



**IN THE CONCILIATION, MEDIATION AND ARBITRATION  
COMMISSION (CMAC)**

**HELD AT MBABANE**

**SWMB 344/13**

In the matter between;

**PRIME BAKERY (PTY) LTD**

**Applicant**

And

**SWAZILAND PROCESSING REFINING &**

**ALLIED WORKERS UNION (SPRAWU)**

**Respondent**

CORAM:

**Arbitrator** : Commissioner Sipho Nyoni

**For Applicant** : Dumisani Ngcamphalala

**For Respondent** : Wander Mkhonza

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**ARBITRATION AWARD**

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**Venue** : 1<sup>st</sup> Floor Asakhe House Mbabane

**Dates of Arbitration** : 2<sup>nd</sup> April 2014, 14<sup>th</sup> April 2014, & 22<sup>nd</sup> April  
2014

**Nature of Dispute** : Unfair Labour Practice

## **1. Details of Parties and Hearing:**

- 1.1 The Applicant is Prime Bakery (PTY) Ltd a company duly registered and incorporated in terms of the law and having its principal place of business situate at Industrial Site Mbabane. The Applicant was represented by Attorney D. Ngcamphalala
- 1.2 The Respondent is Swaziland processing Refining and Allied Workers Union (SPRAWU). The Respondent is the recognised collective Workers representative of the Applicant's employees. The Respondent was represented by its Secretary General Wander Mkhonza.
- 1.3 The arbitration hearing was held at CMAC- Offices Mbabane Asakhe House.

## **2. Issue for Determination:**

- 2.1 The issue for determination is the interpretation to be accorded to **Regulation 7 (1) (b) of the Regulation of Wages (Manufacturing and Processing Industry) Order 2012** which provides as follows:  
7 (1) An employee who is engaged other than on shift work or as a security guard and is required to work in excess of the normal hours specified in regulation 6 shall be paid as follows:-(b) for time worked on a Sunday or a public holiday specified in regulation 8, payment shall be at twice his hourly rate.

## **3. Summary of submissions and arguments:**

### **Applicant's submissions**

- 3.1 The Applicant submitted that since its inception it has paid its employees double the normal wage for time worked on a

public holiday. The Applicant submitted that the Respondent now demands to be paid three times the normal wage for working on holiday and that the basis for the Respondent's demand is an improper interpretation to **Regulation 7 (1) (b) of the Regulation of Wages (Manufacturing and Processing Industry) Order 2012.**

- 3.2 The Applicant submitted that the wording of **Regulation (7) (1) (b) supra** was plain and simple and consequently the words used in the aforementioned provisions should be accorded their ordinary and plain meaning. The Applicant referred to the work of **William N Eskridge, Cases and Materials on Legislation: Statutes and the Creation of Public Policy 3<sup>rd</sup> ed. 2001** in support of the argument that the principle of interpreting statutes is to use the plain meaning of the words.
- 3.3 The Applicant therefore argues that the law and practice is clear on payment for public holidays worked and should only be double if an employee has worked on a public holiday and normal pay if he has not worked.

#### **4. Respondent's submissions:**

- 4.1 The Respondent's contention on the other hand is that employees who have worked on a public holiday should be compensated for working overtime. The Respondent states that in interpreting the relevant provision of the enactment i.e. Regulation 7 (1) (b) of the Wages Order Manufacturing and Processing Industry requires a proper reading of the key phrase or word. The Respondent stated that the phrase '**For time worked on a Sunday or public holiday specified in regulation 8 payment shall be twice his hourly rate**' was the key phrase which required proper interpretation.

4.2 The Respondent argued that since an employee was by law entitled to full pay for the holiday even if he had not worked, it then followed that if the employee worked on the holiday the employee should be paid in addition to his normal pay is double his hourly rate for time worked.

## **5. Analysis of the arguments and submissions:**

5.1 From the submissions made by both parties it is clear that the issue before me is for the proper meaning and effect of Regulation 7(1) (b) supra, which provides for the rate of payment of Wages on Sundays and holidays worked.

