

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 581/07

In the matter between:

TOM MANYATSI AND 262 OTHERS

1st Applicant

**SWAZILAND PROCESSING REFINING
AND ALLIED WORKERS UNION**

2nd Applicant

and

PALFRIDGE (PTY) LIMITED

Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : B. S. DLAMINI

FOR RESPONDENT : B. MAGAGULA

RULING ON POINTS IN LIMINE -29/01/2008

1. The Applicants have applied on a certificate of urgency for an order declaring that the lockout and/or closure of business premises by the Respondent against the Applicant is wrongful and unlawful.

In support of their application, the chairperson of the 2nd Applicant's Shop

Stewards Committee has made an affidavit alleging that:

1.1 the workers held a meeting during their lunchbreak on 19th December 2007;

1.2 after the meeting, when the workers wished to return to work, they discovered that the Respondent had locked all entrances to the workplace;

1.3 the Respondent did not follow the procedures required for a lawful lockout in terms of the Industrial Relations Act 2006;

1.4 the matter is urgent because the Applicant's have been denied access to their workplace by an unlawful the lockout;

1.5 if the matter takes its normal course there will be an unreasonable delay before the matter comes to court and in the meantime the Applicant's employment status remains in limbo.

2. The Respondent opposes the application on the merits, and it has also raised two preliminary points of law, as follows:

2.1 the applicants have failed to set out sufficient facts to warrant the matter being heard as one of urgency;

2.2 the Applicants have failed to satisfy all the requirements for a declaratory order.

3. At common law an employer has no right to lockout its employees. To do so constitutes unilateral a suspension and breach of the employment contract.

Brassey: The New Labour Law 134;

Rycroft: A Guide to the SA Labour Law (2nd Ed) 292.

4. The Industrial Relations Act 2000 prescribes a procedure whereby an employer may legitimately lock out its employee as a form of industrial action in the process of collective bargaining, in order to compel compliance with a demand. Such lock outs are protected in law provided the necessary procedures are observed - see section 87 of the Industrial Relations Act 2000.
5. A lockout which is not in conformity with Part V111 of the Act is an unfair labour practice, and an aggrieved party may apply to court for an interdict and/or compensation for any loss attributable to the lockout - see section 88 (1) of the Act.
6. The Industrial Court regards illegal strikes and lockouts in a serious light because they are subversive of fair collective bargaining and a threat to peaceful industrial relations. An allegation that an employer has illegally locked out a large percentage of its work force undoubtedly is a circumstance which renders an application for relief to be urgent. The very nature of an illegal lock out, and

the deleterious effect it may have on industrial relations, requires that the intervention of the court be sought on an urgent basis.

7. We are satisfied that sufficient averments have been made in the founding affidavit to warrant that the matter be enrolled as one of urgency.
8. Regarding the second preliminary point of law, the Respondent's counsel has listed the requirements precedent to the grant of a declaratory order as follows:

8.1 The Applicant must be an interested person.

8.2 The Applicant must have an interest in an existing, future or contingent right.

8.3 The Applicant must show that the circumstances are suitable for the grant of an order.

8.4 The Applicant's interests must not be merely academic and the circumstances should justify an order:

Jourbert: LAWSA Vol 3 Part 1 at page 413.

9. Bearing in mind that we are presently dealing only with a point in law, we are satisfied that the above requirements for a declaratory prima facie appear in the Applicant's founding affidavit. As employees alleging to have been locked out, they have a direct and substantial interest as to whether the conduct of the Respondent

amounts to an illegal lock out. This interest is real and practical, not merely academic. A declaratory order will determine the current status of the Applicants, their right to return to work and be paid for the period of the alleged lockout, and whether any Applicants are susceptible to disciplinary sanctions for work stoppage.

Respondent's counsel argues that the only remedy available to employee who claim an illegal lock out are those set out in section 88 (1) of the Act. This argument cannot stand against the express provisions of section 8 (4) of the Act, which permits the Industrial Court to make any other order it deems reasonable which will promote the purpose and objects of the Act.

10. In our view a party cannot be faulted for seeking a declaratory order without injunctive relief where the declaratory order is likely to resolve the dispute between the parties. In a dispute between a trade union and an employer, such restraint is rather to be commended.
11. The points in limine have no substance and are dismissed. The matter will proceed to argument on its merits.

The members agree.

PETER R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT