

IN THE INDUSTRIAL COURT OF SWAZILAND

CASE NO.10/87

In the matter between:

BERAL SWAZILAND (PTY) LTD		Applicant
SWAZILAND MANUFACTURING & ALLIED WORKERS UNION		Respondent
CORAM		
J. A.	HASSANALI	President
MR P.	DODDS	For Applicant
MR S.	MOTSA	For Respondent
MESSRS OBED DLAMINI AND NKAMBULE		ASSESSORS

AWARD

(Delivered on 7/4/88)

Hassanali, President

In this application the applicant Company is seeking an Orator from the Court to the effect that the supervisors employed by them are non unionisable on the ground that they fall within the definition of Staff in Sec. 2 of the Industrial Relations Act No.4 of 1980.

Sec.2 defines Staff to mean an employer who -

a) has authority on behalf of the employer to employ, transfer, suspend, lay-off, recall, promote, dismiss, reward or discipline or to authorise or recommend such action, when the Exercise thereof is not solely a routine or clerical nature, but requires the use of independent judgment.

b) participates in the making of general Company policy

c) Works in a capacity which requires him to have full knowledge of the financial position of the employer.

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

It is obvious from the above definition that an employer must possess all the above attributes before he could be designated as a Staff.

However, the point in issue in this case is whether the supervisors in the applicant's company are unionisable in view of the functions they perform.

Mr Dodds representing the company referred me to Annexure 5 which according to him spells out the duties and responsibilities of a supervisor. These duties and responsibilities in my view do not at all come

near to responsibilities referred to in Sec.2 of the said Act. Mr Dodds very rightly agreed with me on this. It seems to me that even a Manager of an industry would become unionisable as the law now stands. This is in my view a serious defect and calls for immediate rectification.

In Kenya the following categories of employees through negotiations have been accepted as non-unionisable and therefore I would like the parties to consider this as a basis for negotiated settlement.
Confidential:

A person who is engaged in work of a confidential nature e.g. who has access to confidential information which could be of use to a union, or who is directly training for such a position. The following list is indicative of the type of job which would be covered by this definition:

Staff dealing with senior management salaries (it should be noted that this does not include staff preparing salaries of

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unionisable employees)

Staff employed in personnel department dealing with and having direct access to personnel matters.
Personal secretaries to senior management.

Directive and Administrative:

A person who is a member of the management or executive staff, or who is directly training for such a position. Such persons are those involved in formulating and putting into operation the company policy.

Representation:

A person who represents the company in a specified geographical area or field of activity, or who is directly training for such a position. (It should be noted that this does not include salesmen and demonstrators).

Supervisory:

A person who supervises the work of others, who is responsible for a section of the activities of the company, who is required by management as part of his duties, to make recommendations in connection with hiring, firing, promotion or disciplinary action, and to whom subordinate staff would apply in the first instance for the remedy of grievances if, in connection with the foregoing the exercise of such authority requires independent judgment, this therefore excludes from this definition charge hands.

As regards to this application, I am of the view that the supervisors in the applicant company do not perform any of the functions enumerated in Sec.2 of the Act and therefore they cannot be designated as Staff. In the circumstances to disallow the supervisors the right of joining the unions of

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their choice will be a violation of the principles of freedom of Association.

Consequently I dismiss the application. My Assessors agree with my decision.

J. A. HASSANALI

President