IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 581/07**

In the matter between:

TOM MANYATSI AND 262 OTHERS **1st Applicant**

SWAZILAND PROCESSING REFINING AND ALLIED WORKERS UNION **2nd Applicant**

and

PALFRIDGE (PTY) LIMITED **Respondent**

CORAM:

P. R. DUNSEITH	**:**	**PRESIDENT**
JOSIAH YENDE	**:**	**MEMBER**
NICHOLAS MANANA	**:**	**MEMBER**
FOR APPLICANT	**:**	**B. S. DLAMINI**
FOR RESPONDENT	**:**	**B. MAGAGULA**

J U D G E M E N T – 06/02/08

1. The 2nd Applicant is the Swaziland Processing, Refining & Allied Workers Union, a trade union duly registered and recognized by the Respondent as entitled to represent the workers at the Respondent's undertaking.

2. The other Applicants are workers employed by the Respondent.

3. The Respondent manufactures refrigerators at its factory premises in Matsapha, Swaziland.

4. The Applicant has applied for an order declaring that the lock out and/or closure of the Respondent's business premises is wrongful and unlawful.

5. The Industrial Court has jurisdiction to hear and determine the dispute, which is an industrial relations dispute arising between employees and their employer.

6. In support of the application, the chairperson of the 2nd Applicant's Shop Stewards Committee has made an affidavit in which the following sequence of events is alleged:

   6.1 On or about 17th December 2007 the Shop Stewards Committee engaged the Respondent's Human Resources Manager with a request that the workers be paid their accumulated annual leave days before the Respondent closed for its annual Christmas holiday.

      It is common cause that the Respondent was due to close on 21st December 2007.

      The Human Resources Manager responded that the leave would be paid in January 2008 when the factory re-opened.

   6.2 On 19 December 2007 the Shop Stewards reported back to the workers regarding the refusal of their request. It was resolved that a meeting be convened during the lunch break on the same day to discuss the way forward on the issue.

6.3 The meeting was held. The workers wanted the Human Resources Manager to explain her decision, but she was not present. Since the lunch break was almost over, it was resolved to return to work and to convene another meeting at a later date.

6.4 When the workers wished to return to work, they discovered that the Respondent had locked all entrances to the workplace.

6.5 The lockout of the workers took place during normal working hours. The workers were willing and ready to resume work after their meeting. The Respondent did not follow the procedures prescribed in Part V111 of the Industrial Relations Act 2000 for a protected lockout. In the premises, the court should declare the lockout of the workers to be wrongful and unlawful.

7. The Respondent filed an Answering Affidavit in which it gave a very different version of what transpired on 19 December 2007. In summary, the following version is given by the Respondent's factory manager and corroborated by various witnesses:

7.1 Management were not aware of the reason for the meeting of workers during their lunch break and had not given their permission;

7.2 The normal lunch period was from 12-30 -100 p.m when the siren had signaled the end of the lunch break. After 1-00 pm, management issued a memorandum calling on the workers to return to their work stations.

7.3 A copy of the memorandum was produced in court. It is

addressed to the “striking staff”, and states:

“*re Ultimatum to return to work*

All employees must return to their work stations by 1:40 pm.”

7.4 A group of workers heeded the ultimatum and returned 20 to work About 20 minutes later- it was now apparently 1-30 p.m. – another group of workers entered the factory and returned to their duty stations.

7.5 The other workers were toyi-toying and singing on the sports filed. After they were called upon to return to work, they proceeded to the main entrance of the factory where they stood inside the gate and blocked the exit and entrance of vehicles. Stones were thrown at a van from VIP Security Services as it approached the gate, and the windscreen was smashed. A truck from the loading bay belonging to a transport contractor was prevented from driving out and the driver was threatened. Raw materials next to the sports filed were damaged . The workers were out of control.

7.6 Management closed the factory roller door leading to the loading bay, but the entrance door to the factory normally used by employees remained open.

7.7 At around 2 p.m. a union official arrived. After a discussion with management, he persuaded the workers to leave the entrance gate. The workers moved to the filed but did not return to their work stations inside the factory.

7.8 The Respondent could not operate its production line without the

188 workers who were refusing to resume wok. The assets and employees of the Respondent were in danger from the out-of-control workers. Since the factory was due to close in 2 days time for the annual holiday, a decision was taken to close the factory the same day. A notice was issued that the factory would remain closed.

7.9 The striking workers remained at the gated until 5.30 p.m.

7.10 When the Respondent re-opened for business in early January 2008, certain of the workers were refused entry to the premises. They were served with notices to attend a disciplinary enquiry and suspended from work pending the enquiry

8. In their Replying Affidavit, the Applicants insist that the Respondent closed all entrances to the factory and prevented the workers from returning to their work stations. Surprisingly, the Applicants do not deny that two groups of workers returned to their work stations after the ultimatum has been issued.

