

IN THE SWAZILAND INDUSTRIAL COURT OF APPEAL

Swaziland National Provident Fund

v

Swaziland Union of Financial Institutions and Allied Workers

ICA CASE NO. 5/96

Coram Sapire P MatsebulaJ and

Maphalala A J

For Appellant P.E. FLYN

For Respondent P.R. DUNSEITH

Judgment

(03/06/98)

The question has arisen in this appeal as to whether this court may and should award the costs of appeal to the successful Appellant.

Section 10(1) of the Industrial Relations Act 1996 (the Act) provides

" No costs shall be awarded by the Court except against a party held by it to have acted frivolously or vexatiously or with deliberate delay in the bringing or defending of a proceeding"

In terms of Section 2 of the Act, "Court" means the Industrial Court established under section 4 of the Act and the Industrial Court of Appeal established under section 17.

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On reading these to statutory provisions it would seem that the Industrial Court of Appeal may award costs in only the limited circumstance stated in Section 10(1).

Section 19(3) however provides.

"After hearing and appeal, the Industrial Court of Appeal may confirm, amend or set aside the decision or order against which the appeal has been noted or or make any other decision or order including an order as to costs, according to law and fairness."

It was argued that this section gave the Industrial Court of Appeal the power to award the successful party the costs of appeal, on the basis that costs follow the cause, even in those cases where the conditions for the award of costs prescribed in section 10(1) are not present.

As Sections 10(1) and 19(3) have to be read and interpreted to complement and not contradict each other, any order as to costs made in exercise of the powers conferred on the Industrial Court of Appeal, can either be a variation of an order as to costs made by the court a quo or as to the costs of appeal itself. In either case however the limitation placed upon the circumstances in which an award as to costs may be made applies.

It follows that the Industrial Court of Appeal may only order costs of appeal against the unsuccessful party, where the such party has been guilty of frivolousness or vexatiousness, or with deliberate dilatoriness in order to delay the hearing of the Appeal.

It has not been argued that these conditions apply. There will accordingly be no order as to costs.

S W Sapire P

J. Matsebula

S. Maphalala