

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 497/2007

In the matter between:

**SWAZILAND NATIONAL ASSOCIATION
OF GOVERNMENT ACCOUNTING**

APPLICANT

and

SWAZILAND GOVERNMENT

RESPONDENT

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : C. Z. DLAMINI

FOR RESPONDENT : M. SIBANDZE

J U D G E M E N T – 16/11/2007

1. The Applicant has applied to court for a final order:

1.1 Directing the Respondent to immediately implement the Schemes of Service Report for the Accountancy and Stores Cadres as it was agreed by the parties in July 2007 during their negotiations in line with the Recognition Agreement that exist between the parties.

1.2 Interdicting and restraining the Respondent from proceeding to effect payment of the Accountancy and Stores Cadres in terms of Circular No. 4 of 2007, on the Schemes of Service for the Accountancy and Stores Cadres as it does not reflect the true results of the negotiated and agreed Schemes of Service layout for the Applicant's members.

1.3 Interdicting the Respondent from unfairly discriminating the Applicant's members from other Government employees affected by the job restructuring process in so far as implementing the KPMG Appeals Report is concerned.

1.3.1 Directing that the implementation of the Applicant's members Appeals also be backdated to 1st April 2005 in line with the Implementation of the KPMG Appeals report.

1.4 Directing the Respondent to comply in full with the provisions and spirit of the Joint negotiation Policy and Recognition Agreement that is binding between the parties.

2. After dismissing two legal points raised in limine by the Respondent, the court heard arguments on the merits of the application and reserved judgement. Pending delivery of this judgment, the Respondent was interdicted from effecting payment

of the salaries of the Accounting and Stores Cadres in terms of Establishment Circular No. 4 of 2007, and it was directed that payment be effected as if such Circular had not been issued.

3. The case made out by the Applicant in its founding affidavit is set out in the judgment on the points in limine dated 5th November 2007, and it is not necessary to repeat what is already stated in such judgment regarding the Applicant's case.
4. The Applicant alleges in its founding affidavit that the Joint Negotiation Team "*unanimously agreed that the Schemes of Service would be negotiated bilaterally with the respective line Ministry.*" The Respondent denies this allegation and avers that the JNT simply referred the Applicant to the Principal Secretary, Public Service to make representations on the Schemes of Service. The Principal Secretary, Public Service in his answering affidavit alleges that these "*representations were eventually made by the Accountant-General who is the appropriate officer to make such representations as the head of cadre.*"
5. Neither party placed the relevant JNT minutes before the court to verify their respective version of what was agreed by the JNT. One set of minutes relied on by the Applicant merely refers to the issue of the Schemes of Services being removed from the table "*for bilateral discussions*", and records the JNT chairman as confirming that the issue may be brought back to the joint negotiation forum "*depending on the merits and demerits of the discussions.*"
6. The relations between the Applicant and the Respondent are regulated by the provisions of their Recognition Agreement. This

agreement defines the principles and procedures that govern consultation and negotiation between the parties. In order to understand the nature of the referral of the issue of revision of schemes of service to bilateral discussion, it is necessary to turn to the provisions of the Recognition Agreement.

7. After scrutinizing the Recognition Agreement, we find that the referral of the issue of Schemes of Service to bilateral discussion was done in accordance with the collective claim procedure set out in article 12 of the Agreement:

- 7.1 Article 12.3 provides that any collective claim which the Applicant wishes to raise with the Respondent shall be submitted to the Principal Secretary, Public Service and resolved with the representatives of the Applicant in conjunction with the parent Ministry.

- 7.2 Article 12.1 defines a collective claim to mean *“any claim for alteration to the existing **terms of service** affecting all employees or a group of employees covered by this agreement.”*

- 7.3 A scheme of service is defined in the Civil Service Board (General) Regulations, 1963 to mean *“the scheme which may prescribe the following **conditions of service** in respect of all offices in a department or of particular offices common to more than one department (namely) official qualifications, duties, salary scales or salary;*

the normal methods for filling vacant offices, either by the selection of candidates for appointment or of officers for promotion, or by either means; the prospects of and the qualifications for promotions in the services; the field of officers eligible to be considered for promotion to any office, or the award of scholarships or training courses intended to enhance prospects of promotion.” We are satisfied that the schemes of service are terms or conditions of service that affect a group of employees covered by the Recognition Agreement, namely accounting and stores personnel.

7.4 The Applicant demanded alteration to the existing schemes of service affecting the Accounting and Stores Cadres. This was done in the context of the KPMG appeal consultants being unable to properly address the appeals of members of these Cadres because the revised schemes of service had not yet been implemented. This demand fell squarely within the definition of a collective claim in terms of article 12.1 and the JNT correctly referred the claim for resolution by bilateral discussion in terms of the procedures set out in articles 12.3, 12.4 and 12.5.

8. Article 12.4 requires the Principal Secretary, Public Service to take steps to resolve the claim with representatives of the Applicant in conjunction with the parent Ministry. This explains the involvement

of the Accountant-General as head of cadre in the role of adviser and facilitator.

