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LEGAL NOTICE NO. 52 OF 1982

THE INDUSTRIAL RELATIONS ACT, 1980

(Act No. 4 of 1980)

THE INDUSTRIAL COURT RULES, 1982

(Under Section 12)

In exercise of the powers conferred upon me by section 12 of the Industrial Relations Act, 1980 and in consultation with the Attorney-General, I hereby make the following Rules:-

Citation and commencement.

1. These Rules may be cited as the Industrial Court Rules, 1982 and shall come into force on the 1st July, 1982.

Interpretation.

2. In these Rules, unless the context otherwise requires —

“the Act” means the Industrial Relations Act, 1980;

“application” means an application or reference made to the Court for the determination or settlement of any question or trade dispute, or for any order or injunction which the Court may lawfully make under the Act;

“decision” includes an order of the Industrial Court;

“legal practitioner” has the same meaning as in the Legal Practitioners Act, 1964;

“member” means a member of the Court;

“Registrar” means the Registrar of the Industrial Court who shall be appointed by the Minister.

Submission of applications to Court.

3. (1) Any person who makes an application to the Court shall —

- (a) in the case of an application for the determination of any matter (other than a dispute) under Parts III, IV, V, VI, VIII or IX or under section 50 (4) or 53 (1) of the Act, make such application in the form prescribed in Form A of the Schedule hereto;
- (b) in the case of an unresolved dispute falling to be dealt with under section 58 or 60 of the Act, make such application in the form prescribed in Form B of the Schedule hereto;
- (c) in the case of an application by the Minister under section 53 of the Act, make such application in the form prescribed in Form C of the Schedule hereto;
- (d) in the case of an application for the interpretation of a decision under Rule 11 (3), in the Form prescribed in Form D of the Schedule hereto.

- (2) The Court shall not take cognizance of any dispute which has not been reported or dealt with in accordance with Part VII of the Act.

Registration of applications and notification of decisions.

4. (1) On receiving an application where the applicant seeks a decision against another party (which other party is hereinafter referred to as “the respondent”) the Registrar shall—

- (a) enter the details of the application in a register to be kept and maintained by him;
- (b) assign to the application a case number and the names of the parties, which together shall constitute the title of the proceedings;
- (c) as soon as possible, but in any case within five days of the receipt of such application, serve a copy of the application including the title of the proceedings, upon the respondent.

(2) On receiving an application made by the Labour Commissioner under subsection (3) or (4) of section 58 or section 60 of the Act, the Registrar shall, in addition to complying with paragraph (1) of this Rule, serve a copy of the application, including the title of the proceedings, on the Labour Commissioner.

(3) On receiving an application by the Minister for an injunction under section 63 (1) of the Act, the Registrar shall —

- (a) enter the details of the application in the register referred to in Rule 4 (1); and
- (b) assign to the application a case number and heading which, together, shall constitute the title of the proceedings.

(4) On receiving an application for the interpretation of a decision under Rule 11 (3), the Registrar shall comply with the provisions of paragraph (1).

(5) Without prejudice to section 63 (3) of the Act, where the Court makes a decision the Registrar shall, not later than five days after the making of the decision, serve a copy thereof on the Minister, the Labour Commissioner and the parties to the application and, if such decision is made in terms of section 58 or section 63 of the Act, cause the decision to be published in the Gazette and, if the President so directs, in a newspaper registered in Swaziland.

Submission of memoranda by parties.

5. (1) Each party to an application made to the Court shall, within such period as the President may direct, being not less than seven days after the date of such direction, present to the Court six copies of a memorandum setting out:-

- (a) in the case of the applicant —
 - (i) the title of the proceedings;
 - (ii) full particulars of each matter included in the application and supported by a statement setting out the reasons therefor;
 - (iii) the person, persons or classes of person, if any, to whom the application relates;
 - (iv) such submissions as the applicant wishes to make in support of his application;
 - (v) the names and addresses of any witnesses, if any, whom it is proposed should be called in support of the application;
 - (vi) the name and address of the legal practitioner or any other person (if any) whom the applicant wishes to represent him in the application;
- (b) in the case of a respondent —
 - (i) the title of the proceedings;
 - (ii) such reply as he may wish to give in respect of the matter raised in the application;
 - (iii) an admission of such submissions contained in the application or in the applicant's memorandum as the respondent admits and a denial of any such submissions as the respondent does not admit;

- (iv) any submissions which the respondent may wish to make in support of his opposition to any of the matters set out in the application;
- (v) the names and addresses of any witnesses, if any, whom it is proposed should be called in support of the respondent's submission;
- (vi) the name and address of the legal practitioner or any other person (if any), whom the respondent wishes to represent him.