9. If willing workers were able to enter the factory and resume work when called upon to do so, it cannot be true that all entrances to the factory were closed. The Applicants have not given any explanation why the other workers were unable to follow the example of their colleagues and return to their work stations.

10. The only reasonable inference to be drawn in the circumstances is that the Applicants chose to ignore the ultimatum and remain away from their work stations.

11. It is by no means clear that the Respondent had any lawful right to give

the ultimatum in the first place. Clause 9.8 of the Recognition and Procedural Agreement deals with union meetings called by the shop stewards. Clause 9.8.1 refers to report back meetings following the monthly scheduled meetings between management and the shop stewards. Clause 9.8.2 states:

> "*Meetings may take place during lunch break, and in designated company premises, to a maximum of one (1) hour only."*

It is not stated whether clause 9.8.2 applies only to report back meetings or union meetings generally. If the latter, then the workers were entitled to continue their meeting until 1-30 p.m and the ultimatum was issued prematurely.

12. No legal argument was advanced to the court on the proper interpretation of clause 9.8 as read with clause 7.3 of the Recognition & Procedural Agreement. It is not necessary for the court to decide the point. Whilst it may be highly relevant to the question whether the workers were engaged in an illegal strike or work stoppage, it is not relevant to the issue we are called upon to decide, namely whether the Respondent unlawfully locked out the workers.

13. In our view the workers were not locked out of their work stations as alleged in the founding affidavit. A large number of workers were able to enter the factory and resume work.

14. Regarding the closure of the factory at 3-30 p.m at 19th December 2007, we find that this action was taken by the Respondent primarily in order to safeguard its assets and protect its employees from possible harm. We accept the evidence of the drivers of VIP Security Services and the transport contractor that they were blockaded and intimidated and, in the

case of the VIP driver, attacked and his vehicle damaged. Both witnesses are independent witnesses whose evidence can be relied on in the face of a bold and unconvincing denial from the Applicants. Even if the intimidation and violence emanated from a minority of workers, the decision of the Respondent to close its premises was reasonable in the circumstances.

15. Such a closure cannot be regarded as a lockout. Whilst the intention was to exclude the workers from the workplace for the remaining two working days of the year, the closure was not accompanied by any demand. Its primary purpose was to safeguard the assets and employees of the Respondent.

16. The Respondent says its decision to close early was also due to its inability to continue production in the absence of a large section of its workers. If such absence was due to a protected strike, the closure of the factory would have constituted an unlawful lockout- but the failure of the workers to return to work cannot by any stretch of the imagination be regarded as a protected strike.

17. Counsel for the Applicants has complained bitterly that when the application first came to court on 21 December 2007, he was persuaded to postpone the application until the new year on the undertaking of the Respondent that none of the workers would be locked out when they factory re-opened in January 2008. Applicant's counsel argues that the suspension of workers is a lock out, and Respondent's undertaking has been breached.

18. The court was not privy to the terms of the postponement agreed by counsel on 21st December 2007. In any event we are unable to designate a suspension pending disciplinary enquiry as a lock out. The right to take

disciplinary action falls within the Respondent's managerial prerogative and is also provided for in terms of the Recognition & Procedural Agreement.

19. In the final outcome, the application must fail. We are unable to declare that the Applicants were unlawfully locked out or that the closure of the Respondent's premises was unlawful.

20. The court is concerned about the apparent lack of proper communication between management and the shop stewards. Firstly, the Human Resources Manager never even mentioned to the Factory Manager or the Chief Executive Officer that the workers had made a special request for their leave to be paid before Christmas. Even if this request was made belatedly it deserved better consideration that an off hand rejection without any consultation. Secondly, if it is true that the shop stewards concealed the reason for the lunchtime meeting on 19th December 2007, then they are also responsible for the misunderstanding and confusion that ensued. Thirdly, management acted precipitately in issuing an abrupt ultimatum without properly ascertaining the nature of the grievance of the workers. The ultimatum itself falls short of the requirement for a fair ultimatum – see **Grogan : Workplace Law 417.**

21. Whilst the Respondent was entitled to take disciplinary action to sanction acts of violence and intimidation on its premises, the court considers that a degree of restraint and understanding should be exercised in respect of those workers who expressed their dissatisfaction at the rejection of their request only by delaying their return to work. With proper communication and dispute-handling skills, the situation could have been defused and the subsequent violence avoided.

22. The application is dismissed. The 2nd Applicant is to pay costs of the application, save that the Respondent is to pay the costs of the points it raised in limine.

The members agree.

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PETER R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT