

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 561/2006

In the matter between:

MASTER GARMENTS (PTY) LIMITED

Applicant

and

**SWAZILAND MANUFACTURING AND
ALLIED WORKERS UNION**

Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : N. THWALA

FOR RESPONDENT : S. MADZINANE

J U D G E M E N T – 20/11/2006

1. On the 10th July 2006 a Collective Agreement was concluded by the Joint Negotiating Council for the Clothing Manufacturing and Textile Industries.

2. The Agreement applies to all persons employed by members of the Swaziland Textile Exporters Association (STEA) and members of the Swaziland Manufacturing & Allied Workers Union (SMAWU).
3. The Applicant is a member of STEA.
4. A dispute has arisen between the Applicant and the Respondent regarding the interpretation of certain provisions of the Collective Agreement. It was agreed by the parties that the dispute should be referred to the Industrial Court for determination by way of interpretation and issue of a declaratory order.
5. The Applicant as an interested party has accordingly filed an application in terms of Section 49 (2) of the Industrial Relations Act 2000 (as amended), setting out the meaning which it ascribes to the contentious provisions of the Collective Agreement, as read in the context of the relevant sections of the Employment Act 1980 ("the Act") and the Regulation of Wages (Textile and Apparel Industry) Order 2004 ("the Wages Order").
6. The Respondent has likewise filed an answer setting out the interpretation for which it contends.
7. The dispute relates to the meaning and effect of Article 9 (1) of the Collective Agreement dealing with annual leave, and Article 13 of the Collective Agreement dealing with maternity leave. The court shall address each of these articles in turn

ANNUAL LEAVE

8. Article 9 (1) of the Collective Agreement provides:

“an employee shall have two normal working weeks leave with full pay after each period of 12 months continuous service with an employer.”

(emphasis added).

9. The Act provides in Section 121 that *“after each twelve months of employment with an employer, an employee shall be given not less than two weeks holiday and shall be paid in respect of such holiday the wages he would have been paid for the time (other than overtime) he would normally have worked during that period.”*
(emphasis added).

10. Regulation 9 (1) of the Wages Order provides:

“an employee shall have fourteen calendar days’ leave with full pay after each period of 12 months continuous service with an employer.”

(emphasis added).

11. The Respondent argues that the “two weeks holiday” referred to in the Act means that employees are entitled to fourteen working days leave, because:

- 11.1 a week is defined in the Act as “any period of seven consecutive days” ;

- 11.2 the seven consecutive days should exclude weekends because Saturdays and Sundays are not working days in the textile industry.
12. The Respondent's argument continues that, in so far as the provision in the Collective Agreement for "two normal working weeks leave" seeks to reduce the statutory leave of fourteen working days leave, it is invalid because parties cannot contract out of the statutory provisions of the Act.
13. The Respondent's argument is fatally flawed. The Act defines a week as "any period of seven consecutive days", and this obviously must include Saturdays and Sundays, otherwise the days would not be consecutive. If the legislature had intended the statutory leave to be fourteen working days, it would have said so expressly. The plain and unambiguous meaning of "two weeks" is two periods of seven consecutive days each, including weekends.
14. The Nominated Members of the court confirm that this interpretation is in accordance with the established practice of employers throughout Swaziland regarding provision of statutory leave.
15. It is the view of the Court that there is no difference whatsoever between the "two weeks holiday" of the Act, the "two normal working weeks leave" of the Collective Agreement, and the "fourteen calendar days leave" of the Wages Order. They all have the same meaning, as stated in Article 13 above .

MATERNITY LEAVE

16. Article 13 of the Collective Agreement provides:

“an employee who has completed the probation period shall be entitled to 30 days maternity leave with full pay.”

17. The Wages Order contains an identical provision.
18. The dispute between the parties relates to whether 30 days here refers to working days or calendar days. Once again, the answer is obvious. If an employee does not normally work on Saturdays and Sundays, then these days cannot be regarded as leave days.
19. The nominated members confirm in this regard that the normal practice and understanding at the workplace in Swaziland is that leave expressed in days refers to working days.
20. The court also notes by way of comparison that the Regulation of Wages for Pre-Schools & Daycare Centres Order, 2006 provides for six weeks maternity leave on full pay. Six weeks is the equivalent of thirty working days and one may expect consistency in the Wages Orders for the two industries regarding maternity leave, since the majority of employees in both industries are women.
21. The Act only obliges employers to grant two weeks maternity leave on full pay. The question arises whether a Wages Regulation Order may override the provisions of the Act to the advantage of employees. It is not however necessary for the court to examine this issue, since the parties have incorporated the more

favourable maternity leave provisions of the Wages Order into their Collective Agreement, as they are entitled to do.

22. For the above reasons, the court declares as follows:

- (a) The “two normal working weeks leave with full pay” referred to in Article 9 (1) of the Collective Agreement bears the same meaning as the “two weeks holiday” referred to in Section 121 (1) of the Employment Act 1980, namely two periods of seven consecutive days each, inclusive of weekends.
- (b) The provision for 30 days maternity leave with full pay in Article 13 of the Collective Agreement refers to 30 working days.

There is no order as to costs.

The members agree.

PETER R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT