

in contravention of the Wages Regulations Order applicable to the respondent's enterprise.

3. SUMMARY OF EVIDENCE : APPLICANTS CASE

3.1 The applicant, Simanga Tsabedze gave evidence under oath. The applicant said he was employed by the respondent on the 30th September 2001 as a Learner Mechanic. After three months of working in this position, the applicant says he was then appointed to be an Assistant Mechanic. When giving his evidence, the applicant also said that his present job is that of mechanic.

3.2 The applicant said that his job as mechanic involves assembling sewing machines, replacing spare parts, fixing sewing machines and also attending to similar electrical jobs.

3.3 The applicant's further testimony was that as a Mechanic he is paid the sum of E5.80 per hour which equals the sum of E260.00 per fortnight or E520.00 per month.

3.4 The gist of applicants complaint is that he is being underpaid by the respondent in that he has acted as Mechanic under Category II as described in the Wages Order for a period in excess of 6 months. According to the testimony of the applicant, the fact

that he has acted in the capacity of Mechanic II for a period in excess of 6 months allows him an automatic entry in the scale of Mechanic I which is remunerated at E290.00 per week.

3.5 When asked by Mr Simelane as to how he (applicant) was subsequently appointed as a Mechanic, the response was that applicant was verbally informed by the respondent that he was being appointed to the position of Mechanic.

3.6 In further explaining his job description, the applicant said that his job entails fixing broken sewing machines during production and also replacing missing parts on such machines. The applicant said that he is a qualified mechanic having completed 12 months working as a mechanic in the first category of the schedule to the relevant Wages Order. It was applicant's further testimony that he went for a test as a mechanic and that such test was conducted within respondent's enterprise. The applicant conceded that when he was appointed as Mechanic II he was not given any written instrument to the effect.

RESPONDENT'S CASE

3.7 Testifying on behalf of the respondent was one William Mambasse. Mr Mambasse also gave his testimony under oath. He said he was employed by the respondent company on the 10th September 2001 as a Supervisor within the maintenance section. He told the commission that he knows the applicant and that he (applicant) works under his supervision.

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Mr Mambasse said that amongst the work performed by the applicant is that the latter primarily does the work of moving the sewing machines around within the respondent's enterprise. This according to him entails for instance, taking or removing a broken machine and substituting same with a proper working machine. He also said that the applicant does assembly or put together the various components of a machine. Mr Mambasse steadfastly denied that applicant works as a mechanist but conceded that applicant does have a certain minimum knowledge of repairing the machines

3.8 It was Mr Mambasse's further testimony that the fact that the applicant professes a certain knowledge about repairing machines does not qualify him to be a mechanist because in any event that is not the job for which he was employed for.

4. FINDINGS & CONCLUSIONS

4.1 It is common cause that the respondent's enterprise is classified under the Textile and Apparel Industry. The applicable legal notice is therefore Legal Notice No. 129 of 2004 regulating the textile and apparel industry.

4.2 As a starting point, it is provided in Section 11 of the Textile Apparel Industry Order 2004 that "An employer shall on engagement of an employee, give such employee a completed copy of the form at the Second Schedule of this Order".

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4.3 In this form which was given to and signed for by the applicant, it is stated that the applicant is employed as Assistant Mechanic and that the probation period is for 3 months.

4.4 Applicant's evidence was that the position of Assistant Mechanic is equivalent to the position of Learner Mechanic. The applicant justified this by stating that when he was employed in the year 2001, the distinction brought about by the Wages Order for the textile and apparel industry was not yet in place.

4.5 In the Wages Order for the textile and apparel industry, a "learner" is defined as meaning "an employee with six months or less who is learning on the job to become a mechanist, folder, packer, presser, soabarar, quality controller or any unskilled job in the industry".

Again in the same order it is provided that "learner mechanic A "means an employee who has less than three months training' and "learner mechanic B" means an employee who has less than six months training to be a machine mechanic".

4.6 In cross-examination by Mr Ndzinisa, the applicant made it clear that he is qualified mechanic. The applicant further said that prior to joining Proton Investment, the respondent herein, that he had previously worked at Natex for about 10 years as a Mechanist. This the applicant said in justifying the fact that he is a qualified mechanic and the applicant went so far as to state that he had a reference to that effect from Natex.

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4.7 What is not clear and obviously not explained by the applicant is why he had to accept a position at the very lower ranks of mechanic when in his own evidence he was a qualified mechanic with ten years experience working as such.

4.8 Further to be noted is the fact that the applicant in his own words indicated that whilst employed by the respondent, he is one of the employees who had to go through a testing phase. Whether this is true or false, the inescapable inference is that the applicant was not a qualified mechanic; for what would be the need to test someone who is already qualified for the job.

4.9 Assuming that the applicant had no skill whatsoever in the position of mechanic, the question arising is whether he was employed as a "learner" or "learner mechanic A". The Order makes a distinction between the two. As indicated above, a "learner" is a person who is engaged in order that he or she may be taught or to learn on the job to become a mechanist. On the other hand, a "learner mechanist A" is a person who already has a training as a mechanic which training may be for a period of 3 months or less.

4.10 According to the Oxford and Concise Dictionary the word 'training' is defined as "the process of learning the skills that you need to do the job". Normally the word 'training' refers to formal training but it is now accepted that such training can be achieved through practical experience on the job.

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4.11 The applicant was unable to produce any form of proof that he was formally trained to be a mechanic as defined in the Act. Again assuming that the word training embraces practical experience on the job, the applicant's case still falls away because the applicant indicated that prior to joining the respondent, that he had previously worked at Natex as a Mechanic for about 10 years. This means applicant would only qualify to be engaged as Mechanic I by virtue of this previous experience on the job.

5. There is also the evidence of the parties at the hearing. The applicant said that the position of "Assistant Mechanic" as reflected in the employment form means "Learner Mechanic" in the current Wages Order. On the other hand the respondent maintained that Assistant Mechanic means nothing more than a Labourer in the sense that such person will normally be engaged to help the main performer of the job.

6. I am inclined to accept the employer's interpretation of the employment title given to applicant in the employment form. Looking at the industry in question, it is my considered view that when the parties herein entered into the contract of employment, that they did not have in mind the various categorisation that were to be brought by the legislature under the Wages Order, 2004. If such was the case, then the onus is on the employee to show that initially he or she was engaged as a trainee mechanic or some similar title thus making his or her engagement consistent with the graduation level contained in the

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Wages Order relied upon by the particular employee. In this case such was not done by the applicant.

7. Having considered all the evidence, submissions and the law applicable to this case, the conclusion I arrive at is that the applicant has failed to discharge the onus of demonstrating that he is entitled to the claim made out in the dispute form. Having so said, I am not ignorant of the fact that it does frequently happen that employers will sometimes require employees to perform responsibilities which do not form part of their job description and then decline to remunerate such employees accordingly. This no doubt does not constitute good industrial relations and ought to be discouraged and needless to say, the appropriate relief should be granted in favour of an employee aggrieved by such action.

8. **AWARD**

The award I make is that the claim in respect of underpayment filed by the applicant against the respondent is hereby dismissed in its entirety.

DATED AT NHLANGANO ON THIS 06 DAY OF FEBRUARY 2007

BONGANI SYDNEY DLAMINI

(ARBITRATOR)