

IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO.921/88

In the matter between:

NGWANE BREWERY (PTY) LTD.

APPLICANT

vs

SIMON MATSABATSA  
PRESIDENT OF THE INDUSTRIAL COURT

1st RESPONDENT  
2ND RESPONDENT

CORAM:

DUNN A.C.J.

FOR APPLICANT:

MR. FLYNN

JUDGMENT (23.3. 1989)

DUNN A.C.J.

This is an application to review and set aside an award of the Industrial Court delivered on the 3rd November 1988.

The 1st respondent was employed by the applicant as a driver/ salesman during the period 22nd September 1982 to 26th June 1986. The 1st respondent was, in the course of his duties, called upon to work overtime. The extent of the overtime worked by the 1st respondent was recorded on daily route sheets which were completed and filed with the applicant. Upon termination of his services the 1st respondent received and signed for certain terminal benefits which were calculated by the applicant. It is common cause that the "Separation Advice Notice" which reflected the 1st respondent's benefits and which was signed by him and the applicant's Manager did not reflect any payment for overtime.

On the 29th December 1986, the 1st respondent filed a report with the Labour Commissioner in terms of Section 50 as read with Section 51 of the Industrial Relations Act 1980, in which he demanded payment for

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overtime from the applicant. The report did not specify what amount was claimed and the dates on which it accrued. The Labour Commissioner was unable to resolve the dispute regarding the failure to pay overtime and he issued a certificate of an unresolved dispute in terms of Section 58 of the Act.

The Commissioner set out at paragraph 4 the reasons why in his opinion settlement had not been reached between the parties. One of these reasons was that the 1st respondent was unable to prove the extent of the overtime he had worked. The 1st respondent then applied to the Industrial Court for an order directing the applicant to furnish the route sheets that had been completed between the 22nd September 1982 and June 1986 in order to enable him to calculate the overtime.

When the application was called in the Industrial Court several preliminary points were raised on behalf of the present applicant (as respondent). The President of that Court dealt with and dismissed each of the points in a ruling which was handed down on the 3rd November 1988. The present application pertains to that ruling. The application turns on the question as to precisely what the

"unresolved dispute" between the applicant and the 1st respondent was. It was argued in the Industrial Court on behalf of the applicant that the report made by the 1st respondent to the Commissioner related specifically to non-payment of overtime during the months of January, February and March 1983 whereas the application to the Industrial Court related to documents covering the period 22nd September 1982 to June 1986. The President ruled as follows on this point:-

I am of the view that the applicant is entitled to apply to Court at any stage for Route Sheets for any period in order to check whether his overtime had been correctly calculated and paid. In the circumstances I overrule the objection.

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The applicant was directed by the president to file the relevant Route Sheets on or before the 5th December 1988.

The following is set out in the affidavit of David John Hunt in support of this application:-

9. The "route sheets" demanded by the Second Respondent are presumably route reports routinely completed by the Applicant's employees in respect of every trip made by the Applicant's vehicles. The task ordered by the Industrial Court would be extremely difficult if not impossible to accomplish as I estimate there are more than 10.000 route reports for the period in question which will have to be sorted out. It will be an enormous task to extract route reports which may relate to the Second Respondent as they are not in any particular order and there will be many reports missing or out of order.

10. I am advised and submit that the award of the Industrial Court should be reviewed and set aside on the following grounds;
- 10.1 The Industrial Court took cognisance of a dispute which had not been reported or dealt with in accordance with the Industrial Relations Act No.4 of 1980.
- 10.2 The Industrial Court is not empowered to order the production of documents which are not relevant to a dispute before it.
- 10.3 The Industrial Court is not entitled to order the production of documents when there is no proper dispute before it purely to enable the Applicant before the Industrial Court to make a case against a Respondent.

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The report filed by the 1st Respondent with the Labour Commissioner reads as follows:-

My normal working was 48 hours for which I was paid per week. My usual starting time was 05.00 a.m. until the end of my sales route. These routes usually finished from 10.00 p.m. to about 1.00 a.m.

There my demand is overtime worked.

The nature of the dispute was set out in the Commissioner's certificate as "failure to pay overtime" and as earlier pointed out conciliation could not be achieved because the 1st respondent was not in a position to state precisely what the extent of the overtime he had worked was. This was as a direct result of the fact that the first respondent was not in possession of the route sheets in which the overtime was recorded. The argument advanced on behalf of the applicant in support of the contention that the report to the Commissioner was specifically for failure to pay overtime for the months of January, February and March 1983 was based on a document which the applicant stated was an annexure to the 1st respondent's report. The document is headed "Simon S. Matsabatsa" (the 1st respondent) and contains 3 columns headed Date, Time and Number. Under the first column various dates in the months of January, February and March 1983 are set out.

The document is not referred to in the 1st respondent's report nor is it marked as an annexure thereto.

The document is not signed despite provision for a signature under the endorsement "signed by." Section 51(1) of the Act provides that a report to the Commissioner shall be made in writing and be signed by the person making the report.

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The document which the applicant states was attached to the report is not signed and is not mentioned in the report. This document was in my view properly disregarded when the nature of the dispute was characterised by the Commissioner. The dispute related to the failure to pay overtime over the entire period of the 1st respondent's employment with the applicant and not simply to the 3 months referred to by the applicant. I find that the dispute was properly before the Industrial Court and that that Court had jurisdiction to decide the 1st respondent's application. That answers the first ground under which the applicant seeks to have the award of the Industrial Court set aside. The second and third grounds can be dealt with together. The documents required by the 1st respondent are directly relevant to the dispute between the applicant and the 1st respondent. The extent of the overtime for which the 1st respondent seeks payment can only be calculated from the entries on the route sheets. Section 6(2) of the Act provides:-

For the purpose of considering any matter before it, the Court may require any person to:-

- (a) furnish in writing or otherwise, such particulars as the Court may require in relation to any matter before it;
- (b) attend before it;
- (c) give evidence on oath or affirmation;
- (d) produce any relevant document.

(my underlining) I have found that the dispute was properly before the Industrial Court. The Court was clearly empowered in the circumstances to order the production of the documents in question.

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The application to review and set aside the award/accordingly refused. The time within which the applicant was to produce the relevant documents has since expired. It will be necessary for the Industrial Court to fix a new date. This aspect of the matter is referred back to the Industrial Court for an order, taking into account such representations as the parties may wish to make, regarding the date on or before which production of the documents is to be made.

B. DUNN

ACTING CHIEF JUSTICE