

**IN THE INDUSTRIAL COURT OF APPEAL OF
SWAZILAND**

HELD AT MBABANE

AND

SWAZILAND GOVERNMENT

CASE NO. 16/2007

APPELLANT

**SWAZILAND NATIONAL
ASSOCIATION OF GOVERNMENT
ACCOUNTING PERSONNEL**

RESPONDENT

CORAM

**R.A. BANDA JP MABUZA
AJA MAMBA AJA MR M.
SIBANDZE ADV. M. VAN
DER WALT**

**FOR APPELLANT
FOR RESPONDENT**

**JUDGEMENT
20th August, 2009**

MAMBA AJA,

[1] The Respondent who was the Applicant in the court below applied for an order inter alia

"2.1 Directing the Respondent to immediately implement the schemes of service reports 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 exists between the parties.

2.2 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 as it does not reflect

the true results of the negotiated and agreed schemes of

service layout for the Applicant's members.

2.3 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.

2.3.1 Directing that the implementation of the Applicant's members Appeals also be back-dated to 1st April 2005 in line with implementation of the KPMG Appeals Report.

2.4 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] In support of the above prayers, the Respondent alleged in its founding affidavit that the parties had agreed in the Joint Negotiation Team that the schemes of service would be negotiated between the parties when the negotiations were held, "the Accountant General served as an advisor to the

parties." The result of these negotiations, according to the Respondent, was a final report on the Schemes of service for the Accountancy and Stores Cadres. The Respondent alleged further that

"The respondent, in bad faith inserted conditions which were not agreed upon to the implementation of the reports thus creating further delays and prejudice to the Applicant. 10.3 further, this delaying tactics and unilateral alterations and or amendments were not only disapproved by the Applicant but the Accountant General and the Ministry of Finance as being prejudicial too." (per paragraph 10.2 and 10.3 if the founding affidavit).

Lastly the Respondent alleged that

"On or about the 18th October 2007, the Respondent issued a Circular purportedly implementing the schemes of service reports [notwithstanding that same contains issues that were neither discussed nor agreed upon by the parties." (per paragraph 11).

[3] These allegations were denied by the Appellant who stated that the Joint Negotiation Team had not resolved that the issues must be negotiated between the parties but that they be referred to the Principal Secretary in the Ministry of Public Service. The said Secretary stated that representations on the issues had been made on behalf of the Applicant by the Accountant General, as head of the Accountancy Cadres.

[4] After considering the matter, the court a quo found as a matter of fact

"1. 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 [Recognition] 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."

And further, the court held that the said secretary erred by inviting and discussing the issues with the Accountant

General instead of the Applicant. It came to the conclusion that

"The Accountant General as head of cadre is a representative of the Respondent [Appellant]. 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." (per para 9 of Judgement).

[5] The court a quo came to the conclusion 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." But that in order to promote fairness, harmony and equity in labour relations it had to order compliance with the procedures stipulated in article 12 of the Recognition Agreement and interdict the Principal Secretary from effecting payment of salaries as per the relevant circular.

[6] The Appellant has appealed this decision arguing that : the court a quo "adjudicated upon a matter which was not

before it.... In that it was never the Respondent's case nor was it alleged that the referral of the matter to bilateral discussions was carried out in terms of ...clause 2.3 [of the Recognition Agreement] nor was it the basis for the Respondent's application that the implementation of the Schemes of Service was defective because of violation of clause 12 of the Recognition Agreement."

[7] Article 12 of the Collective Agreement regulates or pertains to collective claims or grievances and provides as follows: 12.1 A collective claim shall mean any claim for alteration to the existing terms of service affecting all employees or group of employees covered by this agreement.

7.5 A Collective grievances shall mean a grievance affecting all employees or a group of employees arising out of employment and their conditions of employment.

7.6 Any Collective claim or collective grievance, which the Association wishes to raise with the Employer, shall be made in writing and submitted to the Principal Secretary of the Ministry of Public Service and Information.

7.7 On receipt of the claim or grievance the Employer will take steps to resolve with representatives or the Association as quickly as possible and in any case within 21 working days in conjunction with the parent Ministry.

7.8 Failing settlement of the claim or grievance within 21 working days, a meeting of the Joint Negotiating Team shall be called to discuss the matter, such meeting shall be held within 42 working days of the date of claim or grievance was submitted under subclause 12.3.

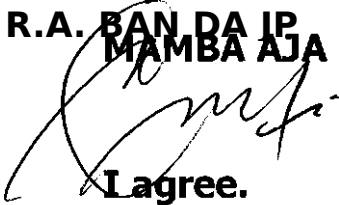
[8] It is significant to note, as the court a quo found, that in the Civil Service Board Regulations of 1963 a scheme of service is defined to mean "the scheme which may prescribe the following conditions of service in respect of all offices in department or of particular offices common to more than one department (namely) official qualifications, duties, salary scales or salary;..." The Schemes of service that was referred to bilateral discussion was clearly one that sought to regulate such issues within the relevant cadres. The court a quo found as a fact 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." This collective claim or grievance, according to the Joint Negotiation Forum had to be deliberated upon between the Respondent on the one hand and the Principal Secretary in the Ministry of Public Service and the Ministry of Finance on the other hand, (see 9.1 of the Respondent's founding affidavit). Whilst this was denied by the Applicant, the Principal Secretary, Public Service stated that the issue was referred to him and he received "representations made by the Accountant General who is the appropriate officer to make such representations as the head of cadre" (per paragraph 37 of the Appellants opposing affidavit, page 154 of the court record).

[9] The court a quo held that by receiving representations from the Accountant General and not the respondent, the said Principal Secretary was in error. He misconstrued his own role and that of the Accountant General. The Accountant General was not a representative of the Respondents. As a result of this error, the Principal Secretary effectively failed to discuss the matter with the Respondent as directed by the

Joint Negotiation Forum and provided under article 12 of the Recognition Agreement. This finding by the court a quo is, in my judgement unassailable and it was the basis upon which the court ordered that the Appellant be interdicted and restrained from implementing the relevant circular and that the issue

of revision of the schemes of service for the Accountancy and Stores Cadres be referred back to the parties for bilateral discussions in terms of clause 12 of the Recognition Agreement. Having the interdict in place, pending compliance with the dictates of clause 12 of the Recognition Agreement would appear to me to be only logical and fair to both parties in the circumstances. In view of the finding that the process of implementing the schemes of service was flawed, it would have been inequitable in my view not to restrain the Appellant from implementing it.

**R.A. BAN DA IP
MAMBA AJA**



I agree.



I also agree.

[10] For the foregoing reasons, I would dismiss the Appeal with costs, including costs of Counsel to be duly certified in terms of the rules of court.