

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 239/2000

In the matter between:

JD TRADING (PTY) LIMITED

APPLICANT

And

SWAZILAND COMMERCIAL

AND

ALLIED WORKERS UNION

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. Z. JELE:

FOR APPLICANT

MR. S. MOTSA:

FOR RESPONDENT

RULING

15/9/00

The applicant in this application seeks an order that the memorandum of agreement dated 26th May 2000 signed by the parties in Manzini be made an order of court in accordance with Section 84 (2) of the Industrial Relations Act 2000.

Looking at the face of the agreement annexed to the applicant's application one sees a TITLE "COLLECTIVE AGREEMENT". Respondents are objecting stating that they do not agree to register the agreement with the court. Secondly, that the document filed by the applicant is not a "Memorandum of Agreement" in terms of the Industrial Relations Act 2000. But the document is labeled "Collective Agreement"

Alternatively, respondent contends that the document does not qualify to be a collective agreement in terms of Part VII of the New Act.

Applicant states that the agreement before court is sought to be registered in terms of Section 84 (2) of the Industrial Relations Act.

1

He further states that the agreement was signed by both parties and was witnessed by the Labour Commissioner.

It is clear from the papers filed of record with the court that respondent reported a dispute with the Labour Commissioner in terms of Section 51 and 58 of the repealed Act of 1996. The Labour Commissioner conciliated on the dispute and the matter was resolved and the parties signed the agreement which is the

subject matter of this enquiry.

The question that the court has to answer is:-

Is the agreement before court a "collective agreement" in terms of Part VII of the Industrial Relations Act 2000 or a "memorandum of agreement" in terms of Section 84 of the Industrial Relations Act 2000?

Applicant states that the document was titled "Collective Agreement" as a result of an error common to both parties. He however states that this does not negate the fact that the document constitutes an agreement reached between the two parties in good faith.

Looking at the body of the agreement which was witnessed by the Labour Commissioner one has a view that this was an agreement negotiated between the union and applicant company. What was negotiated was then reduced in writing in terms of Section 84.

Section 84 provides:-

"84 (1) where a dispute has been determined or resolved, either before or after conciliation, the parties shall prepare a memorandum of agreement setting out the terms upon which the agreement was reached and the memorandum shall be lodged with the court for registration by any of the parties, or by the Commissioner of Labour at the request of the parties".

It is clear therefore, that this is not a collective agreement in terms of Part VII of the Act, but a memorandum of agreement in terms of Section 84 (1) of the Act. Application to register the agreement in terms of Section 84 of the Act is hereby granted.

2

The court orders as follows:-

I. Agreement registered as 'MEMORANDUM OF AGREEMENT' in terms of Section 84 (1) of Act No. 1/2000 - with the following amendment:

a) Title of Agreement

Memorandum of Agreement

ENTERED INTO BETWEEN

SWAZILAND COMMERCIAL AND ALLIED WORKERS UNION (HEREINAFTER REFERRED TO AS THE UNION)

and

J.D. TRADING (PTY) LTD (HEREINAFTER REFERRED TO AS THE COMPANY)

II. No order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT

3