

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT MBABANE

CASE NO. 87/88

In the matter between:

S. M. A. W. U. Applicant

vs

SWAZI TIMBER PRODUCTS Respondent

CORAM: J.A. HASSANALI President

MR MOTSA For Applicant

MR DODDS for Respondent

MR MOKGOKING & MR MATSEBULA Assessors

A W A R D

(Delivered on 8th June, 1989)

HASSANALI, P

In this matter the Applicant Union, a Union registered under Section 18 of the Industrial Relations Act applied under Sec. 36(5) to the Respondent Company for Recognition by its letter dated 17th August, 1987 (Ex.'E') which reads as follows -

The General Manager, Swazi Timber Products, Villiers Street, Manzini.

Dear Sir,

RECOGNITION APPLICATION

In terms of Section 36(5) of the Industrial Relations Act No. 4 of 1980, we hereby apply for being recognised as the sole representative of all your employees.

For the benefit of convenience, please receive names and addresses of our Executive Committee.

As provided by the aforesaid law, we hope to hear (from) you within 30 days.

Kindly co-operate with us so that we progress the soonest possible time.

Yours faithfully,

Hi

SIPHO MOTSA EXECUTIVE "OFFICER c.c. The Commissioner of Labour P.O. Box 198, MBABANE.

The Respondent company replied the applicant Union by its letter dated 26th August, 1987 (Ex.'D') as follows.

26th August, 1987

The Executive Officer, Swaziland Manufacturing And Allied Workers Union P.O. Box 1158 Manzini

Dear Sir

We are in receipt of your letter dated 17th August, 1989. Please comply with Sec. 36(5) of the Industrial Relations Act Number 4 of 1980 by supplying us with the categories of employees you intend representing.

Thanking you

Yours faithfully M. RAMKOLOVAN

Section 36(5) reads as follows -

If forty percent or more of the employees in respect of which the industry Union or staff association seeks recognition are fully paid up members of the Organisation concerned, the employers shall within 30 days of the receipt of the application and in writing -

- (a) grant recognition to the organisation or
- (b) if he decides not to grant such recognition lodge with the Court his reasons for the refusal to grant recognition and shall serve a copy thereof on the industry Union or Staff Association, as the case may be.

However this matter remained a stalemate for sometime until the parties met and decided to conduct a membership count on 14/12/87 (Vide Ex.'A'), but this count did not materialise and consequently the Union reported it to the Labour Commissioner under Sec. 50 of the said Act as a dispute (Ex.'A')

It seems to me that the dispute between the parties is on the question of whether the 40% or more of the Union membership were its fully paid up members.

During the course of the arguments, Mr Motsa representing the Applicant Union submitted that the Company unjustly rejected the membership cards, receipt book and the Register handed over to Mr Ramkolovan, the Representative of the Company, by Mr Ndlangamandla Labour Officer on behalf of the Union in support of its claim that it had more than 40% fully paid up members. Mr Motsa further submitted that though more than 40% of the Company's employees supported the Union on a count conducted subsequently by the Company on its own volition, the Company still refused to grant recognition to the Union which action he said was unreasonable and unjust.

Mr Dodds representing the Company maintained that the Company had very rightly rejected the membership register of the Union on the ground that it did not conform to the requirements of Sec. 36(5) in that it did not state whether the members were fully paid up members of the Union. On the question of the Count conducted by the Company, he argued that it did not in any way suggest that those who voted for the Union were its fully paid up members. The Union had to establish this and since it had failed to do so, the Union he said was not entitled to recognition.

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On the evidence placed before Court I am satisfied that the Union did submit its Membership Cards, receipt book and Register to prove it had more than 40% of the Company's workforce as its members.

The Company however rejected the Union's claim on the ground that its membership Register did not state whether those members were fully paid up members. Mr Ndlangamandla, Labour Officer maintained that he had inspected the said Register and found that the members had been paying their subscriptions regularly. Mr. Ramkolovan on the other hand took the opposite view. Nevertheless I am inclined to accept the evidence of Mr Ndlangamandla in preference to that of Mr Ramkolovan especially on the ground that he was an independent witness. In the circumstances I hold that the membership register did conform to the requirements of Sec. 36(5) .

I find it hard to understand as to why the Company failed to lodge its reasons for its refusal with the Industrial Court when it decided not to recognise the Union, as envisaged under Sec. 36(5). As such it would not be fair and just for the Company to challenge the Union's Application.

In any event the Company at a later date, on its own volition conducted a count of its employees to check whether the Union had the necessary 40% support. The count very explicitly did demonstrate that the Union did have the support. On this count alone the Respondent should have extended its recognition to the Union forthwith, without embarking on a collision course on such a technical matter as the rectification of the Membership Cards (Vide Ex.B). This sort of obstruction is most unfortunate and does not in any way help to foster good industrial relations.

Having considered the evidence, I find that the Respondent Company has been unreasonable in not recognising the Union as required under Sec. 36(5)(a). In the circumstances I order the Respondent Company to grant Recognition to the Applicant Union without verification, and direct that it should be done forthwith.

My Assessors agree with my decision.

This decision is entered as an Award of this Court.

J.A. HASSANALI,

PRESIDENT