IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 538/2006**

In the matter between:

SWAZILAND RAILWAY **Applicant**

and

SWAZILAND TRANSPORT & ALLIED WORKERS UNION (STAWU) **Respondent**

CORAM:

P. R. DUNSEITH	**:**	**PRESIDENT**
JOSIAH YENDE	**:**	**MEMBER**
NICHOLAS MANANA	**:**	**MEMBER**
FOR APPLICANT	**:**	**S. SIMELANE**

J U D G E M E N T – 20/09/2006

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1. In terms of the recognition agreement between the parties, the Applicant undertook to sustain its recognition of the Respondent as the sole collective bargaining agent of the Applicant's unionisable employees as long as the Respondent union remains representative of the employees in the undertaking.

2. At the time of recognition, the provisions of the Industrial Relations Act 1980 applied, and the necessary representativeness was forty per cent of the bargaining unit.

3. Section 36 (7) of the Industrial Relations Act 1980 permitted the employer to apply to court for the withdrawal of the recognition if the percentage of fully paid up members falls below forty per cent of the bargaining unit.

4. The Industrial Relations Act 1980 was repealed and replaced by the Industrial Relations Act 2000 (as amended by the Industrial Relations (Amendment) Act 2005).

5. Section 42 (11) now permits an employer to apply for the withdrawal of recognition if the representativeness falls below that contemplated in section 42 (5) (a) for a continuous period of more than three months.

6. Section 42 (5) (a) stipulates that an employer shall recognize a union that has fifty per cent representiveness.

7. It is by no means clear whether a union which was recognized under the 1980 Act on the basis of forty per cent representiveness may now have its recognition withdrawn in the event that it cannot achieve a representativeness of fifty per cent. Prima facie, such a union has a vested right to maintain its recognition status so long as it has forty per cent representativeness, and the provisions of section 42 of the 2000 Act (as amended) cannot operate to remove such vested right.

8. In this matter it is not necessary for the court to decide this knotty question because:

8. 1 the Applicant alleges that the representativeness of the Respondent union has fallen to below forty per cent for a continuous period of more than three months;

8.2 the Respondent has not filed any papers denying this allegation or opposing the application.

9. Applicant's attorney stated from the bar that there is no current collective agreement which will be affected by the withdrawal of the recognition.

10. In the premises, the application is granted and the court makes an order

in terms of prayer 1 of the notice of motion.

The members agree.

P. R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT