof).

5.14 The foregoing legal reasoning should lead me to make a finding that the Respondent’s operations involves a combination of both the manufacturing and processing industry occupations as well as the textile and apparel industry occupations.

6. AWARD

In the premises, I make the following order:

6.1 Both the Regulation of Wages (Manufacturing and Processing Industry) Order and the Regulation of

Wages (Textile and Apparel Industry) Order are applicable to the Respondent's operations.

6.2 In respect of those occupations which appear in either wages regulation Orders, the Respondent is ordered to apply that Order which offers a higher wage as opposed to the one which offers a lower one.

6.3 I find no fault on the Respondent's past use of only the textile and apparel industry wages regulation Order. Therefore, I will not order that this award should have a retrospective effect. Its application is with effect from October, 2010.

6.4 However, for those employees which the Respondent had been underpaying by not complying with the minimum wages as set in the textile and apparel wages regulation Order, I order that the Respondent should calculate the amounts of their underpayments, using the textile and apparel wages regulation Order, for the past 18 months from the date of filing this dispute to the Commission and do good those amounts of underpayments.

6.5 Order no. 6.4 hereof should be carried out in meaningful and open consultations with the

Applicants' representative, before end of October,
2010.

6.6 I make no order as to costs.

DATED AT MANZINI THIS.....DAY OF SEPTEMBER, 2010.

MTHUNZI SHABANGU
CMAC COMMISSIONER