THE INDUSTRIAL COURT OF APPEAL OF SWAZILAND

Worker's Representative Council

Plaintiff

vs

Manzini Town Council

Defendant

Appeal No. 12B/98

Coram	Sapire, JP;
	Matsebula, J A
	Maphalala, J A
For Apellant	Mr. Jele
For Respondent	Mr. Shabangu

JUDGMENT

(06/04/2000)

This appeal is a further chapter in protracted litigation between the parties. The dispute arose out of a strike of the employees of the Manzini Town Council, in October 1989. The dispute was initially decided by the Industrial Court. Against its decision an appeal was made to the High Court which was then the court of appeal in terms of the then current legislation, the Industrial Relations Act 1980. The decision of this court of appeal in turn was taken on appeal to the Appeal Court, which reversed the decision of the High Court and ordered that

"The contract is terminated from the 23rd October 1989, that the employees are not to forfeit such privileges which may have accrued to them by October 1989 (the date of the purported dismissal) and that the matter be referred back to the Industrial Court to payment of compensation and otherwise as it thinks fit".

This required Industrial Court having to decide on compensation, which had to be paid to the workers for a procedurally unfair dismissal. It was not at any time decided that the dismissal was unlawful. It is clear from the judgment of the appeal court that the strike was unlawful. The Industrial Court had originally found that the strike was unlawful as the employees were engaged in essential services and as such prohibited in terms of section 65(2)(1)(c) of the Industrial Relations Act No .4 of 1980 from striking. Dunn J sitting on appeal did not reverse this. Browde J A in the judgment of the Court of Appeal expressly agreed with the judgment of Dunn J on this point.

The Industrial Court then proceeded to reconsider the matter in terms of the decision of the Court of Appeal. By the time the matter had to be decided, the former Industrial Relations Act had been replaced by new legislation, namely the Industrial Relations Act of 1996. Whether it did so expressly or not the court a quo was required to consider whether the substantive provisions of the former or the latter act were to be applied. As to procedural matters it was the provisions of the new act, which were to govern. The court a quo decided to apply the provisions of the latter act in relation to the substantive remedy

afforded the injured party, and the calculation of the award to be made as directed by the Court of Appeal, notwithstanding that it was not in force at the time that the cause of action accrued.

Only at the end of some argument was a previous decision of this court produced in which the issue was dealt with. In the previous decision to which we were referred, namely the Havelock Asbestos Swaziland Ltd. vs David Scholes1 the same question arose.

This court observed that at the time of the unfair dismissal the Industrial Relations Act of 1980 was in force. Thereafter and while the case was still pending the Act was repealed and replaced with the Industrial Relations Act 1996. In terms of the earlier act the compensation, which the court a quo could award was limited into an amount equal to six months salary? The successor provides for increased awards up to the equivalent of 24 months salary. When the latter act was promulgated the court a quo permitted the respondent to amend his claim for damages so as to claim the larger amount than provided for in the new act. We came to the conclusion that in this the court a quo erred on a matter of law and that it was the earlier act, which governed. This decision is binding on us unless we are convinced that we were wrong in the first instance. The arguments advanced to us have not convinced us that the earlier decision is wrong and accordingly the real point in issue in this case must be decided in favour of the appellant. There is a general rule that statutes affect future matters only, in regard to substantive issues. Procedural issues may be otherwise. See Curtis v Johannesburg Municipality 2.

Protea International (Pty) Ltd v Peat Marwick Mitchell & Co3

1 unreported judgment in this court of 16/04/99

2 1906 TS 308 at 311

3 1990 (2) SA 566 (A)

The matter is therefore once again referred to the Industrial Court to compute the question of an award in accordance with the provisions of the 1980 Act. It is open to the court a quo to determine the award, only on the basis that the dismissal of the workers was procedurally unfair.

Sapire, J P

Matsebula, J A

Maphalala, J A