

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT MBABANE

Case No. 84/92

In the Matter Between:

ALICE DLAMINI

FIKILE MASINGA

TIBONELE MATHABELA

Applicant

AND

SIKANYE FOOTWEAR LIMITED

Respondent

CORAM:

Martin S. Banda	:	President
Vusie Dlamini	:	Member
Josiah Yende	:	Member
Mr Sipho Motsa	:	For the Applicant
Mr Patrick Flynn	:	For the Respondent

J U D G E M E N T

The Applicant in this matter seeks an order of Court ruling that the Respondent can either proceed to produce and desist withdraw the lay off notice or retrench the employees and that the Court should order the Respondent to stop the lay off or retrench the employees.

The Respondent in its reply has avowed that it is better to curtail costs by temporary lay offs pending further orders and thereby preserve the factory and employees jobs as opposed to the permanent closure of the factory and the permanent loss of jobs.

Legal Notice No. 8 of 1990 an off shoot of Act No. 16 The wages Act of 1944 has created rules relating to lay offs. Rule 12 dealing with lay offs states and we quote:

" 12 (1) Due to circumstances beyond his control an employer may lay off employees for up to fourteen working days without pay provided that at the end of this period he shall either re-employ the employees in their original jobs, or give them notice of termination of Service in accordance with the provisions of the Employment Act 1980.

- (2) During the period of any lay-off, the employer shall not engage other employees to replace the employees he has laid off.
- (3) The employer shall give
 - (a) a permanent employee fourteen days notice before the lay off;
 - (b) a seasonal twenty-four hours notice before the lay-off.

We have not been persuaded by the Applicant that either Regulation 12 of the Wages Act has been breached. To the contrary the evidence before court is that the Respondent complied with the regulation. The Respondent gave the requisite notice. The Respondent laid off the employees for the 14 days that he is permitted to by the regulation. We agree with the Respondent that the regulation does not impose a limit on the number of lay offs that an employer may effect.

The evidence of PW1 is that all the employees were re employed in their original jobs on return from lay offs.. The employees it would appear have taken offence on the second lay off coming immediately after the first. They refer to this as an exploitation of the Act. Unfortunately for them the regulations permit the Respondent to do what it has done.

We are to say the least amazed with the submission that the employees should be retrenched as opposed to being laid off. It surely is to the benefit of employees in a job market that is continuously shrinking due to recession to preserve their jobs, not to be dismissed on a retrenchment.

The Applicants have not put before court any evidence showing that the Respondents business is a continuous business. The Applicant has not put any evidence before Court showing that this is supposed to be the third lay off in 1992. To the contrary the evidence before court shows that this is the second lay off. No evidence has been placed before court showing that there is no justification for this or any other lay off in the past. We have had evidence from DW1 explaining why employees work a lot of overtime. This has not been challenged by the Applicant with contrary evidence.

We would like to state here that the Regulation of wages(Manufacturing and processing Industry) order 1990 placed the onus of satisfying himself that circumstances are beyond his control on the employer not on the Industrial Court. It is for the Respondent to decide that circumstances exist warranting a lay off not for the Industrial Court.

It is the decision of the Court that the Applicants have failed to prove their case on a balance of probability. We have decided not to resolve the question

whether the people whose names were presented as Applicants could legally represent the other employees as such a resolution does not affect the resultant decision of the Court on the merits of this case. The Applicants application is accordingly refused.

The members have concurred.



MARTIN S. BANDA
INDUSTRIAL COURT PRESIDENT