

IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE

Case No.336/2021

In the matter between:

SWAZILAND AGRICULTURAL MANUFACTURING AND ALLIED STAFF ASSOCIATION (SAMASA) Applicant

And

THE ROYAL ESWATINI SUGAR CORPORATION (RES) Respondent

Neutral Citation: Swaziland Agricultural Manufacturing and Allied Staff Association vs Royal Eswatini Sugar Corporation.
(336/2021) [2022] SZIC 60 (31 May 2022)

Coram: **MSIMANGO– ACTING JUDGE**
(Sitting with Mr. S. Mvubu and Ms. N. Dlamini – Nominated Members of the Court)

DATE HEARD: 24th March, 2022

DATE DELIVERED: 31st May, 2022

SUMMARY: The Applicant and the Respondent entered into a collective agreement for cost of living adjustment/ increment for the period 1st April 2021 to 31st March 2022. All employees of the bargaining unit covered by the agreement were to receive a cost of living increase of

5% with effect from 1st April 2021. The Applicant now alleges that the Respondent partly complied with the agreement by segregating six employees for no justified reason, and this amounts to unfair discrimination in the workplace.. The Respondent argues that the six employees were appointed in March 2021, and in terms of the company practice new employees only become eligible for cost of living adjustment upon completion of twelve (12) months continuous service of employment with the Corporation. The Applicant has now brought the present application to compel the Respondent to fully comply with the collective agreement by paying 5% cost of living adjustment to the Applicant's six (6) members/ Respondent's employees.

JUDGEMENT

- [1] The Applicant is the Swaziland Agricultural Manufacturing and Allied Staff Association (SAMASA) Mhlume Branch, an Association duly established in terms of the Industrial Relations with limited capacity to sue and be sued in its own name.
- [2] The Respondent is the Royal Eswatini Sugar Corporation a company duly incorporated according to the Company laws of Eswatini, with limited capacity to sue and be sued in its own name, and with its principal place of business at Simunye and Mhlume in the Lubombo Region.

- [3] The Applicant and Respondent commenced negotiations for cost of living adjustment in March 2021. The Applicant in negotiating with the Respondent was acting in the interest of all its members under the SAMAS's bargaining unit.
- [4] When the parties commenced negotiations on the cost of living adjustment (COLA) in March 2021, the following listed employees had just joined the Royal Eswatini Corporation from Inyoni Yami Swaziland Irrigation Scheme (IYSIS)
- (i) Bandzile Maseko
 - (ii) Bheki Ndlangamandla
 - (iii) Machawe Dlamini
 - (iv) Mbulisi Maseko
 - (v) Nontokozo Dlamini
 - (vi) Similo Khoza
- [5] The Applicant in negotiating for COLA was also negotiating in the interest of the above employees who formed part of the bargaining unit at the time of the commencement of the negotiations.
- [6] The Applicant and the Respondent concluded negotiations in May 2021 and thereafter entered into a written collective agreement which was signed on the 11th and 12th May 2021. The effective date of the agreement was 1st April 2021 and was to be valid until 31st March 2022, and that all employees of the bargaining unit covered by the agreement were to receive a cost of living increase of 5% with effect from 1st April 2021. This was to apply to all employees who were within the SAMASA bargaining unit.

- [7] The collective agreement was duly registered with this Honourable Court on the 28th May 2021, and as such formed terms and conditions of the employees within the SAMASA bargaining unit including the six employees listed in the preceding paragraph.
- [8] The Respondent partly complied with the agreement by segregating the six listed employees for no justified reasons.
- [9] The Applicant submitted that the six employees are within the bargaining unit of SAMASA, and have a right by virtue of the collective agreement to also have the 5% increment effected on their salaries as per the terms of the collective agreement.
- [10] Further that, the prejudice that will be occasioned in the event the orders sought are not granted is that, the collective agreement will be rendered useless or without any force or effect yet it is binding and moreso it is an order of the Court. The rights of the six affected employees will continue to be unlawfully violated without any justified reason in law.
- [11] It was not in dispute that the six (6) employees formed part of the bargaining unit at the time of the commencement of the negotiations. However, the Respondent advanced argument to the effect that the Applicants were verbally informed that they were not eligible for COLA, for the reason that they were recently employed by the Respondent and in terms of company practice, new employees only become eligible for

COLA upon completion of twelve (12) months Continuous Service of employment with the Respondent.

[12] The Applicant on the other hand denied that the employees were advised of such, and further argued that there was no clause in the collective agreement that specifically addressed this issue, as a result thereof the collective agreement applies to all employees.

[13] Considering the arguments made by the parties and the pleadings filed thereof, the Court finds that the parties have made bald statements and denials, furthermore, there are glaring dispute of facts. As it stands the matter cannot be decided on the papers.

[14] The following are issues that are in dispute between parties-:

- (a) Whether or not the employees were advised by the Respondent that they were not eligible for cost of living adjustment, since they had not completed twelve (12) month's continuous employment with the Respondent.
- (b) In terms of company practice when are new employees eligible for COLA.

[15] In such matters the court has two options as provided for in **Rule 14 of the Industrial Court Rules 2007**, which reads as follows-:

14 (1) where a material dispute of fact is not reasonably foreseen, a party may institute an application by way of notice of motion supported by affidavit.

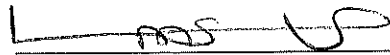
14 (13) in dealing with an application provided for in this subrule, the Court may make any competent order it deems fit, including an order-

- (a) Referring the matter to oral evidence for the determination of a specified dispute of fact.**
- (b) Referring the matter to trial and directing that it be enrolled in the trial register.**

[16] In the circumstances the Court orders as follows:-

- (a) The matter is referred to oral evidence on the disputed issues.**

The Members agree.



L. MSIMANGO

ACTING JUDGE OF THE INDUSTRIAL COURT

FOR APPLICANT: Mr. M. Ndlangamandla
(MLK Ndlangamandla Attorneys)

FOR RESPONDENT: Mr. H. Magagula
(Dynasty Inc. Attorneys)