IN THE INDUSTRIAL COURT OF ESWATINI

Case No. 346/2019

In the matter between:

SWAZILAND ELECTRICITY SUPPLY MAINTENANCE AND ALLIED WORKERS UNION	Applicant
And	
ESWATINI ELECTRICITY COMPANY	1st Respondent
NATIONAL ELECTRICITY SUPPLY MAINTENANCE AND ALLIED WORKERS UNION	2nd Respondent
CONCILIATION MEDIATION AND ARBITRATION COMMISSION	3rd Respondent

Neutral Citation: Swaziland Electricity Supply Maintenance and Allied Workers Union vs Eswatini Electricity Company and Others [346/2019] *SZIC 02* [03 February 2020]

Coram: **T.L. DLAMINI - ACTING JUDGE**
(Sitting with D.P.M. Mmango and E.L.B. DLAMINI Nominated Members of the Court)

Date Heard: 11 November 2019

Date Delivered: 03 February 2020

JUDGEMENT

Serving before court is an urgent application seeking the following prayers;

[1] Dispensing with the Rules of this court as they relate to time limits for service.

[2] That this honourable court condones the Applicant's non compliance with the Rules of court and deals with this matter as one of urgency.

[3] That pending determination of the unfair labour dispute by the Conciliation Mediation and Arbitration Commission, a *rule nisi* be issued interdicting the 1st Respondent from embarking on the process of paying out performance bonused for 2018/19 financial year to all employees using the bonus policy impugned at CMAC.

[4] That the 1st Respondent be ordered to pay the costs of this application in the event of unsuccessful application.

[5] That the Applicant be granted further and/or alternative relief.

[6] The scope of prayer 3 was narrowed down by counsel for the Applicant to apply to members of Applicant only upon a question from the Bench on its applicability.

[7] The Applicant's case is that it seeks a temporary interdict to stop payment of Bonuses for the year 2018/19 financial year for all members of the Applicant pending determination of the Arbitration of the dispute on the bonus policy. The said Arbitration process by CMAC is set to proceed on the 21st November 2019.

[8] Applicant contends that it concluded a collective agreement on performance bonus scheme on the 1st April 2013 with the Respondent. The said Bonus agreement was to endure for 24 months unless extended in writing, cancelled by the parties or replaced by a new bonus agreement. The said collective agreement is marked

"SESMAW1". Applicant contends further that the collective agreement was duly registered by this court and was applied even after its expiry by the parties herein particular the years 2016/17. During the month of September 2018 the Respondent paid out bonuses to all its employees. However the bonuses were paid in terms of a new bonus policy whose terms were never negotiated with Applicant or consulted before its implementation. Applicant raised its concerns with Respondent's management which did not yield any results. Hence the matter was placed before the 3rd Respondent (CMAC).

[9] The first Respondent contends that;

The collective agreement sought to be enforced by the Applicant has lapsed by effluxion of time, as it was neither extended nor a new one made to replace the expired one. Further the terms of the said collective agreement were not incorporated into the individual contracts of employment of the members of the Applicant.

[10] The said collective agreement has been replaced by operation of law by the bonus policy scheme which was developed pursuant to the

promulgation of the Public Enterprises Unit circular relating to bonus payments for all Public Enterprises. The Respondent, being a public Enterprise is duty bound by **Section 10 of the P.E.U. Act** to adhere to directives from the P.E.U.

[11] The Respondent had also raised the question of Locus standi of Applicant to seek an order that affects other employees and Management who are not members of the Applicant and have not been cited in this matter. However this was clarified by the Applicant's counsel that he is not shaking the whole apple Tree as it where, but the order sought was to operate for the benefit of its members only.

[12] The facts between the parties herein are common cause and the points of departure are very few. Being that the first Respondent introduced a new bonus payment policy on which Applicant contends it was not consulted upon or invited for negotiations on same. The converse from the Respondent being that Applicant was consulted on same and that the matter of the new bonus policy was entirely out of its hands.

Hence Applicant acquiesced to the new bonus policy when it accepted payment in the years 2017/18.

[13] The law on temporary interdicts is well settled and the principles therein are well set out in the case of **Mahlobo Edmund Dlamini and Sipho Samson Tsabedze versus Chief Hayindi Dlamini – High Court Case No. 4633/10**. The learned Chief Justice set out the principles as follows:

"It is settled law that in order to establish and interim interdict the Applicant must establish that it has a prima facie right even though open to some doubt, that there is a well grounded apprehension of irreparable harm to the Applicant if the interim relief is not granted and ultimately succeeds in establishing his right, that the balance of convenience favours the granting of interim relief and the Applicant has no other satisfactory remedy". In same vein, His Lordship the Chief Justice stated as follows: **"The Court weighs up the likely prejudice to the Applicant if the interim interdict is refused and the refusal is shown to have been wrong against the likely prejudice to the Respondent if the interim interdict is granted and this is later**

shown to have been wrong. Similarly the court must also have regard to Applicant's prospects of success".

[14] The Applicant's cause of action is the collective agreement from which bonus payments are made by the Respondent. The Respondent states that the said collective agreement has expired by effluxion of time. Bonus payments can only be made in accordance with the new bonus policy as dictated to by **Section 10 of the P.E.U. Act**. It is clear from the above that Bonus payments will be made to the Applicant. All Applicant is seeking is that the third Respondent should determine whether the bonus payments should be made under the elapsed collective agreement or under the new bonus policy.

[15] It is the Court's view that the Respondent will not suffer any prejudice if it withholds payment of bonuses to members of the Applicant pending determination of the Arbitration process with the third Respondent. In terms of **Section 8(4) of the Industrial relations Act**, the court may make any order it deems reasonable which will promote the purpose and objects of the Industrial Relations Act when deciding any matter in particular promoting harmonious Industrial

relations. It is the Court's view that the balance of convenience favours the grant of an interim interdict restraining the Respondent from paying out performance bonuses to members of the Applicant only pending the finalization of the Arbitration process with the 3rd Respondent.

[16] In the premises the court makes the following order.

(1) First Respondent is interdicted and restrained from paying out performance bonuses to members of the Applicant only pending finalization of the Arbitration process with 3rd Respondent.

(2) No order as to costs.

The Members agree.

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T. L. DLAMINI
ACTING JUDGE OF THE INDUSTRIAL COURT

For Applicant: Mr. M.L.K Ndlangamandla

For Respondents: Mr. Z.D. Jele