IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 117/94

In the matter between:

ARMSTRONG DLAMINI APPLICANT

And

SWAZILAND UNITED BAKERIES LTD RESPONDENT

RULING

The Applicant seeks an order to amend its application by the deletion of 6 months and substitution thereof with 24 months in the relief relating to maximum compensation. The application has been necessitated by Section 15 (4) of the Industrial Relations Act of 1996 which amended Section 13 (4) of the Industrial Relations Act of 1980. The application is opposed.

The grounds for opposing the application are that the Industrial Relations Act of 1996 does not provide for the amendment of relief sought in matters that are already pending before Court but that it enables such matters to proceed. The other ground for opposition is that in the issues in dispute outlined in the Certificate of Unresolved Dispute that was attached to the Applicant's application a claim for compensation is not one of the issues in dispute.

Section 92 of the Industrial relations Act of 1996 quite clearly provides that matters initiated under the repealed Industrial Relations Act of 1980 shall be

continued under the Industrial Relations Act of 1996 as if same were initiated under the Industrial Relations Act, 1996. As we understand it if an Applicant under the 1980 Industrial Relations Act was claiming compensation for 6 months under the Industrial Relations Act of 1996 such a claim would be for 24 months. The effect of the Industrial Relations Act is that the Applicant is legally presumed to have been claiming for 24 months compensation from the onset of these proceedings as opposed to the 6 months. The opposition to the amendment on this ground is in our view without merit.

The argument raised against the reference in the Certificate of Unresolved Dispute of 6 months notice for allowing work seeking on the ground that this is not a claim for 6 months compensation would on the face of it appear to hold water. Perusal of Section 33 (6) of the Employment Act of 1980 provides and we quote:

" 6. During the period of notice served by an employer on an employee under this Section, the employee shall be entitled, without reduction in his wages to be absent from his work for the purpose of seeking other employment for twelve hours each week, the timing of which shall be agreed between the employee and the employer and which in pursuance of such agreement, may be taken in one or more complete days during the period of notice ".

To suggest that the issue referred to in item 7 of Annexure "A" of the Applicant's Certificate of Unresolved Dispute refers to time to enable the Applicant to look for other employment would be stretching the provisions

of Section 33 (6) of the Employment Act of 1980. The only Section that provides for a claim of 6 months relief by an employee is that provided for under Section 13 (4) of the Industrial Relations Act of 1980 save that instead of the word notice the 6 months claim is for compensation.

A claim for 6 months relief by the Applicant was included into the Certificate of Unresolved Dispute. The Respondent's attention was brought to the fact that the Applicant sought 6 months relief by his employer. The Applicant now seeks to amend the reference of 6 months to 24 months. The issue of a claim for 6 months relief was conciliated upon by the Labour Commissioner as an issue in dispute. The Applicant is now entitled to seek to increase the reference to 24 months as provided for by Section 15 (4) of the Industrial Relations Act of 1996. The application for amendment of the reference from 6 months to 24 months maximum compensation is hereby allowed and the opposition dismissed.

MARTIN SAMSON BANDA PRESIDENT

INDUSTRIAL COURT