

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 307/2000

In the matter between:

SWAZILAND GOVERNMENT'

APPLICANT

and

SWAZILAND FEDERATION OF TRADE UNIONS

1ST RESPONDENT

SWAZILAND NATIONAL ASSOCIATION OF

TEACHERS

2ND RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. MUSA SIBANDZE

FOR THE RESPONDENT:

MR. PAUL SHILUBANE

REASONS FOR THE RULING

15/11/2000

The 1 st and 2nd Respondents are organisations established and registered in terms of Part 1V of the Industrial Relations Act 2000. Just like the Industrial Court, the Respondents are creatures of statute.

The domain of the action that may be taken by the Respondents in furtherance of their lawful objectives is regulated by the Act.

The Act has put in place mechanisms and procedures to be followed especially as concerns calling of:

- (i) protest action to promote or defend socio-economic interests.
- (ii) strikes or lockout action in conformity with this Act.

Whereas the freedom of association and expression of the Respondents is provided for and well safe guarded by the Act in terms of Section 4, Section 32, Section 98 and Section 100 of the Industrial Relations Act, 2000.

And whereas we take judicial notice of the existing dispute concerning certain subsections of Section 40 and 52 of the Act. It is common cause that Section 40 (1) up to and

2

including subsection 40 (12) are a product of the consultation process by the tripartite prior to the promulgation of the Act.

The above notwithstanding, from the papers filed of record, the Applicant has established prima facie that there was no attempt by the Respondents to notify the Labour Advisory Board of their intended action in terms of Section 40 (2).

The 21 days notice is meant to provide the tripartite the opportunity to ventilate on the following:

- (i) whether the issues sought to be defended by the protest action are of socio-economic nature.
- (ii) whether the issues sought to be defended are purely political matters.
- (iii) whether such issues sought to be defended cannot be amicably resolved without embarking on the protest action.

There is no controversy whatsoever on the role of the Advisory Board in this respect.

In any event, even the latter controversial inclusions into Section 40 and 52 of the Act remain law until the legislature in its wisdom decide otherwise. We do however have serious reservations against the belated amendments.

That, notwithstanding, the Respondents, like this court have no inherent powers to operate outside the purview of this Act.

Prima facie, subject to the arguments on the merits, the Applicant has established that the conduct of the Respondents in calling the protest action was not in strict adherence with the provisions of the Act.

The Members Agree.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT