

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

Case No. 163/91

In the matter between

SWAZILAND COMMERCIAL AND ALLIED Applicant

WORKERS UNION

and

EDGARS STORES (PTY) LIMITED Respondent

T/A JET STORE AND SALES HOUSE

Quoram:

Martin S. Banda: President

Mr V.V. Dlamini: Assessor

Mr. N.A MAISEBULA: Assessor

Mr D. Mangle: for the Applicant

Mr. P. Flynn: for the Respondent

JUDGEMENT

The Applicant in this matter is seeking an order directing the Respondent to grant it recognition. The Respondent has averred that the Applicant has failed to show that it represents 40% or more of the employees employed by the Respondent and that accordingly it is not entitled to recognition.

The Applicant informed the court that it did not intend to lead evidence in support of its case. It then closed its case.

The Respondent gave evidence that Edgars Stores (Swaziland) Pty Ltd is a subsidiary of Edgars Stores (Pty) Ltd and that Jet Stores and Sales House are not registered companies but trade names of Edgars Stores (Swaziland) (Pty) Ltd.

DW 1 Donald Leslie Findlay the Respondents Group Human Resources Executive testified that in March 1988 he received letters dated 24th September 1987 and 11th February, 1988 written by Mr D.P.M. Mango General Secretary

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of the Applicant. The letters were addressed to the Manager Sales House Mbabane. The subject of both letters was an application for recognition of the Applicant by the Respondent Edgars Stores (Swaziland) (Pty) Ltd. Dw 1 replied to both letters on the 2nd March 1988 on behalf of Edgars Stores Limited acknowledging their receipt.

On the 14th March 1988 DW 1 wrote to the Applicant asking for a copy of the Unions Constitution, details of Union membership within the establishments and a copy of the proposed recognition agreement. The

matter seemed to end then until 1990.

On the 12th March, 1990 the Applicant wrote a letter addressed to the Area Manager Jet Stores Swaziland (Pty) Ltd Mbabane. The subject of the letter was an application for recognition of the Applicant by the Respondent as a Sole representative organisation of employees.

It will be noticed that exhibit D 1 letter dated 24th September, 1987 was addressed by the Applicant to the Manager Sales House Mbabane. Exhibit D2 letter dated 11th February 1988 was addressed by the Applicant to the Area Manager Sales House Stores Mbabane. Exhibit D5 letter dated 12th March 1990 was addressed by the Applicant to the Area Manager Jet Stores Swaziland (Pty) Ltd Mbabane.

The evidence of DW 1 is that Edgars Stores (Swaziland) (Pty) Ltd is a subsidiary of Edgars Stores Ltd. Edgars Stores Swaziland (Pty) Ltd has Jet Stores and Sales House as trade names. Jet Stores and Sales House are not registered Companies.

Mr Mango in his submission accepts the correction of the Respondent title. That is Mr Mango has accepted that the proper Respondent in these proceedings are Edgars Stores Swaziland (Pty) Ltd. This acceptance per se would have meant the end of the Applicants case. The Respondent has said Sales House and Jet Stores are not registered companies but trade names. Sales House and Jet Stores are not employers yet the Applicant made its application for recognition to them. As mentioned earlier this would have meant the end of the application made by the Applicant.

However the Respondent appears to have waived this point and the case proceeded on the basis that the Applicant seeks to refer to Edgars Stores Swaziland (Pty) Ltd as the Respondent-

DW1 testified that a letter dated 13th December, 1990 was sent by the Applicant to the Respondents Salaries department though titled Jet Stores (Pty) Ltd Crown Mines under cover of this letter were 14 authorisations made in the name of Jet Stores Swaziland Limited. No authorisations

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were received for Manzini. Respondent did not receive authorisation forms for Sales House Mbabane and Manzini.

The Respondent had no objection to recognising the Union. All it wanted was to be assured that the Applicant had sufficient representation. The Respondent wanted the Applicant to establish its membership. The Union had 31% representivity as shown by the authorisation forms. The Respondent had 46 employees employed in Swaziland. Four (4) of the employees are not in the bargaining unit being the Management. The staff compliment is as at 12th March, 1990 when the application for recognition was made. As on the 27th January 1992 there were 43 employees including Managers. 39 of the employees are in the bargaining unit.

Mr. Mango on behalf of the Applicant has submitted that on receipt of the letter dated 12th March, 1990, the Respondent should have responded within 30 days. As earlier stated in this judgement the letter dated 12th March 1990 being exhibit D5 was not addressed to the Respondent nor to an employer, as there is no legal entity known as Jet Stores Swaziland (Pty) Ltd existing. The Respondent was under no legal duty to respond to exhibit D5. In the circumstances Section 36 (3) and Section 36 (5) of the Industrial Relations Act of 1980 could not be brought into operation.

The parties relationship proceeded purely on an informal basis, a gentlemen's agreement, without legal punitive measures.

The Court is now being asked on the same informal basis to grant an order of recognition but based on Section 36 (5) of the Industrial Relations Act. The Applicant has not testified before Court. The only evidence before Court is that of the Respondent.

On the 30th May, 1991 the Applicant under exhibit D14 informed the Respondent that it was trying to recruit the Respondents employees to complete the necessary 40% requirement. This admission from the Applicant totally destroys its case. It is the Applicants case as shown in its application that the Respondent refused to grant it recognition as the exclusive collective employees who are the Applicants members. No evidence to prove this point has been put before Court.

The Court is satisfied that the Applicant has failed to prove that it made an application to the Respondent for recognition pursuant to Section 36 (1).

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The Applicant has failed to prove that it has discharged the burden placed on it by Section 36 (3) or Section 36 (5). Consequently the Applicant has failed to show that it is entitled to the relief sought. The Applicants application is accordingly dismissed.

The assessors have concurred.

M.S .BANDA

INDUSTRIAL COURT PRESIDENT