

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD IN MBABANE:

CASE NO: 60/88

In the matter between:

TONKWANE WORKS COUNCIL

Applicant

VERSUS

1. TONKWANE ESTATES LIMITED

1st Respondent

2. JOHN HAYTER, (LIQUIDATOR OF TONKWANE

SAWMILL CO. LTD)

2nd Respondent

CORAM:

J.A. HASSANALI

President

MR P.R. DUNSEITH For

Applicant

MR SCHNEIDER For

1st Respondent

MR FLYNN For

2nd Respondent

MR MOKGOKONG &

MR MATSEBULA

Assessors.

ORDER

Hassanali, P.

This Application is brought by the Applicant on behalf of about 400 employees, against the 1st Respondent for an Order on the following terms -

a) that the said employees be declared as employed by the 1st Respondent as at the date of liquidation of Tonkwane Saw Mill.

b) that the said employees are entitled to recover from the 1st Respondent wages and other benefits as reflected in Annexure A.

According to the Applicant, the 1st Respondent's business mainly consisted of wood cutting and which wood was later taken to the Sawmill for processing into saleable material for the construction market. The entire process was carried out by various branches operating under different Company names, namely - Tonkwane Estates Ltd, Tonkwane Sawmills Ltd, K L S Chemicals Ltd, Swaziland Charcoal Ltd and Tonkwane Timber Ltd. However

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the inter relation between these Companies was coordinated from one Central office at Tonkwane Estates Ltd. The employees who worked at the complex were all recruited by Tonkwane Estates Ltd and their Works Council, the applicant looked after their interests. However due to serious financial problems. Tonkwane Sawmill Ltd was placed under liquidation and as a result the Tonkwane Complex was closed down on 10/3/88. Thereafter the Crabtree family who managed and controlled both the Sawmill and Tonkwane Estates, terminated the services of about 400 employees, alleging that they worked for the Sawmill and directed them to the Liquidator the 2nd Respondent, for their terminal benefits. Being now presented with rather an agonising crisis, the employees took the matter up with the Commissioner of

Labour who decided to bring it to Court after having failed to negotiate a settlement.

The 1st Respondent took up the position that the said employees on the date of liquidation of the Tonkwane Sawmill, were employed by the Sawmill and not by Tonkwane Estates Ltd. It was also maintained that the applicant did not have the authority to act on behalf of the alleged employees and that at all material times, the Works Council was defunct.

The 2nd Respondent however maintained that all those employees were in the employ of the 1st Respondent.

When the case of the 1st Respondent was at its concluding stage, a letter signed by four persons who happened to be signatories to the Application was submitted to Court. This letter apparently requested Mr Dunseith, to withdraw the case. This was later followed by a Notice dated 24th October, 198P withdrawing the case. Since both the letter and Notice were not tendred to Court through the proper channel, the Court directed Notice on the four persons to appear in Court on 23/10/89. in Court they admitted to

signing the Notice of withdrawal and indicated their intention to withdraw the Application.

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Mr Scheneider representing the 1st Respondent raised certain objections which he said arose as a result of the Notice of Withdrawal and asked Court either to dismiss the applicants' application or allow the applicants to withdraw the case. The objections being -

- (1) that the signatories to the application did nor represent anybody either than themselves.
- (2) that the Works Council was defunct at the time the application was signed.
- (3) that the signatories to the Notice should be allowed to withdraw the application or alternatively be dismissed.

Arising from these objections. Mr Dunseith argued that objections 1, and 2, should have been raised as preliminary objections and not at such a late stage. He submitted that what the Court had to decide was whether the Notice of Withdrawal placed before Court represented an application to withdraw the proceedings on behalf of the applicant.

Mr Flynn representing the 2nd Respondent argued that even if the Court decided that the application be withdrawn, the 2nd Respondent was still entitled to proceed with the case in view of the existing dispute between the two respondents.

On objections 1 and 2, I have serious doubts as to whether these could be raised at this stage. In my view there should have been raised in. limine. In the circumstances I make no ruling on these.

What the Court has to decide now is whether the Notice of Withdrawal which has been placed before it represents an Application to withdraw the proceedings instituted on behalf of the Applicant's Works Council.

In order to arrive at a decision on this matter it is essential for me to go back to the meeting of the Works Council when it took & decision to institute proceeding? against the 1st Respondent. According to Titus Mahlaba. a signatory to the application in virtue of being a member of the Works

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Council, a meeting of the Works Council was called to discuss the termination of about 400 employees by the Crabtree family on the ground that they belonged to Tonkwane Sawmill which was at that stage placed under liquidation. At that meeting, as I understand the position was this. The number of members

in the Works Council was seven. Two of them had left the 1st Respondent. There were thus five members. They were Catsha Dlamini (Chairman), Titus Mahlaba, Angelina Vilakati, David Vilakati and Emillinah Shongwe. These five on behalf of the employees took a decision to institute proceedings against the 1st Respondent for the recovery of their terminal benefits. They then signed the application on behalf of the Tonkwane Works Council, the applicant. However during the course of the trial, with the exclusion of Catsha Dlamini, four of them submitted to Court a Notice withdrawing the application. As I stated earlier, the four in Court indicated their intention to withdraw the case.

These four, the remaining members of the original Works Council and signatories to the main application, according to Mahlaba, met and took a decision to withdraw the case which they eventually did by signing the Notice of Withdrawal. I have no doubts that this is a majority decision and in this respect I wish to refer to Sec. 20 of Act No. 21 of 1970 (interpretation Act) which I think might be of some relevance to this matter.

"Where, by a law, an act or thing may or is required to be done by more than 2 persons, a majority of them may do it."

Therefore the Notice of Withdrawal which I mark Ex .A constitutes a proper withdrawal as envisaged under Rule 9(c) of the Industrial Court Rules.

However from the evidence presented it is quite apparent to the

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Court that these 4 persons had been coerced into signing Ex. A by their employer, who happens to be one of the Directors of the Tonkwane Complex.

On the matter raised by Mr. Flynn, I can find nothing in the Rules of the Industrial Court / or in the Rules of the High Court which indicates that the Court has jurisdiction to intervene and proceed with the hearing as between the 1st and 2nd Respondents. Mr Flynn was not able to refer me to any relevant authority nor was I able to find any. In my view a withdrawal of a case, terminates forthwith its proceedings. In the circumstances I have to refuse his application.

Consequently application to withdraw is granted.

Application withdrawn.

J.A. HASSANALI,

PRESIDENT