9. In his affidavit the Principal Secretary states that he invited the Accountant-General to consult on finalization of the schemes of service, and the Accountant-General *“decided to include in his team the officers of the Applicant”*. The Accountant-General as head of cadre is a representative of the Respondent. He had no mandate to represent the Applicant nor co-opt the Applicant into his “team”. The Accountant-General was to play a conjunctive role in the bilateral discussions between the Applicant and the Principal Secretary, Public Service, to advise and facilitate agreement on the revised Schemes of Service. The Principal Secretary misconstrued the respective roles of the parties, and clearly he did not appreciate his duty under article 12 to take steps to resolve the revision of the Schemes of Service with the Applicant.
10. The Applicant and the Accountant-General appear to have reached consensus on what the Schemes of Service should contain, but since the Accountant-General’s role was conjunctive, this consensus was not conclusive or binding upon the Respondent.
11. Article 12.5 provides expressly that *“failing settlement of the claim within 21 working days, a meeting of the JNT shall be called to discuss the matter, (and) such meeting shall be held within 42 working days of the date the claim..... was submitted under sub-clause 12.3.”*
12. Clearly the Principal Secretary, Public Service had no right to unilaterally implement and publish his own version of the Schemes

of Services. If the final version of the schemes could not be settled and agreed between the parties, then the issue should have been referred back to the JNT.

13. Even in the absence of article 12 of the Recognition Agreement, the unilateral action of the Principal Secretary is condemned by the court. Having arrived at draft Schemes of Service which were acceptable to both the Applicant and the head of cadre (subject to some minor tuning), it is incomprehensible how the Principal Secretary could then unilaterally amend the draft Schemes of Service in material respects and implement the amended Schemes without reverting to the other interested parties. It seems that the concept of “smart partnership” has not yet enlightened the corridors of the Ministry of Public Service.
14. The court finds that the JNT referred the collective claim of the Applicant regarding revision of the Schemes of Service for resolution by bilateral discussion between the Applicant and the Principal Secretary, Public Service in conjunction with the Ministry for Finance. We find that no final consensus was reached on the Schemes of Service, primarily due to the Principal Secretary prematurely abandoning the discussions and acting unilaterally.
15. Although Article 12.4 prescribes a period of 21 days for resolving the collective claim, the Applicant has clearly waived strict observance of this time limit. In our view, consensus on the Schemes of Service is still possible if the parties return to their bilateral discussions in a spirit of goodwill, and the time frame may be extended to accommodate bona fide discussion.

16. Mr. Sibandze for the Respondent has argued strongly that the relief sought by the Applicant is predicated upon its erroneous belief that final agreement was reached upon the Schemes of Service. We agree with Mr. Sibandze that no case has been made out for the relief sought in prayers 2.1, 2.3 and 2.3.1 of the Notice of Motion. We do however find that the Respondent has not complied with article 12 of the Recognition Agreement, and that this has resulted in the premature implementation of the Schemes of Service.
17. In deciding matters before it, the Industrial Court may make any order it deems reasonable which will promote the purpose and objects of the Industrial Relations Act 2000 – see section 8 (5) of the Act. This does not mean that the court can embark on a frolic of its own and make orders which bear no relation to the issues before it or the relief sought by the Applicant. Nevertheless, the Industrial Court as a court of equity is given greater leeway than the common law courts to make an order that promotes fairness and equity in labour relations, encourages harmonious and constructive collective bargaining, and provides for the speedy resolution of industrial and labour disputes.
18. We believe that these objects of the Act can best be achieved in the present matter by enforcing compliance with the procedures set out in article 12 of the Recognition Agreement between the parties. The order we propose to make is based upon the allegations in the papers before court and the submissions advanced by counsel for the parties, and is not so far removed from the relief sought in prayers 2.2 and 2.4 of the notice of motion that either party may claim to be taken by surprise.

19. The court orders as follows:

- 19.1 **The Principal Secretary in the Ministry of Public Service and Information is directed to withdraw Establishment Circular No. 4 of 2007 forthwith. Pending such withdrawal the Respondent is interdicted and restrained from effecting payment of the salaries of the Accountancy and Stores Cadres in terms of Establishment Circular No. 4 of 2007.**
- 19.2 **The issue of revision of the Schemes of Service for Accountancy and Stores Cadres is referred back to the parties for bilateral discussions between the representatives of the Applicant and the Principal Secretary, Public Service in conjunction with the Accountant-General.**
- 19.3 **Should the parties fail to reach consensus on the Schemes of Service within 21 working days after the date of this order, the issue of revision of the Schemes of Service shall be referred to the next meeting of the Joint Negotiation Team to be dealt with in terms of the Memorandum on proposals Regarding the Negotiations Policy and Structure dated 28 February 2000 and the Recognition Agreement between the parties.**

19.4 **There is no order made with regard to costs.**

The members agree.

PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT