IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 95/90

In the matter between:-

CENTRAL BANK OF SWAZILAND APPLICANT

and

SWAZILAND UNION OF FINANCIAL

INSTITUTIONS AND ALLIED

WORKERS- RESPONDENT

RULING

In this application the Applicant seeks an order to amend Article 2 of the Collective Agreement entered into between the Applicant and the Respondent
dated the 23rd June 1989.

The agreement was to be operative for the period of 24 months from the 1st April 1989. Agreement was registered with the Industrial Court on the 8th July, 1989.

It has been submitted on behalf of the Applicant that Part 2 Article 2 of the Collective Agreement is absurd ridiculous and in contravention of Legal Notice Number 14 of 1988.

It has been submitted that it was never the intention of the Applicant to grant us employees, the security officers conditions as reflected in Part 2 of Article 3 of the Collective Agreement. The Applicant has moved this application pursuant to Section 66(a) of the industrial Relations Act. It has been submitted that the collective Agreement does not refer to security officers and that they should have had their own category within the agreements. That is was a mistake not is refer to security officers. It has been submitted that the Applicant became aware of the absurdity of the collective agreement when security officers raised the question of overtime. That it was never the intention of the Applicant to the xxx to its employees. The Applicant submitted that the Collective

Agreement was a mere formality. Applicant now seeks an amendment to the Collective Agreement to rectify an obvious error.

The Respondent has submitted that the Applicant is asking the court to fill up a loophole left in the collective agreement. It has been submitted on behalf of the Respondent that the law allows , for rectification of an agreement if it can be proved on account of fraud or common mistake the parties intention to contract is not refelcted. That for the collective agreement to be amended under Section 46(a) of the Industrial Relations Act there has to be an obvious error. It has been submitted that Annexure E on page 38, 39 and 40 deals with security guards and watchmen. That at the time the Collective Agreement was negotiated security guards and watchmen were in the parties minds. That the provision for work on Sunday and public holidays only refers to security staff as there are no staff in the bank who work on a Sunday or public holiday.

The Applicant in this matter is asking the court to enforce the provisions of Legal Notice No. 140 of 1988 and submits that any conditions in the collective agreement that are not in agreement with Legal Notice No. 140 of 1988 are absurd and in contravention of the law and should be amended. The proposed amendment to Article 2 provides that normal hours of work for security guards shall be 48 hours spread

over 6 days. Legal Notice number 140 of 1988 provides that normal working hours shall be 72 hours spread over 6 days. The Collective Agreement being sought to be amended provides 44 hours per week as normal hours of work. It will be noticed that even this is not 72 hours an provided in Legal Notice number 140 of 1988.

Legal Notice number 140 of 1988 was intended to provide basic minimum working conditions for employees in the watching and Protective Services industry. Legal Notice number 140 of 1988 was never intended to oust the parties freedom to cater into collective agreements where terms are more favourable to the

parties. Infact this is borne out by Section 44(3)(d) and Section 48(1) of the Industrial Relations Act. Section 46(a) was intended to correct honest and obvious errors not to accommodate intention to disregard the provisions of collective agreements entered into by the parties. The Applicant carelessly endorsed and signed the Collective Agreement whose termsit is now seeking to be amended because for it signing a collective agreement was a mere formality.

Applicant sought to amend the contentions Article 2 of Part 2 of the collective agreement when it was faced with paying overtime pay to its employees. The Collective Agreement dated 23rd June 1989 refers to security guards and watchmen. It is fallacious for the Applicant to allege that the parties did not provide for them in this collective agreement. It is further fallacious for the Applicant to allege that Part 2 Article 2 is absurd and should be amended. Part 2 Article 2 of the collective agreement dated 23rd June 1989 reflects the wishes intentions of the parties to it. This court has not been shown any error in Part 2 Article 2. Indeed this court has not been shown any obvious error falling under Section 46(a) of the Industrial RElations Act necessitating a need to amend it.

It is the decision of this ccurt that the Application before it is misconceived. It is the order of the court that the Applicants application be dismissed.

As for the submission by the Applicant that there is no reply before court we would urge the Applicant to read our judgement in the case of Sipho Zungu vs Bank of Credit and Commerce International (Swaziland)Limited. The reply now before court is properly before it.

M.S. BANDA

INDUSTRIAL COURT PRESIDENT

12/12/91