

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 280/99

In the matter between:

SWAZILAND MANUFACTURING AND

ALLIED WORKERS UNION

APPLICANT

and

SWAZI WIRE INDUSTRIES (PTY) LTD

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANAMA:

MEMBER

FOR THE APPLICANT:

MR. SICELO DLAMINI

FOR THE RESPONDENT:

MR. ZONKE MAGAGULA

JUDGEMENT

10. 07. 2000

The Applicant union seeks an order directing the respondent to grant recognition to the Applicant in terms of Section 43 (6) of the Industrial Relations Act No.1 of 1996.

The Applicant in its Founding Affidavit states that it has fulfilled all the legal requirements for the Respondent to recognise it as the sole representative of the workers in the undertaking.

Counsel for the Applicant submitted that in September 1999 more than 51% of the Respondent's employees joined the Applicant and became full subscribed card carrying members.

On the 5th September 1999 the Applicant applied for Recognition in terms of the Act, The Respondent is alleged to have threatened its employees into resigning from the union subsequent thereto. These allegations are contained in a letter directed to the Respondent by the Applicant dated the 7th October. 1999.

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The Respondent has since failed to respond to the Applicant's concerns inspite of a reminder dated the 18th October, 1999.

On the contrary the Respondent states in its Answering Affidavit that the union has no proof of its 51% membership in the undertaking and has placed the Applicant to strict proof thereof.

It was submitted for the Respondent that the union was forcing the employees of the Respondent by use of threats to join the union, The delay to recognise the union is meant to resolve the allegations of threats made to employees. Further Respondent denies that it has threatened its unionised employees and prays that the Application be dismissed.

At the time this Application was lodged no verification count had been conducted, however on the 11 th April, 2000 the office of the Commissioner of Labour conducted a verification count and a document containing the results thereof was submitted from the bar by counsel for the Applicant.

The Respondent admitted that such exercise did take place but alleged that the process was Hawed.

Out of 61 unionisable workers of the Respondent, over 50% + 1 were members of the union.

We do accept the document from the Department of Labour as primaface evidence of the results of the verification count. We have admitted the document notwithstanding that it was not earlier annexed to the founding Affidavit.

We do reject the contention by the Respondent that the exercise was Rawed in as much as that information was not readily availed to the court but was brought forth after the court questioned the Respondent as to whether or not they confirm that a verification count was conducted by the office of the Labour Commissioner.

We accordingly find that the Applicant has satisfied the requirements of Section 43 (5) of the Act and order the Respondent to grant it recognition forthwith in terms of the law.

There will be no order as to costs.

The members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT