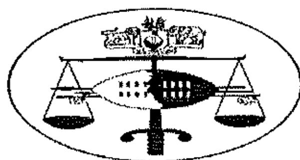

# IN THE INDUSTRIAL COURT OF ESWATINI

**HELD AT MBABANE** Case No. 200/2019

In the matter between:

**SWAZILAND RAILWAY STAFF ASSOCIATION** Applicant

And

**ESWATINI RAILWAY** Respondent

**IN RE:**

**SWAZILAND RAILWAY STAFF ASSOCIATION** 1st Applicant

**SWAZILAND TRANSPORT COMMUNICATION AND ALLIED WORKERS UNION** 2nd Applicant

**SWAZILAND RAILWAY** Respondent

**Neutral Citation:** Swaziland Railway Staff Association v Eswatini Railway, In re: Swaziland Railway Staff Association and Another v Swaziland Railway. (200/2019) [2022] SZIC 94 (20 July 2022)

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

**DATE HEARD:** 06th July 2022

**DATE DELIVERED:** 20th July, 2022

*SUMMARY: The parties signed a Memorandum of Agreement on the 24th August 2018, and it was registered as an order of the Court on the 25th August 2020. The Applicant alleges that the Respondent is refusing to comply and implement the provisions of article 3.2 of the Salary Review Report by LCC as contained in the agreement. The Applicant argues that the Respondent's failure to comply and implement the agreement amounts to a violation of the Court Order issued by the above Honourable Court.*

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## JUDGEMENT

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[1] The Applicant is Swaziland Railway Staff Association, a staff association duly registered as such in accordance with the **Industrial Relations Act 2000 (as amended)**, with its principal place of business in Mbabane, Dzeliwe Street.

[2] The Respondent is Eswatini Railway (the employer) with its principal place of business situated at Eswatini Railways Building, Dzeliwe Street, Mbabane.

[3] The Applicant is seeking a declaratory order, declaring that there was no implementation of the salary review in line with article 3.2 of the Memorandum of Agreement, which was registered as an order of the above Honourable Court.

[4] The Court is called upon to declare the conduct of the Respondent as unlawful, null and void, irregular and of no force and effect. Consequently there to, to compel the employer to comply with the Court order of the 25th August 2020 fully by paying all the employees.

[5] The Respondent argued to the contrary that during or about October 2016, the Respondent having consulted the Applicant and the trade union commissioned a salary review exercise. Regrettably the exercise took longer than anticipated. Whilst the exercise was still ongoing and around March 2017, the Public Enterprise Unit (PEU), communicated the 2017/2018 cost of living adjustment (COLA) for salaries, terms and conditions in public enterprises and fixed it at 6.8%. The Respondent then met with the employee representative organisations and on the 19th July 2017, agreed on the implementation of the 6.8% cost of living adjustment for the financial year 2017/2018 effective 1st April 2017. The cost of living adjustment was paid in August 2017 and backdated to April 2017.

[6] From the pleadings and as also apparent from the arguments made by the parties, the Court observes that there are various disputes of fact that clearly cannot be resolved on the papers.

[7] It is trite that a litigant who elects to proceed on notice of motion, and where a material dispute of fact is foreseeable or who should have realised when launching the application that a serious dispute of fact was bound to develop, does so at his/her peril. This is so in that the Court may in the exercise of discretion, decide to dismiss the application in its entirety.

[8] A material dispute of fact can arise in one or other of the following ways:-

(a) Where the Court is satisfied that the party who purports to raise the dispute has in his/her affidavit seriously and unambiguously addressed the fact said to be disputed.

(b) The Respondent may deny one or more of the material allegations made on the Applicant's behalf and produce evidence to the contrary or apply for the leading of oral evidence.

(c) The Respondent may admit the Applicant's affidavit evidence but allege other facts, which the Applicant disputes.

[9] If the Court is of the opinion that an application cannot be properly decided on affidavit, it may in the interests of a just and expeditious decision, direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact. The Court can be moved in this direction only if a real dispute of fact and not a fictitious one exists.

[10] **Rule 14(1) of the Industrial Court Rules 2007**, provides that:-

> *"Where a dispute of fact is not reasonably foreseen, a party may institute an application by way of notice of motion supported by affidavit."*

1. In the event that a dispute of fact does arise in circumstances where it was not reasonably foreseen, the Court may make an order in terms of **Rule 14(13) (a) or (b)** which provides that the Court may make an order:-

(a) Referring the matter to oral evidence for the determination of a specified dispute of fact.

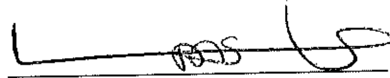
(b) Referring the matter to trial and directing that it be enrolled in the trial register.

[11] Applying the provision of Rule 14 as set out above to the facts of this case, the Court accordingly makes an order that:-

(a) The matter is referred to oral evidence.

(b) No order as to costs.

The Members agree.



**L. MSIMANGO**

**ACTING JUDGE OF THE INDUSTRIAL COURT**

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|---|---|
| FOR APPLICANT: | Ms. H. Mkhabela |
| | (Mkhabela Attorneys) |
| FOR RESPONDENT: | Mr. Z.D. Jele |
| | (Robinson Bertram Attorneys) |