

IN THE INDUSTRIAL COURT OF SWAZILAND

TOLD AT MBABANE

CASE NO. 127/2000

In the matter between:

SIZWE MAUNGA

APPLICANT

and

MAX ENTERPRISES (PTY) LTD t/a

SWAZILAND SECURITY ACADEMY

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. B. MAGAGULA

FOR THE RESPONDENT:

MR. SIFISO DLAMINI

RULING

01/08/2000

The Respondent has raised objections in limine to the Applicant's Application for compensation for unfair dismissal in the following terms:

"1.1 The dispute was reported by the Applicant himself yet there is a Works Council in existence at the respondent's undertaking.

1.3 The court therefore may not take cognisance of this matter in view of Rule 3 (2) Of the Industrial Court Rules which states that the court may not take cognisance of any dispute which has not been reported or dealt with in

accordance with Part V111 of the Act."

It is common cause that the dispute was reported by the Applicant personally. The only contentious issue is whether a Works Council is an organisation that has exclusive right in terms of the Industrial Relations Act of 1996 to report disputes on behalf of the employees where it exists in an undertaking.

It is apparent from the Applicant's replication to the point in limine that the Applicant does not dispute the existence of a Works Council at the Respondent's undertaking, That

2

notwithstanding, we note that the Respondent has attached the minutes of the election of a Works Council on the 25th March 2000 to the reply. These minutes have not been challenged in the replication. Even though the best evidence in the circumstances would have been a certificate of registration of a Works Council, we do accept that this became a moot point once the existence of the organisation was not placed in issue by the Applicant.

A Works Council is an organisation established in terms of Section 47 (2) of the Industrial Relations Act No. 1 of 1996. It is not an organisation that is granted recognition as the exclusive collective employee representative in terms of Section 43 (9) of the Act.

A Works Council once established is conducted in accordance with a written constitution submitted to the Labour Commissioner that inter alia includes the procedure for dealing with disputes in the Works Council and with individual and collective grievances in the undertaking.

Indeed, a Works Council may be established in an undertaking where there is in existence an Industry Union that has been granted recognition under Section 43. Where there is such co-existence, the function and scope of the works council excludes all matters which are included in the recognition agreement between the industry union and the employer and all matters included in the scope and function of the joint industrial council, if it does exist.

In the present matter, there is no evidence of such co-existence. There is only a works council in existence at the undertaking.

The issue to be determined is whether the existence of the works council precluded the Applicant from reporting the dispute personally. Section 57 (1) of the Industrial Relations Act reads thus:

"57(1) A dispute may only be reported to the Commissioner of Labour by

© a member of a works council

(f) any employee in the undertaking where no organisation is active in the undertaking concerned in the dispute "

It is a foregone conclusion that a works council was established and in existence at the Respondent's undertaking. A list of the members of the works council is shown in Annexure "AA1" to the Respondents reply.

3

In terms of Rule 3 (2) of the Industrial Court rules:

"The court may not take cognisance of any dispute which has not been reported or dealt with in accordance with Part VII (read Part VIII of the Act) ".

This court has ruled time and again that the provisions of Part VIII of the Act are peremptory. See Eric Khumalo and Usuthu Pulp Company Ltd. Industrial Court of Swaziland Case No. 70/96 at pg 8 wherein Justice Parker stated :

"if the Applicant reported the dispute to the Commissioner of Labour under Section 57 and 58 of the Industrial Relations Act, he was in breach of Section 57 of the Act in particular Subsection (1) (f) because he could not bring himself under the purview of that Subsection as I have reasoned above. "If that was the case, then this court would have had no hesitation in dismissing the application on the ground that the dispute reporting procedure was not followed".

The learned Judge went on to distinguish that particular case on the facts and found that the matter had been reported under Section 41 of the Employment Act.

The present case was allegedly reported in terms of Section 57 (1) (f) of the Act by the applicant. We find that the Applicant acted in breach of Section 57 as there was in existence a works council within the meaning of subsection 57 (1) © of the Act.

This court has accordingly no jurisdiction to entertain this matter and we have no hesitation in dismissing it for failure to follow the proper reporting procedures.

The Applicant is at liberty to report the matter afresh in terms of the Act. There will be no order as to costs.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT