

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT

MBABANE

Case No. 188/91

In the Matter between :

SWAZILAND MANUFACTURING AND

ALLIED WORKERS UNION

Applicant

AND SWAZILAND MILLING

Respondent

RULING

This is an application by the Swaziland Manufacturing and Allied Workers Union in which they seek the Court to make the following orders namely:

- i) Rules that it is illegal for the Respondent or an employer in that matter to be a member of the federation of Swaziland Employers.
- ii) Orders the Respondent to proceed with the membership count unconditionally,

The Respondent in reply contended that the issue as to whether the Respondent can properly become a member of the federation of Swaziland Employers is not a matter for the courts decision. Alternatively the Respondent averred that it is not illegal for the Respondent to become a member of such Federation of Employers.

It was further contended on behalf of the Respondent in its reply that the Court should rule that the parties should proceed with the Count on the basis set out in annexure C and finally it was contended on behalf of the Respondent that the Court should give directions as to how the membership Count should take place.

On the date of hearing the parties were mutually agreed and by consent stated that the issues to be addressed were as follows:

- i) Whether the Respondent can properly become a member of the federation of Swaziland Employers.
- ii) What method should be applied by the parties as to how the membership Count should take place.

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It was submitted on behalf of the Applicant that Section 2 of the Industrial Relations Act of 1980 has defined a "Federation and that this definition is as follows, and we quote.

"Federation means an organization which is wholly comprised of a combination of employers associations, industry unions or staff associations as the case may be."

It has further been submitted that this definition agrees with Section 33 of the Industrial Relations Act. Section 33 reads and we quote.

"(1) Organisations may form, participate in, be affiliated to or join a federation which has as its principal objects the functions of advice consultation and the provision of services to its members.

(2) No federation shall act either by instruction to its members or by taking instructions from its

members in any way that might be held as being in restraint of trade or in support of a political party or in any other manner that might be construed as giving the federation the status or function of an industry union, staff association or employers association"

It has thus been submitted that Swaziland Milling the Respondent is not an employers association to be a member of a federation of employers. It has been submitted on behalf of the Applicant that advice as envisaged in Section 33 (1) of the Industrial Relations Act of 1980 should be obtained in advance. It has further been submitted that the Federation of Employers cannot participate in a count involving an industry union. The presence of the Federation of Employers at such a count would be usurping the powers of an employers association and that this is in breach of Section 33 (2) of the Industrial Relations Act. The submission has further been expanded that an employer has no right to affiliate or be a member of a federation of Employers as he is not an employers association.

For the Respondent it has been submitted that Sections 68 and 69 of the Industrial Relations Act of 1980 are complimentary. Attention have been drawn to Section 68 (a) and (b) and Section 69 (a) and (b). Section 68 (a) (b) and Section 69 (a) (b) provide and we quote:

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"Section 68 Every employee may

- (a) take part in the formation of any organisation or federation;
- (b) be a member of any such organisation or federation and take part in its lawful activities"

"Section 69 Every employer may

- (a) take part in the formation of any employers association or federation;
- (b) be a member of any such association or federation and take part in its lawful activities"

It is the Respondents submission that these two Sections may be contradictory as read with the definition of federation. It has been submitted that there is a conflict in Section 68 and 69 of the Industrial Relations Act as read with the definition of federation. We have been urged that this conflict is resolved by the interpretation of statutes in that where there is a conflict between the definition and a Section of the Act passed by parliament the Section overrides the definition.

It is the Respondents submission that there is common sense in the provisions of Section 68 and 69 of the Industrial Relations Act. This common sense approach has been drawn from an analogue that there would be a group of employees who would not be members of a union but be members of the federation and that this is particularly so with employers. That where you may have one employer in an industry and he cannot form an association of employers on his own, and that employees may not have formed themselves into a union this does not exclude them to be members of the federation of employees.

If the intention of the Legislature was that Section 68 and Section 69 should per se be complimentary Section 33 of the Act could not have been inserted. As we understand it Section 33 put a restrictive interpretation upon Sections 68 and 69 such that while allowing for the creation of federations it, restricted its membership to organisations as opposed to direct membership of individuals. Individuals in the context of the Respondent meaning a single employer. The fact that certain Industries have only one employer did not pre occupy the attention of the Legislature and cannot be used to liberalise the intention of the Legislature. The intention of the Legislature was clear and concise

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It was not open to ambiguities. If the literal and strict interpretation of the Act appears to suggest an absurdity it is up to the Legislature to effect the necessary amendment.

In the present case there is neither a latent or specific absurdity in the law that would necessitate such amendment.

It will be noticed that Part III of the Industrial Relations Act Section 17 (2) (3) provides that six or more employees can agree in writing to form an organisation and that two or more employers in the converse may form such an organisation.

Section 19 provides that such an organisation of employers or employees shall show in their constitution the undertaking or industry in which they will carry out their activities.

Section 20 provides that an Industry union may have as member only persons employed in the industry in which it is active and the same is true for an employers association that it shall have as members persons or business associations engaged in the industry in which the employers association is active.

Taking into account all the Sections in the Industrial Relations Act that we have referred. It is succinctly clear and this was the intention of the Legislature that no employer can be a member of the federation of Employers. Section 68 and 69 of the Industrial Relations Act should not be misconstrued by placing a wider interpretation on it, whose effect is to disjoint its natural flow and understanding. It is the decision of the Court that the Respondent cannot be a member of the federation of Swaziland Employers.

We now come to the question of determining the method of proving to an employer union membership. This question has been vexing the minds of both employers and employees for a long time. The question has in its work triggered off misunderstanding, labour unrest and lockouts.

We have heard argument, from both parties on this point. We have been greatly assisted by the submissions that have been made by both parties. It is the decision of the court that to avoid future friction and negative approach on this question we should give our decision on this question.

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It has been decided that in proving, membership of an industry union the following should be observed;

- i) The industry union should provide a register of its members
- ii) The Industry union should provide signed membership cards
- iii) The Industry union should provide copies of receipts issued to members in payment of their subscriptions.
- iv) The employers should provide the industry union with a List of all its employees who are eligible for membership and are unionisable.
- v) The meeting should be held between an industry union and an employer

The Applicants application has accordingly been successful.

MARTIN S. BANDA

INDUSTRIAL COURT PRESIDENT