

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT MBABANE

CASE NO. 52/89

In the matter between:

SWAZILAND RAILWAYS

Applicant

VS.

SWAZILAND TRANSPORT AND ALLIED
WORKERS UNION

Respondent

CORAM:

J.A. HASSANALI President

MR MOTSA
MR DODDS

For Applicant
For Respondent

MR MIKGOKONG & MR MATSEBULA Assessors

HASSANALI, P.

This Application is brought by the Swaziland Railways under Section 36(5)(b) of the Industrial Relations Act.

The Respondent Union has objected to the Application on the ground that it had not been filed within 30 days as required under the aforesaid section and therefore has asked that the Application be dismissed. In the circumstances the question that has to be decided is whether the requirements under Section 36(5)(b) have been complied with. Before I do so, I wish to set out the salient facts, which led to this application.

The Respondent Union by its letter dated 16/1/89, applied to the Swaziland Railways for recognition under Section 36(5) of the Industrial Relations Act. In its reply of 20/1/89, the Railways made the Union understand that it had no intention of granting recognition on the ground that the Union had failed to name the categories of employees which it intends to represent, in its application. The Union wrote back on 31/1/89 that it represented all its employees and if the Railways had any doubts about it, it should comply with the requirements laid down under Section 36(5)(b) of the aforesaid Act.

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Since the Applicant failed to grant recognition or take the matter to Court, the Respondent on 27/2/89 reported this matter as a dispute under Section 50 of the said Act to the Labour Commissioner, with a copy to the applicant Railways. Meanwhile the applicant and the Respondent undertook a voluntary membership count on 22/5/89 but the required 40% membership of the Union could not be established during this exercise. Hence no agreement was reached. However on 21/6/89, the Labour

Department intervened and through conciliation a settlement was reached on a number of issues. The issues being -

- (1) that because of the lapse of time since the application for recognition was first made the parties will disregard the phrase "fully paid up membership" for the sake of progress -
- (2) that they will disregard the fact that thirty days had long lapsed since the application for recognition was first made.

- (3) that the check off forms which were rejected by management be re-instated with proof of authenticity of the signatures
- (4) that Union Members assist management in checking the signatures appearing on the check off forms against signatures appearing on the company employment records
- (5) that the exercise be completed on or before the 14th July, 1989."

As a result of this Agreement another membership count was conducted on 11/7/89 and it was established that the Respondent Union had the necessary 40% membership of the Railways Workforce. On 11/7/89 the Applicant and the Respondent signed an agreement with a view to entering into a recognition agreement later on. This did not materialise and the applicant decided to bring this matter to court under Sec. 36(5) (b) which reads as follows: -

"If forty per cent or more of the employees in respect of which the industry Union or staff association seeks recognition are fully paid up members of the organisation concerned, the employer shall, within thirty days of the receipt of the

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application and in writing -

- (a) grant recognition to the organisation or
- (b) if he decides not to grant such recognition lodge with the Court his reasons for the refusal to grant recognition and shall serve a copy thereof on the industry union or staff association, as the case may be."

According to the above provision, it is clear that if an employer decides not to grant recognition to a Union, such employer should bring an application to Court .within 30 days of the receipt of the application for recognition. This however did not happen in this matter. The Union wrote to the Railways on 16/1/89 and the present application was brought to Court only on 17/7/89 After a lapse of 6 months and after the Union had notified this failure as a dispute to the Labour Commissioner. In my view the Applicant has not complied with the requirements envisaged under Section 36(5)(b) and in the circumstances I have no other alternative but to dismiss the Application.

Application dismissed.

My Assessors agree with my decision.

J. A. HASSAN AL I,

PRESIDENT OF THE INDUSTRIAL COURT