

IN THE INDUSTRIAL COURT OF SWAZILAND

HOLDEN AT MBABANE:

CASE NO; 95/1989

SWAZILAND BREWERS LIMITED Applicant

VS.

S. M. A. W. U. Respondent

C O R A M: J.A.

Hassanali President

Mr Millins For Applicant

Mr S. Motsa For Respondent

Mr. Mokgokong & Mr. Matsebula Assessors.

AWARD

(Delivered on 30th May, 1990)

HASSANALI, P.

This is an application by the Swaziland Brewers Ltd., the Applicant, against the Respondent Union, seeking an Order on the following terms –

- (a) that this Honourable Court will resolve such matters as are in dispute between the Applicant and the Respondent.
- (b) that this Honourable Court will grant an Order interdicting and restraining the Respondent from instituting and continuing with strike action against the applicant pending the resolution of the matters in dispute.

After hearing Mr Millins, the Representative for the Applicant in the Chambers, I refused the application in respect of prayer (b) and allowed Notice on the Respondent in respect of prayer (a) for 13/11/89.

I will now briefly state the events that prompted the applicant company to make this application.

On 20/7/89 the Respondent Union submitted a list of grievances to the

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Applicant Company (Ex.C) relating to the denial of the rights of certain of its Members who were under the control of one Mr. Madonsela. The procedure relating

to the grievances as laid down in the Recognition Agreement was then followed and on 21/8/89 the General Manager of the Company communicated the outcome of the said investigation (Ex.D). On 19/9/89 the Grievance Hearing was reconvened for the purpose of finalising the remaining two grievances (Ex.E) but the Union declined to participate. It instead reported the entire matter as a dispute to the Labour Commissioner who attempted to negotiate a settlement, but failed. He consequently issued a Certificate of Unresolved Dispute in terms of SEc. 58(1) of the Act No.4 of 1980. Thereafter the Union notified the Company of its intention to strike and the company in turn presented this application to Court.

The grievances in issue are all centred around Mr Madonsela and from this it seems to me that the workers in his department were frustrated with him by the manner in which he treated them. Their relationship came under considerable strain due to frustration and accumulated grievances. Some of the grievances were of a minor nature while some were serious. Nonetheless the Management appointed Mr P. Haack the Production Manager, in terms of the Recognition Agreement to investigate these grievances. It is a fundamental principle that an investigation or hearing should be conducted in an impartial and straight forward manner and that every opportunity be given to the party concerned to place before it, all the evidence in support. The grievance hearing was held and the Respondent Union was given ample opportunity to call any witness in support but it did not avail itself of this. Instead it remained silent and in fact manifested that it was reluctant to co-operate in the hearing. The behaviour of the Union in my view was most unfortunate. As such the net result of the hearing was that all the grievances were dismissed. Had the Union acted in a more responsible manner, perhaps the conclusions arrived at in respect of some of the grievances may have been different. It is however relevant to mention at this stage that since the grievances were mainly directed at Mr. Madonsela, he should have been called to the hearing and given an opportunity to speak out.

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I find that at no stage did the Management make any effort to bring the Union and Mr Madonsela together for joint discussion on the said grievances. It should be remembered that Industrial peace could be brought about either by preventing the occurrences of grievances or by devising ways and means of removing the grievances once they come into existence, by direct discussion. Conflicts in industrial relations are to a large extent the result of employees dissatisfaction and accumulated grievances. In such an atmosphere any trifling incident would be sufficient to trigger off industrial unrest..

I would also like to comment on the question of hiring casual labour and recruitment of new employees. Mr Haack in his evidence stated that the above were management prerogatives. I agree with him but it must be noted that the workmen generally resent any form of change in their work place. In bringing about such changes, prior consultation with the representatives of the employees would tend to reduce any protests and help to foster harmonious relationship between the workers and the Management which would ultimately be in the interests of the employers themselves.

Taking all the factors into consideration, it seems to me that the grievance hearing

was conducted against the background of the negotiated Recognition Agreement. There is no suggestion in the evidence of Mr. Ndlangamandla, a witness for the Union, that Mr Haack had misdirected himself at any stage in relation to the grievance procedure. ,Nor is there any evidence to throw any doubts on his honesty and bona fide.

Therefore I am satisfied that the grievance hearing was conducted fairly and the mode of procedure adopted by Mr. Haack was sufficiently complied with the requirements detailed in the Recognition Agreement. The decisions arrived at in respect of each grievance were made after careful reasoning and weighing of facts. In the circumstances I do not wish to interfere with his findings.

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My Assessors agree with my decision.

J.A. HASSANALI

PRESIDENT