

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 29/2000

In the matter between;

SWAZILAND COMMERCIAL AND

ALLIED WORKERS UNION

APPLICANT

and

SWAZILAND NATIONAL HOUSING BOARD

RESPONDENT

CORAM:

KENNETH NKAMUULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. S. MOTSA:

FOR APPLICANT

MR. Z. JELE:

FOR RESPONDENT

RULING

26. 06.2000

The Applicant commenced the annual wage negotiations with Respondent on the 19th August 1999, The parties were unable to achieve a settlement for reasons not relevant to the present enquiry. The dispute was reported to the Commissioner of Labour. The Commissioner of Labour failed to resolve the dispute and on the 18th January 2000 certified the dispute as unresolved (see annexure B).

On the 21st January 2000 Applicant wrote a letter to respondent requesting them to appoint a mediator. In the same letter they appointed their mediator and further suggested a third mediator in keeping with Section 65 (4) of the Industrial Relations Act of 1996 (see annexure C).

According to Applicant and also supported by Respondent's letter dated 9th February 2000 annexed to the Notice of Motion as "Annexure E". Respondent flatly refused to go to mediation. They instead reported the dispute or mediation to the Commissioner of Labour.

On the other hand the Respondent in its replying papers para 13 stated that "On the strength of Annexure TJD3 the respondent has made the following proposals to the Applicant:

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13.1 that the parties agree to proceed to mediation.

13.2 In the event the mediation does not achieve a settlement, then the matter referred to arbitration for final adjudication.

13.3 This proposal was made in the interest of good industrial Relations in that, dispute will be resolved

quickly".

Now it is clear that both sides are aiming at one resolution but through differ directions. This may have been caused by the breakdown in communication.

Section 65 (3) and (4) provides for settlement of disputes that concern issues of inter as opposed to Section 65 (2) which provides for settlement of unresolved disputes the concern issues of existing rights.

Section 65 (3) (a) provides that " at both parties' request, the Commissioner of Labour shall refer the dispute to (he court for its determination thereof and (he court's determination on the matter shall, subject to Section 11, be final."

Section 65 (3) (b) states that " at both parties' request, the Commissioner of Labour shall refer the dispute to an arbitration Board....."

Section 65 (3) © provides that either party may give a strike or lock out notice in accordance to the Act.

However, before the notice to the strike action or lock-out action is embarked upon the parties shall refer the dispute to mediation.

The Act provides for three options i.e the Court. Arbitrator and Mediator. The mediation is a gateway to a strike or lock out notice.

Section 65 states that the parlies shall refer the dispute to mediation. If this option is followed it is clear that there must be agreement reached by the parties. This cannot be a one man show. Both parties must agree on mediation in order that this option works.

I have already pointed out that mediation is a gateway to a strike or lock out action. However, it can also be a step towards arbitration. It actually depends to the will of the parlies and also to their good or bad faith during negotiations.

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It is now clear that the parties did not reach an agreement on what action they both wanted to take as a next step in these negotiations. For this reason we have decided to refer the matter back to negotiation where an agreement will be made on what option to take out of the three provided by the Act.

Parties are given a period of seven (7) days to do this exercise. Members concur.

KENNETH P. NKAMBULE

JUDGE - INDUSTRIAL COURT