

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT MBABANE:

CASE NO: 28/89

In the matter between:

SWAZILAND UNION OF FINANCIAL INSTITUTIONS
AND ALLIED WORKERS

Applicant

AND

SWAZILAND BANK EMPLOYERS ASSOCIATION

Respondent

CORAM :

J.A. HASSANALI President

MR D. BERGER (Advocate)

For Applicant

MR P. DODDS

For Respondent

MR MOKGOKONG & MR MATSEBULA Assessors

A W A R D

(Delivered 17th August 1989)

HASSANALI, P

In this matter the parties negotiated and entered into a Collective Agreement on 28th November, 1988. The Agreement to become effective from 1/1/1989 for a period of two years. It is a matter of great regret that such enlightened parties having negotiated, concluded and signed the Collective Agreement are now in serious disagreement over its interpretation on the Article covering overtime and are seeking the Court's assistance to resolve the dispute.

When the matter was taken up for enquiry, Mr Dodds representing the Respondent Banks, applied that the preliminary objection raised in his reply be taken up first and disposed of, before enquiring into the issue in dispute. Mr Berger representing the Applicant Union raised no objection to this.

The preliminary objection raised by Mr Dodds was that this Court had no jurisdiction to hear and determine this matter on the ground that the Collective Agreement in Case No. 8/88 was only registered without a decision being taken by the Court. I have to disagree with him on this. The Collective Agreement was in fact registered under Sec. 44(1) of the Industrial Relations Act, on a decision made by this Court, after due enquiry. In the circumstances I

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overruled the objection.

Coming now to the main point, the parties are seeking an interpretation of Article 2.1 of the Collective Agreement as to whether it means -

(1) that overtime worked in excess of normal hours per day will qualify for payment only if in excess of 176 hours per four week cycle

or

(2) that overtime worked in excess of normal hours per day will qualify for payment only if in excess of 44 hours per week

or

(3) that overtime worked in excess of normal hours per day shall qualify for payment at the expiration of the four week cycle -Article 2.1 reads as follows -

"Overtime"

Overtime shall be paid for hours worked by employees in excess of normal hours. Such overtime worked shall be payable at 1 ½ times the hourly rate. The rate applicable for work undertaken on Sundays or Public Holidays shall be at 2 times the hourly rate. However, time off in lieu of overtime earned may be availed of by mutual consent between the employee and his employer."

In order to appreciate the full significance of the above Article a look into Article of 2 of the said Agreement is very necessary. It states as follows -

"Hours of work"

Normal hours of work for clerical and non-clerical employees will be 176 hours per four week cycle and 44 hours per week , but credit will be given for public holidays. When employees are not required to work on Saturdays mornings credit will not be given for hours not worked. Employees who

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are absent on Annual, special, sick or unpaid leave will be credited with the normal hours of work in respect of each days absence (except Sundays) on the following basis -

Monday to Fridays : Eight hours (including a luncheon break of one hour).

Saturdays : Four hours. Hours of work in respect of office employees where no work on Saturdays is required will be on the following basis -

Four Working days : 8 ¾ hours (including a luncheon break of one hour).

One Working day : 9 hours (including a luncheon break of one hour).

"Hours of work in respect of departments"

requiring shift working do not form part of this agreement and are subject to separate negotiations with the number bank concerned."

Perusing the above Articles it seems to me that the normal hours of work have been clearly determined for both Clerical and non-Clerical employees. The /so that the hours purpose of this in my view is to identify the duration of the normal working hours/

which are worked in excess of the regular hours could be distinguished as overtime. The normal working hour will earn the basic wage and once that is complete, any excess hours will earn overtime or premium rates.

I have also perused some of the Regulations on Wages prevalent in this Country and all of them follow the pattern established by the International Labour Organisation; that is to identify the normal working hours and thereafter the hours worked in excess of the normal hours to be considered as overtime. Therefore it seems to me that Articles 2 and 2.1 of the Collective Agreement are similarly,

based as the recommendation of the International Labour Organisation (See Conventions and Recommendations of I.L.O. Pages 1029 and 1030).

Prior to the signing of the Collective Agreement on 28/11/88 the standard practice in operation at the Barclays Bank of Swaziland Ltd. and Bank of Credit and Commerce International (Swaziland) Ltd was to pay its employees overtime for the hours worked in excess of 44 hours. The Standard Chartered Bank Swaziland Ltd paid its employees the overtime in excess of 176 hours per four week cycle and these have been identified as the normal working hours. Though the Applicant Union made attempt through consultation with the Respondent to change this practice so as to bring it in line with its way of thinking and have the same embodied in the Agreement, it failed because of the Respondent's opposition to such change. As a result the Collective Agreement was signed without any change in the existing practice relating to overtime and was registered in Case No, 8/88 by mutual consent. It now appears to me that the Applicant Union is seeking to introduce a new element into this Agreement which in my view would constitute a variance in an already negotiated and signed agreement. This is undesirable and should be discouraged during the subsistence of an Agreement.

It was brought to the Notice of the Court by Mr Dodds that the Standard Chartered Bank was agreeable to fall in line with the other two Banks in the event the Court interprets the Article 2.1 as stated in paragraph 2 of the Application to the Court - Form D.

After carefully considering the above points, I have come to the conclusions that the reasonable interpretation on the overtime claim (Article 2.1) in the Collective Agreement should be as follows - That overtime worked in excess of Normal hours per day will qualify for payment only if in excess of 44 hours per week.

My Assessors agree with my interpretation and this interpretation is entered as an award of this Court.

J A HASSANALI

PRESIDENT