

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO: 55/87

In the matter between:

THE LABOUR COMMISSIONER

Applicant

VS

SWD. TRANSPORT WORKERS UNION

Respondent

CORAM:

J.A. HASSANALI

President

MR MAKHANYA

for Applicant

MR MOTSA

for Respondent

MR MOKGOKONG &

MR MATSEBULA

Assessors.

ORDER

(Delivered on 8th June, 1989)

Hassanali, P.

In this Application the Commissioner of Labour is seeking an Order from this Court against the Respondent on the following terms -

- 1) that it submits a Return in terms of Sec. 22 of the Industrial Relations Act on or before 30/9/87.
- 2) that it be declared defunct in terms of Sec. 31(1) of the said Act.

The Respondent, a registered Union in terms of Sec. 18 of the said Act was required under Sec. 22(1) to submit to the Labour Commissioner within 6 months after the end of each financial year a Return which shall include-

- a) Organisations current postal addresses
- b) Name and postal addresses of its current officers.
- c) Details of any amendment made to its Constitution since the preceding return.
- d) ... its

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- d) its audited accounts for the preceding financial year.

The Respondent however failed to submit any returns and this necessitated the Labour Commissioner to write to the Union to comply with the requirements under Sec. 18 of the Act or face in the alternative the consequences contemplated under Sec. 31(1).

Section 31(1) reads as follow -

"upon application by an affected person or by the Labour Commissioner, the Court may after making such enquiries as it may consider necessary, declare an Organisation to be defunct if the Organisation has not filed a return under Sec. 22 or if the Court is satisfied that the Organisation is no longer carrying on any of the activities of an organisation."

Despite the Commissioner's letter the Union remained silent and it was then that he decided to initiate proceedings against it. Meanwhile the Union submitted a Return for the period 1/4/86 to 31/3/87 which was rejected by the Commissioner on the ground that the Return did not comply with the requirements of Section 22(1) of this Act.

Though there was no proper compliance in respect of (a), (b) & (c) aforesaid, I directed the parties to centre their arguments mainly to the question of the Audited Accounts.

In this connection I now refer to the remarks of the Auditors which are as follows - "A major part of the Unions income comprises contributions from Members. There was no

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system of control over such income upon which we could rely for the purpose of our audit and there was no alternative procedures which could be adopted to verify the amount of contribution of income recorded in the Union financial statements. Accordingly in our opinion the Union has not complied with the requirements of Sec. 29 of the Industrial Relations Act of 1980 in that it has not maintained a satisfactory system of control over receipt."

Section 29 States -

"(1) All funds received by or on behalf of an Organisation shall forthwith be deposited to the Organisation's bank account, with a bank in Swaziland duly licensed as a financial institution under the Financial Institutions (Consolidation) Order, 1975 (Order No. 23 of 1975)

(2) Every expenditure received by or on behalf of an Organisation shall be evidenced by a written receipt or voucher, which shall be kept with the Organisation's accounts.

(3) The treasurer or other officers responsible for the custody of the Organisations funds and property shall hand over such funds and property to the Organisation when he leaves office, or earlier if so directed by the Chairman and Secretary of the Organisation or a general meeting.

(4) The Court may make such Order as it deems necessary to secure compliance with this section.

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Taking into consideration the remarks of the Auditors, it is clear to me that the Union has failed to maintain a proper accounting system as envisaged under Section 29. This in my view constitutes a very serious breach of the said Act. Mr Motsa representing the Union argued that the Auditors Report and the Audited statement were primarily meant for the Union so that it could rectify any accounting errors. I am afraid I cannot subscribe to this view. Had this been the position then there would not have been any necessity for the Union to submit such a Return as required under Sec. 22(1) (a). In my view the main purpose in submitting such a Return to the Commissioner was for him to take remedial action provided for under Sec. 31(1) if he so finds that Union Officials had been misusing the Union Funds. Therefore I reject Mr Motsa's argument on this and hold that the Respondent Union had failed to comply with the requirements especially to the audited statement as contemplated under Sec. 22(1) (d) of the Act.

What has to be decided now is whether the Union should be declared defunct under Sec.31(1) of the Act. Mr Fakudze, the present chairman of the Union admitted that the Union had failed to maintain proper accounts due to difficulties in collecting the subscriptions from the sub-branch Unions. He also admitted

that the Union had not forwarded the Return for the period 1/4/87 to 31/3/88. However given another opportunity, he said he would submit a Return to the Commissioner for this period.

Though there is no doubt that the Union is in contravention of and in flagrant disregard of Sec. 22 of the Act I do not wish to declare the Union defunct at this stage but to give it another opportunity to submit a proper audited statement. In the light of this I wish to make the following XXX

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that the Respondent Union shall submit to the Labour Commissioner a Return in terms of Sec. 22 of the said Act for the period 1/4/87 to 31/3/88 and the Statement of Account shall conform to Sec. 29 of the Act. The said Statement shall be audited by a qualified Auditor and submitted to the Commissioner on or before 28th July, 1989. If such statement is accepted by the Commissioner, the application in this case will then be dismissed. In the event the statement is not submitted or not accepted by the Commissioner, the Commissioner then shall apply to Court for an appropriate Order in this matter.

My Assessors agree with my decision.

I enter this decision as an Award of this Court.

J.A. HASSANALI,

PRESIDENT