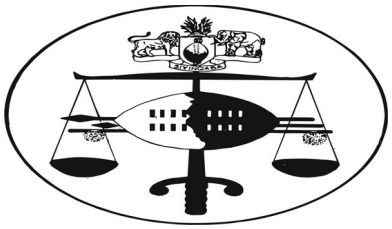

IN THE INDUSTRIAL COURT OF SWAZILAND

JUIDGMENT

Case NO. 345/2012

In the matter between:

SWAZILAND RAILWAY STAFF ASSOCIATION **Applicant**

And

SWAZILAND RAILWAY **Respondent**

Neutral citation: *Swaziland Railway Staff Association v Swaziland Railway (345 [2013]* SZIC 2 (FEBRUARY 15 2013**)**

Coram: NKONYANE J,
(Sitting with G. Ndzinisa & S. Mamba Nominated Members of the Court)

Heard : **13th DECEMBER 2012**

Judgment delivered: **15TH FEBRUARY 2013**

Summary:

The Applicant, a category A Public Enterprise agreed to raise its employees salaries without first obtaining the written approval of the Minister acting in consultation with the standing Committee on Public Enterprises (SCOPE). No written agreement signed by the parties and presented to Court for registration. The Public Enterprises Unit issued a Circular stopping the process.

Held---The agreement was properly put on halt in terms of the Public Enterprises (Control and Monitoring) Act No. 8 of 1989 as there was no written approval by the Minister responsible acting in consultation with SCOPE.
Held further--- The Court will not enforce an unwritten agreement pertaining to terms and conditions alleged to be emanating from the negotiation table, contrary to the provisions of Part V11 of the Industrial Relations Act.

JUDGMENT
15.02.13

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[1] This is an application for determination of an unresolved dispute instituted by the Applicant against the Respondent.

[2] The Applicant is a Staff Association duly registered in terms of the Industrial Relations Act, 2000 as amended.

[3] The Respondent is a category A Public Enterprise which has its headquarters in Mbabane.

[4] The facts of the application are largely common cause between the parties. They reveal that on 07th April 2010 the parties engaged in salary negotiations for two years, namely, 2010/2011 and 2011/2012.

[5] The negotiating team for the Respondent offered 7.3% for the financial year 2010/2011, and 9.5% for the Financial year 2011/2012. The negotiating team for the Applicant accepted the two offers but made a further request of 7.5% instead of 7.3% for 2010/2011, and 10.5% instead of 9.5% for 2011/2012. The Applicant stated in paragraph 8 of its application that, without any formal communication to it, the Respondent implemented the 7.5% increment for the Financial year 2010/2011. However, during the 2011/2012 Financial year, the Respondent did not effect the 10.5% increment or at least the 9.5% increment initially offered by the Respondent on the basis that the Standing Committee on Public Enterprises ("SCOPE") had put a stop to any salary increment for that Financial year.

[6] The Applicant accordingly reported a dispute to the Conciliation, Mediation and Arbitration Commission ("CMAC"). The dispute could not be resolved and a certificate of unresolved dispute was issued by the Commission.

[7] When the matter appeared before the court on 16th October 2012, the court was informed that the parties have agreed that the dispute can be resolved by the court without the leading of oral evidence as it falls to be decided by the court answering the question of law raised. The question of law is whether the Public Enterprises Unit can influence the decision taken by the Respondent to increase the salaries of the Respondent's employees.

[8] Heads of argument were filed on behalf of both parties for which the court is grateful. On behalf of the Applicant it was argued that;

8.1 The salary increment agreement started to be operational in 2010 and there was no legal basis to halt the process for the 2011/2012 Financial year.

8.2 The parties negotiated for two years 2010/2011 and 2011/2012.

8.3 SCOPE has no power to set aside the agreement entered into by the Respondent.

8.4 The Respondent had the mandate to negotiate with the Applicant.

8.5 If the 10.5% increment is not paid, at least the Respondent must pay the 9.5% that it offered.

[9] On behalf of the Respondent it was argued that:-

9.1 There was no collective agreement that was signed by the parties as proof that the parties had reached an agreement.

9.2 It was imperative in terms of the Industrial Relations Act, 2000 that the agreement be reduced into writing and filed with the Industrial Court in order for it to be binding between the parties.

9.3 PEU is the controlling body of Public Enterprises, it therefore had the mandate to approve or disapprove of any decision taken by the Respondent.

[10] From the evidence before the court, it is not in dispute that the Respondent is a category A public enterprise in terms of the **Public Enterprises**

(Control and Monitoring) Act No.8 of 1989 as amended. **Section 10** of this Act deals with approval of policy decisions and provides that;

"10. (1) no category A public enterprise shall do any of the following without the approval in writing of the Minister responsible acting in consultation with the Standing Committee;

a) ….

b) …

c) …

d) ….

e) Make any major adjustment to the level or structure of staff salaries and wages or other terms and conditions of service of its staff."

[11] In the present matter the PEU did issue Circular 1/2011 directed to all Chief Executives of Category A Public Enterprises and advised that;

"3. Please note that for 2011 in the case of wages and salaries SCOPE directed that "Major" should be 0% (zero percent)."

Since the PEU is the controlling body of all public enterprises, it had the mandate in terms of the Act to take the decision that it took and the Respondent had the duty to abide by the directive. Further, from this provision of the law, it is clear that the implementation of the agreement between the parties was subject to the approval of SCOPE.

[12] By stopping to effect the salary increments for 2011/2012 the Respondent was complying with the directive from SCOPE. SCOPE was acting in terms of the provisions of the Public Enterprises (Control and Monitoring) Act No.8 of 1989.

[13] There was no collective agreement that was signed by the parties and submitted to the court in accordance with Section 55 (2) of the Industrial Relations Act No.1 of 2000. The parties engaged each other at the negotiation table to deal with the issue of salary increment. The process was initiated by the parties and must be left in the hands of the parties until it is finalized. The court must not interfere. Once the parties reach an agreement, the law says that agreement must be reduced into writing, signed by the parties and submitted to the court for registration. The agreement becomes part of the terms and conditions of employment. In terms of section 57(1), once registered, the agreement *"shall be binding on the parties"*. That is the document that any of the parties can come to court

to enforce. There was no such document presented in court. If any party is of the view that the other party is reneging from an unwritten and unsigned agreement reached at the negotiation table, there is another remedy available to the affected party under the Industrial Relations Act.

[14] The provisions of **Section 10 of the Public Enterprises Act** are peremptory. There was no evidence before the court that the Respondent, a category A enterprise, did get the written approval of the Minister responsible acting in consultation with SCOPE to adjust the salaries of the staff.

[15] In the light of the above observations by the court, it follows that the Applicant's application ought to be dismissed, and that is the order that the court makes. In order to preserve good industrial atmosphere at the work place, the court will order each party to pay its own costs.

[16] The members agree.

N. NKONYANE
JUDGE OF THE INDUSTRIAL COURT

FOR APPLICANT: **MR. S.L. MADZINANE**
(MADZINANE ATTORNEYS)

FOR RESPONDENT: **MR. Z.D. JELE**
(ROBINSON BERTRAM ATTORNEYS)