

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 60/99

In the matter between:

MHLANGANO MAPHALALA

APPLICANT

and

UNIVERSITY OF SWAZILAND

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. Z. JELE

FOR THE RESPONDENT:

MR. M. SIBANDZE

RULING

08.03.2000

The Respondent objects to the Applicant's Application on the grounds that the Applicant ought not to have reported the dispute personally to the Commissioner of Labour because the Association of Lecturers and Academic Personnel (ALAP) was active and recognised in terms of Section 43 of the Industrial Relations Act at the Respondent's undertaking.

The Respondent argues that in terms of Section 57 (1) and Rule 3 (2) of the Rules of the Court we lack jurisdiction to entertain this application as it is not properly before the court.

The issue as to who ought to report a dispute in terms of Section 57 (1) has been a subject of numerous decisions by this court.

It is now trite that where there is in existence an active recognised Association in an undertaking, it is mandatory that all disputes between the members of the bargaining unit and the employer should be reported by the organisation and not by an individual.

There is no dispute that in the present case the Applicant reported the dispute himself.

2

The Applicant has told the court that at the time he reported the dispute on the 19th June 1998 ALAP had not been recognised, nor was it active at the undertaking and therefore he was justified in terms of Section 57 (1) to report the dispute personally.

In support of the objection raised the Respondent called Mr. Samuel Siphon Vilakati, the Registrar of the Respondent.

He told the court that ALAP has been active at the undertaking and was active at the time the Applicant reported this dispute to the Commissioner of Labour.

He referred the court to exhibit 'A1', a letter written by the Secretary General of ALAP on the 13 th August 1998

The letter partly reads :

"This serves to inform you that the Industrial Court action that the University instituted against ALAP is still pending....."

..... In their application the University has conceded that they do recognize ALAP; and claim that all along they have in good faith, mistakenly denied that ALAP was recognised. This means that until their application is granted by the court, ALAP recognition stands".

It is common cause that the Application by the University was filed in January 1998.

According to exhibit 'A2' written on the 6th March 1996 the Applicant in the present application was co-opted into the executive of ALAP and was the Vice Secretary General of ALAP. The letter was written by the Applicant on behalf of ALAP.

There is no evidence that the Applicant had ceased to be the Vice Secretary of ALAP as at the time he reported the dispute to the Labour Commissioner.

What is for sure is that sometimes in 1997 he had taken up employment with Swaziland Government and his services with the Respondent were terminated in April, 1998.

The Applicant reported the dispute personally on the 19th June, 1998.

Whether or not he had ceased to serve the executive of ALAP is not material but of importance is that the Applicant may be presumed to have been privy to the activities of ALAP in his capacity as the Vice Secretary General.

3

It is indeed a matter of common knowledge that as at the month of January 1998 the longstanding controversy regarding the non-recognition of ALAP had been settled except that the Respondent had indicated its desire to repudiate the recognition on grounds that ALAP did not have the requisite membership in terms of Section 43 of the Industrial Relations Act, hence the Application to the Industrial Court for the recognition to be nullified.

The applicant submits that due to the pending controversy over membership, ALAP was not active in the organisation because the Respondent refused to engage ALAP in any matters concerning the well fare of its constituency at the Respondent's undertaking.

This in our view is besides the issue to be determined here.

Of relevance is whether ALAP was "active" as a registered Staff Association regardless of the attitude of the respondent towards ALAP's existence.

In terms of Section 57 (1):

"A dispute may only be reported to the Commissioner of Labour by :

(e) any employee in the undertaking where no organisation is active in the undertaking concerned in the dispute ".

The operative word here is ' active'.

The activity envisaged herein is that of the organisation of its own right as a recognised entity in terms of the Section 43 (a) of the Industrial Relations Act.

The Respondent produced exhibit "A3" to demonstrate that, even in the height of its controversy with the Respondent, ALAP on 23rd June, 1997 reported a dispute to the Labour Commissioner on behalf of one of its members Dr. Gugulethu Gule.

Mr. Sibandze submitted that there was no reason why ALAP could not have reported the current dispute on behalf of the Applicant given that the impasse between it and the Respondent had thawed save for the case pending in court over the number of members of ALAP at the Respondent's undertaking. The dispute was eventually ruled in favour of ALAP.

We opine that the activity envisaged by Section 57 (1) (e) is on the part of the organisation and not the reaction of other bodies such as the Respondent or the office of the Commissioner of labour towards it.

4

It has been objectively demonstrated by the Respondent that indeed ALAP was recognised and active at the Respondent's undertaking as of the 19th June, 1998 when Applicant reported the present dispute inspite of the pending suit at the Industrial Court.

This court has ruled before in numerous cases that the provisions of Part V111 of the Industrial Relations Act including Section 57 (1) are peremptory.

The provisions of Section 57 (1) at times appear obstructive and a cause of delay in the prosecution of disputes by parties. On the other hand, the rationale of having a centralised reporting of disputes in undertakings as opposed to individuals reporting their matters does not lack a positive aspect.

It is in this light that we direct that the applicant should comply with the provisions of Section 57 (1) and cause his dispute to be reported by the Association of Lecturers and Academic Personnel (ALAP) other than by himself. We indeed lack jurisdiction to entertain this application in terms of Rule 3 (2) until and when these provisions have been complied with.

The members agree.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT