

CONCILIATION, MEDIATION AND ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI SWMZ 158/08

In the matter between:-

**SWAZILAND COMMERCIAL AND
ALLIED WORKERS UNION (SCAWU) APPLICANT**

And

VENICE (PTY) LTD T/A PUNCH BOWL RESPONDENT

Coram:

**Arbitrator : Lorraine Zwane
For Applicant : Reuben Ndlangamandla
For Respondent : Sadiq Meghani**

ARBITRATION AWARD

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1. PARTIES AND HEARING

1.1 The Applicant is Swaziland Commercial and Allied Workers Union (SCAWU), a Union duly carrying on business in Mbabane, Hhohho District.

1.2 The Respondent is Venice (Pty) Ltd t/a Punch Bowl, a company duly registered in terms of the company laws of Swaziland, duly carrying business along Mhlakuvane Street, opposite Manzini Mall, District of Manzini.

2. ISSUES IN DISPUTE

The issue for adjudication or determination is whether Applicant is entitled to be granted Recognition by the Respondent.

3. BACKGROUND TO DISPUTE

3.1 The Applicant lodged a dispute with the Commission (CMAC) on the 27th June 2008. A certificate of unresolved dispute was issued in terms of Section 85 (1) of the Industrial Relations Act, 2000 (as amended) on the 21st August 2008.

3.2 The parties then filed a request for arbitration on the 19th August 2008.

3.3 I was then appointed to arbitrate in the matter on the 24th September 2008.

3.4 The matter was scheduled for a pre-arbitration meeting on the 11th November 2008 and both parties failed to attend the pre-arbitration meeting.

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3.5 I then scheduled the matter for a pre-arbitration meeting for the 2nd December 2008. Likewise on this date both parties failed to attend.

3.6 Subsequently the matter was postponed on several occasions at the instance of the respondent until it was finally heard on the 26th May 2009.

4. SURVEY OF EVIDENCE AND SUBMISSIONS

4.1 Both parties led no evidence during the hearing of the matter as they felt it was unnecessary to do so and thus I will only consider the submissions made or presented.

4.2 Applicant argued that it has met the required percentage stipulated by the law in terms of its membership but the Respondent refused to grant it recognition.

4.3 Applicant further argued that it was entitled to recognition as it had met the required membership.

4.4 Applicant submitted further that out of the six (6) members it initially had, only four (4) were remaining as two (2) had been victimised and later dismissed.

4.5 Applicant further submitted that one (1) of its members was an Indian national by the name of Sadiq Meghani who paid about two (2) or three (3) subscriptions then resigned when the applicant lodged a dispute with the Commission.

4.6 Applicant further contended that one of its members Siphon Nhlabatsi, whose name was later corrected to Musa was dismissed by the Respondent for introducing the applicant in the workplace.

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4.7 Applicant contended further that presently four (4) of its members were remaining who had subscribed until March 2009.

4.8 Applicant submitted that until March 2009 the four were fully paid up members.

4.9 Applicant further submitted that its application for recognition dated the 3rd April 2008 which was exhibited before me was unresponded to by the Respondent.

4.10 Applicant submitted further that it wrote a follow up letter dated the 9th June 2008 and again received no response.

4.11 The Respondent on the other hand contended that it has five (5) staff members in its employ and vehemently denied ever having seven.

4.12 Respondent further contended that none of its staff had been dismissed.

4.13 Respondent contended further that subsequent to it being called to the conciliation proceedings the Managing Director, Sadiq Meghani enquired from its employees whether they had joined a Union and they responded that they were not aware it was a Union but were informed it was an Insurance and Money lending company.

4.14 Respondent further contended that three (3) of its employees namely, Muzi Magagula, Thulani Ndwandwe and Stanley Kunene then resigned after realizing that Applicant had misrepresented itself in order to obtain their membership.

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4.15 Respondent contended further that Sadiq Meghani was never a member of applicant and that Siphon Nhlabatsi never worked for the company.

4.16 Respondent further submitted that the letters of resignation from the applicant by its employees were duly forwarded to it.

4.17 Respondent submitted further that the difficulty it faced in the matter was the failure by applicant to produce proof of its membership.

4.18 Respondent therefore submitted that the applicant has failed to meet the required membership stipulated by the law of fifty per cent fully paid up members.

5. CONCLUSION

5.1 The Applicant has lodged a dispute with the Commission for an Order directing Respondent to grant it recognition.

5.2 The procedure by which the Applicant can acquire recognition is outlined in Section 42 of the Industrial Relations Act, 2000 (as amended).

5.3 In terms of Section 42 (1), any registered trade union or staff association may notify an employer that it seeks to exercise its organizational rights in respect of a specified class of employees.

5.4 It is common cause that the Applicant wrote a letter addressed to the Director of the Respondent dated the 3rd April 2008, which was exhibited before me, seeking for recognition in terms of Section 42 of the Industrial Relations Act, 2000 (as amended).

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5.5 It is further common cause that the Applicant wrote a follow-up letter dated the 9th June 2008 which was also exhibited to me and was unresponded to by the Respondent.

5.6 It is common cause further that as a result of the Respondent's failure to reply to both letters of the Applicant, the latter then referred the dispute to the Commission.

5.7 Section 42 (3) provides that –

"The employer shall reply to the organization and the Commission in writing within 21 days of the receipt of the application stating that –

- a. it recognizes the trade union or staff association; or
- b. it refuse to grant recognition and the reasons for such refusal."

5.8 Sub-section (4) of the above provision provides that if the employer fails to reply under subsection (3) or it refuses to recognize the trade union or staff association, the organization may refer the dispute to the Commission.

5.9 Subsection (5) provides that –

"The employer shall recognize a trade union or staff association that has been issued with a certificate under Section 27 if –

- a. fifty per cent plus one of the employees in respect of which the trade union or staff association seeks recognition are fully paid members of the organization."

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5.10 Subsection (6) further provides that –

"for purposes of determining whether a trade union or staff association represents fifty percent plus one of the employees in respect of which it seeks recognition, a stop order form duly signed by the employee shall be sufficient proof that the employee is a full member of the union, and in the case of any disagreement a head count shall be conducted."

5.11 Applicant's locus standi is conferred in CMAC Rules and Section 76 (1) of the Industrial Relations Act, 2000 (as amended) which recognizes the union's right to represent its members in both conciliation and arbitration proceedings at CMAC.

5.12 It is self - evident, however, that a union can only represent its members.

SEE: JOHN GROGAN 'WORKPLACE LAW 8TH EDITION AT 327.

5.13 Therefore, Applicant can only seek recognition of members it represents.

5.14 In casu, Applicant has failed to adduce any evidence either documentary or otherwise in proof of the membership it represents or seeks recognition on behalf of.

5.15 I further find that the Applicant has failed to present evidence in the form of a stop order facility to prove that it has met the requirement stipulated by Section 42 of fifty percent plus one fully paid members.

5.16 I therefore find that Applicant has failed to discharge the onus resting on it on a balance of probabilities.

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6. THE AWARD

6.1 Applicant's application is dismissed.

6.2 No order as to costs.

DATED AT MBABANE ON THIS 26TH DAY OF JUNE 2009.

LORRAINE LINDIWE ZWANE

ARBITRATOR