

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 47/2005

In the matter between:

SWAZILAND NATIONAL ASSOCIATION

OF CIVIL SERVANTS

Applicant

and

SWAZILAND GOVERNMENT

Respondent

CORAM:-

NDERI NDUMA: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: P. R. DUNSEITH

FOR RESPONDENT: L. MAZIYA

ORDER-26/07/05

Upon reading the papers filed of record, and upon hearing counsel for the parties; and for reasons to be provided at the request of either party, the court makes the following order:

1. By consent of the parties, paragraph 4.4 of the Replying Affidavit of Aubrey Sibiya is struck off. The court censures the deponent for placing false information under oath in the Replying Affidavit aforesaid.

2.1. The court accepts that for the period August 1998 to the date of the award, and in terms of the Agreement dated the 13th July 1994, the officers in the ranks of firemen, leading fireman and sub-officer engaged in shift work were entitled and were paid extended duty allowance of 20% of their basic salary.

2.2. That for the same period August 1998 to the date of the award, and in terms of paragraph 18.4 (a) of the said award; the arbitrator awarded all the officers referred to in paragraph 2.1 of this order, overtime at the rate of one and a half times (1.5) in respect of all overtime hours worked in excess of their normal hours.

2.3. It is common cause that for the period August 1998 to the date of the award, the normal working week for the firemen engaged in shift work was 56 hours per week, calculated over three weeks, on the basis of a three shift system.

Accordingly, the Respondent had no right to deduct the extended duty allowance from the overtime payment in terms of the Arbitration Award. The deducted amounts should be refunded. And it is so

ordered.

3. In respect of the period from the date of the award onwards, the effect of the award was to nullify and supercede the Agreement of the parties. The specific prayer of the Applicant to the Arbitrator was for him to set aside the Agreement dated the 13th July 1994.

4. In place of the terms contained in the aforesaid agreement, the Arbitrator awarded the Applicant the following:

(i) A reduced normal week of 48 hours in place of 56 hours provided for in the Agreement.

(ii) Payment of all overtime hours worked in excess of the normal working hours in accordance with the General Orders at the rate of one and one half (1.5). For emphasis the Arbitrator said "That from this day onwards the Swaziland Government shall pay overtime worked by firemen represented by SNACS in accordance with the provided General Order guidelines".

(iii) The Arbitrator awarded to the Applicant an extended duty allowance of 20% of basic salary with effect from the 1st April 1994. He specifically stated "This refers to stand-by allowance". He did not define the term stand-by allowance.

The court observes the following in this respect; The Concise Oxford Dictionary -

9th edition defines the term 'stand by' as follows:

" 1. a person or thing ready if needed in an emergent;

2. readiness for duty (on stand-by); ready for immediate use."

It was accepted by the parties that an officer on stand-by is not required to report for duty unless and until when he/she is called to attend to an emergency.

In the Founding Affidavit, the Applicant stated that the officers work a 24 hours shift and then they rest for three (3) days. They stated further that the officers whilst are on such a rest, they are on 'stand-by' because they may be called upon to attend to an emergency at any time. The Respondent in the Answering Affidavit specifically denied that the Applicant's members are required to be on standby whilst on rest.

This is a dispute of fact that was not fully resolved.

Having said that, the court finds that the reference of payment of stand-by allowance by the Arbitrator can only be interpreted to apply, where the officers are on stand-by. If they do not work on stand-by upon completion of the 24 hour shift, then the stand-by allowance referred to is not, and cannot be payable.

The court orders accordingly.

NDERI NDUMA

JUDGE PRESIDENT-INDUSTRIAL COURT