

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 70/98

In the matter between:

NGAZANE VILANE & 2 OTHERS

and

THE SWAZILAND GOVERNMENT.

1st RESPONDENT

THE ATTORNEY GENERAL.

2ND RESPONDENT

CORAM

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR APPLICANT:

SIPHO MOTSA

FOR RESPONDENT:

ZANDILE MATSE

JUDGEMENT ON SLEEPOUT ALLOWANCE CLAIMS

5/2/2002

The three applicants lodged a notice of motion seeking inter alia an interim order in the following terms:

1. Directing the Principal Secretary and/or Under Secretary (Administration) both of the Ministry of Public Works and Transport on behalf of the 1st Respondent to:
- 1.2. pay the Applicants their sleeping allowances on or before the first day of May, 2001 and continue to pay such sleep out allowances claimed in terms of a Court order dated the 30th May, 2000.

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The order of the 30th May 2000 reads as follows:

1. After hearing the representatives of the parties and by consent thereof: IT IS ORDERED THAT A FURTHER ORDER IS GRANTED IN THE FOLLOWING TERMS;

That the 1st Respondent pays the Applicants a sleep-out allowance each time they sleep away from their duty stations.

The Applicants, subsequent to this order and while they performed carpentry work at Ngwenya and Lamgabhi within Mbabane area, submitted claims for sleep-out allowance. Payment was declined hence the application before court.

The Respondent in opposition to the claims sought leave to lead oral evidence of one Raymond Mkhululi Mamba, the Chief Buildings Engineer and that of Mandla Shoti Zulu, the Clerk of Works, Building Department stationed at Mbabane.

The totality of their evidence was that the Applicants' claims were invalid because they did not work outside their duty stations on the days in respect of which the sleep-out allowance was made hence the same were rejected by the Respondent.

Mr. Mamba submitted a map of Swaziland and explained to the court that for the purposes of the Buildings Department, the country was divided into five Sectors, namely; Mbabane, Piggs Peak, Manzini, Nhlangano and Siteki.

That each sector had a depot where the Clerk of Works was based and where building materials and employee records were kept.

That each sector was considered a duty station for the workers employed to work on various sites in the particular sector .

That the Applicants were provided with tent-accommodation daily and transport fortnightly at the various sites and therefore were not eligible for any sleep-out allowance while they worked in any site within a sector.

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That usually the Applicants were based on one site until the project was complete and would with their consent be moved to another site either within the sector or elsewhere.

It was explained to the Applicants that they would only be entitled to claim sleep-out allowance if they were assigned duties outside their designated sector.

Mr. Mamba added that at times the Artisans were transferred with their consent to another Sector if there was no construction work in their sector and would be provided with tent accommodation in the new duty station and would then not be eligible for sleep-out allowance.

The evidence was corroborated by the Clerk of Works.

The Applicants however insist that their duty station is the depot and that they were entitled to a sleep out allowance while stationed at various sites within the Sector. They argued that the tents accommodation was not suitable for family habitation and therefore they were forced to buy food for themselves in the tents and at the same time buy subsistence provisions for their families at their respective homes.

It is apparent that the Artisans have no duty to perform at the depot but only report there for administrative purposes and to receive their salaries at the end of the month.

The applicants have worked for many years for the Respondent as carpenters and have never been paid sleep out allowance while they were stationed in their sector of employment. That this practice had become a custom of the Department until this claim was lodged is quite clear.

Whereas the court was not given the proper genesis of the sectorial demarcations I am satisfied that the Applicants for a long time were aware that they were employed to work in a sector and not at a depot. That they knew they were entitled to sleep out allowance whenever they worked outside the sector. Their current claim is in respect of days spent within the sector.

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According to General Order A410, which is a guideline for the administration of subsistence allowances to employees while on official duties in Swaziland, an employee is entitled to the various subsistence allowances, including sleep out allowance if he is absent from his duty station engaged on official duties.

The question that arises is whether a sector as described by the Respondent can be construed to be a duty station for the purposes of payment of subsistence allowances.

A station is a place or building where a person or thing stands or is placed especially, habitually or for a definite purpose according to the Concise Oxford Dictionary 9th Edition.

A duty station therefore, is that place or building where a person is habitually placed, for the purpose of working.

According to the evidence before us, the Applicants are not stationed in a building but are placed on various sites within a designated sector. That the nature of their work in the category of maintenance of houses dictates that they move from one site to another usually after a specific project is complete. They are accommodated at the site during the tenure of the project.

It is the court's considered view that it would be impracticable to pay out sleep out allowances in the circumstances of the Applicants due to the nature of their work. That the division of the work station into sectors, is reasonable and economically feasible on the part of the Respondent. Determining the matter otherwise would mean that the Applicants would perpetually be entitled to sleep out allowance since they are fully on out door work.

It is essential, however that terms and conditions of service of the workers involved in the building construction be stipulated to them in writing before they are employed and that the remuneration payable to them take consideration of the outdoor nature of their work to avoid dissatisfaction expressed by the Applicants.

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Having said that, the claims by the Applicants have no merit and same are dismissed with no order as to costs.

The members agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT

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