5.2 Verbatim, Regulation 7 (1) (b) of The Regulation of Wages (Manufacturing and Processing Industry) Order 2012 reads thus; **'An employee who is engaged other than on shift work or as a security guard and is required to work in excess of the normal hours of work specified in regulation 6 shall be paid as follows; (b) for time worked on Sunday or a public holiday specified in regulation 9, payment shall be at twice his hourly rate'**

5.3 The contention of the Applicant is that payment of employees who work on a Sunday or public holiday should be at twice the hourly rate only. The Respondent argues on the contrary that an employee who works on a public holiday should be paid the normal daily rate as well as double the normal rate for time worked. In essence the Respondent contends that employees who work on a public holiday should be compensated for working overtime.

5.4 As rightly pointed out by the Respondent, the starting point in statutory interpretation remains an endeavour to ascertain the intention of the legislature from the words used in the enactment. Those words must be attributed their ordinary,

literal and grammatical meaning, see; **Randburg Town Council vs Kerksay Investment (Pty) Ltd**

- 5.5 The Industrial Court of Appeal in the case of **United Plantations Swaziland t/a Tambuti vs Gina and Others Appeal case 15/2007** in interpreting the relevant wages order held that the proper interpretation to be given was thus; where the hours an employee work are in excess of 60 hours a week fall on a Sunday the employee will draw two times his hourly wage rate but where the overtime worked is during the week i.e. Monday to Saturday, the employee will only be paid 1.5 times his hourly rate as overtime.
- 5.6 In *casu* the relevant provision of the Wages Order provides that for time worked on a Sunday or a public holiday payment shall be at twice the hourly rate. The provision does not state that the payment shall be over and above the normal wage the employee would ordinarily be entitled to.
- 5.7 'The making of laws is essentially the function of the legislature. This means that, in as much as what is known as judge-made law may be constitutionally permissible, judge made law must be carefully confined to its proper limits and Courts should be astute not to intrude into the legislative sphere which is the preserve of the law giver', see **The Attorney General vs Mary-Joyce Doo Aphane case 12/2010.**
- 5.8 The literal and ordinary meanings of the words used in the provision do not give an ambiguous or unreasonable interpretation. The express mention by the legislature in **Regulation 7 (1) (b) of the Wages Order** that payment for time worked on a Sunday or a public holiday shall be at twice the hourly rate means exactly that and nothing else. Had the

Legislature intended an employee to receive more than twice the hourly rate for time worked it would have expressly stated so.

5.9 **Regulation 6 of the Wages Order** stipulates the amount of hours to be worked by an employee in a week. What is relevant to note is that the hours to be worked are spread over six days i.e. Monday to Saturday inclusive. It therefore follows that working on Sunday is considered as overtime as the employee would not ordinarily work on Sunday and time worked on Sunday is over and above the stipulated hours of work per week. If a holiday falls on a week day and the employee would ordinarily be at work on that day, then the employer is obliged to pay the employee twice his hourly rate for time worked on that holiday.

5.10 The construction or interpretation of **Regulation 7 (1) (b) supra** which the Applicant seeks to give effect to is the correct interpretation. Employees are to be paid twice their hourly rate for time worked on public holiday. There is nothing in the enactment which gives credence to the Respondent's argument that employees who work on public holidays are to be paid their daily rate plus twice their hourly rate for time worked on the public holiday.

## **6. AWARD:**

6.1 The award that I make is the following:

6.2 Employees covered by **Regulation 7 (1) (b) of the Wages Order Manufacturing and Processing Industry Order, 2012** are to be paid twice their hourly rate for time worked on a public holiday or Sunday. Such payment is not over or in addition to the employee's daily wage unless the employee has exceeded the normal weekly forty-eight hours of work

spread over six days as stipulated in Regulation 6(1) to (3) of the Wages Order Manufacturing and Processing Industry of 2012.

6.3 There is no order as to costs.

**DATED AT MBABANE ON THE \_\_ DAY OF JUNE 2014**

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**SIPHO M NYONI**  
**CMAC ARBITRATOR**