

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT MBABANE CASE NO. 58/98

In the matter between:

PEAK TIMBERS LIMITED

APPLICANT

AND

SWAZILAND AGRICULTURAL

& PLANTATIONS WORKERS

UNION RESPONDENT

CORAM:

C. PARKER

: JUDGE

R. C. M. BHEMBE

: MEMBER

D. P. M. MANGO

: MEMBER

For the applicant

: Mr. M. Sibandze

For the respondent

: Mr. P. R. Dunseith

In this matter the applicant has brought an application in which it prays for an order that: (a) the applicant's employees who did not work on 6 September 1997, being Somhlolo day, are not entitled to be paid wages in respect of the said day; and (b) the applicant is not obliged to pay its employees in respect of gazetted public holidays unless the employees actually work on such public holidays.

In its replying answer the respondent has prayed that the applicant's claims be dismissed, and that the dispute be determined by the Court, and the Court should rather grant an order: (a) directing the applicant to pay its production workers their wages for eight hours worked at double time in lieu of the public holiday on 6 September 1997; and (b) for further and alternative relief.

As we see it, from the papers filed of record and submissions of Mr. Sibandze, for the applicant, and of Mr. Dunseith, for the respondent, the question that is clearly raised is: did the affected employees work on Saturday, 6 September 1997, which was a public holiday with full pay in terms of The Regulation of Wages (Manufacturing and Processing Industry) Order 1997 (1997 Manufacturing and Processing Industry Order)? This Regulation was passed under the Wages Act,

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1964 (Act No. 16 of 1964).

It is the applicant's contention that the affected employees did not work on Saturday, 6 September 1997 because: First, 6 September 1997 which fell on a Saturday is a day on which the applicant does not operate its plant and on which the affected employees did not work. Second, Saturday is not a working day for the affected employees. Third, the affected employees work five days a week, ie from Monday through Friday, for a total of 48 hours, which are spread over those five days, making it 9.6 hours a day. And that this is in keeping with regulation 6 (1) of the 1997 Manufacturing and Processing Industry Order.

The respondent contends per contra thus: The affected employees did work on the public holiday which fell on Saturday, 6 September 1997, for the following reasons: First, the affected employees work additional 1.6 hours per day on weekdays in lieu of working on Saturdays. That is to say, the eight hours of work which are in respect of Saturday have in effect been spread over Monday through Friday. Second, no overtime is paid to the affected employees in respect of the additional 1.6 hours

worked per day, ie from Monday through Friday, since these hours are worked in lieu of Saturdays. Third, since 6 September 1997 was a public holiday falling on a Saturday, the affected employees were not required to work the additional 1.6 hours per day for five days in lieu of the Saturday. But they worked these additional eight hours, and so they worked on a public holiday.

In the respondent's papers, the respondent avers that in terms of the 1997 Manufacturing and Processing Industry Order, "the normal hours of work for the production workers employed by the applicant are 48 hours per week, 8 hours per day."

With respect the 1997 Manufacturing and Processing Industry Order does not say so. The relevant provisions are contained in regulation 6 (1) of the said Order. Regulation 6(1) provides –

"The normal working week for employees other than security guards and casual labourers shall consist of not more than forty-eight hours of work."

Unlike similar regulations in other Wages Orders, eg The Regulation of Wages (Hotel and Catering Trades) Order, 1998 (regulation 6) and The Regulation of Wages (Motor Engineering Trades) Order, 1998 (regulation 5(1)), regulation 6 (1) of the 1997 Manufacturing and Processing Industry Order does not stipulate how the weekly hours of work are to be spread. Indeed, the present The Regulation of Wages (Manufacturing and Processing Industry) Order, 1998, in regulation 6(1) does not also stipulate how the weekly hours of work are to be spread over the days.

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But, for instance, under the aforementioned Hotel and Catering Trades Order the working week of 48 hours should be spread over six days; and under the aforementioned Motor Engineering Trades Order the working week of 48 hours should also be spread over five and a half days.

What this means, in our view, is that it is the intention of the regulation maker that as far as the manufacturing and processing industry is concerned an employer and his or her employees can agree as to how to spread the working week of 48 hours over the days.

In the present case, the applicant and the respondent agreed that the affected employees will work 9.6 hours per day from Monday through Friday, and do no work on Saturdays. That is, the applicant and the respondent have agreed that the normal working week for the affected employees which consists of forty-eight hours of work shall be spread over five days, ie Monday, Tuesday, Wednesday, Thursday and Friday. So, for these employees, by choice and agreement, Saturday is not a working day. Monday, Tuesday, Wednesday, Thursday and Friday are their working days. Thus they work 9.6 hours a day, which come up to 48 hours a week; and this is in accord with the stipulation in regulation 6 (1) of the 1997 Manufacturing and Processing Industry Order.

From the foregoing, we have come to the conclusion that the affected employees did no work - actually or otherwise - on Saturday, 6 September 1997, and also that Saturday is not a working day for the affected employees.

In the result the Order of this Court is that the affected employees who did not work on 6 September 1997 are not entitled to be paid wages for eight hours, or any hours at all, at double time in respect of that day.

There will be no order as to costs. The two Members concur.

DR. COLLINS PARKER JUDGE OF THE INDUSTRIAL COURT

10 August 1998