(2) The Court may, on the application of either the applicant or the respondent, grant an extension of time specified for the submission of memoranda.

Court may seek clarification.

6. Where the Court considers that either the memorandum of the applicant or of the respondent does not adequately set forth the particulars required by the Court or if for any other reason the Court requires clarification or amplification of any submission made by either party, the Court may require that party to supply such further particular's clarification or amplification to the Court and the other party.

Notification of hearing and preliminary directives.

7. (1) The President shall determine the time, date and place for the hearing of any application and the Registrar shall, at least seven days before the date of such hearing, cause a notice to be served on the applicant and the respondent and any person or organization which may be declared by the Court to be an interested party.

(2) In the event of any dispute as to whether an organization or a person is an interested party, the decision of the Court shall be final.

(3) Before any hearing of an application, the Court may give any directives it considers necessary for the disposal of the application.

Proceedings of the Court, etc.

8. (1) All proceedings of the Court shall be open to the public but the Court may, in any particular case, determine whether any hearing or part thereof shall be held in camera.

(2) Witnesses appearing before the Court may be cross-examined.

(3) The Court may admit evidence on affidavit presented to the Court.

(4) Every document submitted by a party shall be in the original or, if the court is satisfied that the original is not available, by means of a copy certified to the satisfaction of the Court.

(5) An organization or a person declared to be an interested party under Rule 7, whether or not it is representing an applicant or a respondent and whether or not it is summoned by the Court, shall have the right to call witnesses to testify.

(6) If a party fails or both parties fail to appear at a hearing or part thereof, the provisions of paragraph (7), (8) and (9) shall apply and, for the purposes of these Rules, an appearance shall be construed as including an appearance through a person representing a party in accordance with section 15 of the Act.

(7) Where the applicant fails to appear, the Court may —

- (a) if such failure occurs before the hearing has actually commenced and the respondent so requests, dismiss the application or, whether or not the respondent so requests, adjourn the hearing;
- (b) if such failure occurs after the hearing has actually commenced and the case for the applicant has not been concluded, adjourn the hearing or dismiss the application; or

- (c) if such failure occurs after the case for the applicant has been concluded, proceed with or adjourn the hearing or dismiss the application or make a decision.

(8) Where the respondent fails to appear, the Court may —

- (a) proceed with or adjourn the hearing; or
- (b) after hearing the case for the applicant make a decision.

(9) Where both parties fail to appear, subject to paragraphs (7) and (8), the Court may adjourn the hearing or make a decision.

(10) The Court may recall any witness or call any other person to give evidence on any matter relevant to the application or to the hearing and may order the production of any documents.

(11) The parties to an application may with the permission of the Court, call additional witnesses.

Decisions of the Court.

9. (1) Every decision of the Court shall be a reasoned decision and shall be delivered at an open sitting of the Court and recorded in a document signed by the President.

(2) Where any member disagrees with the majority decision of the Court, such disagreement and the reasons therefor shall be recorded in a document signed by him.

Notification of decisions of the Court.

10. As soon as practicable after the conclusion of a hearing, the Registrar shall notify the parties of the date on which the decision of the Court will be delivered.

Other powers of the Court.

11. (1) The Court may —

- (a) either of its own volition or at the request of any party, extend the time appointed by these Rules for the performance of any act, even though the time appointed therefor has passed;
- (b) postpone the time and date fixed for any hearing;
- (c) dismiss the proceedings if an applicant gives notice that he wishes to withdraw his application;
- (d) if the applicant and respondent agree in writing upon the terms of a decision to be made by the Court, give a decision accordingly without a formal hearing;
- (e) on good cause shown, condone any failure of strict compliance with these Rules, and in particular, but without derogating from the foregoing, in the case of an urgent application, the Court or the President acting in Chambers may dispense with the forms or services provided in these Rules and dispose of the matter at such time and in such place as the President may deem fit.

(2) The Court shall cause any patent clerical mistake, incidental error or omission to be rectified without further reference to the parties and shall cause the Registrar to notify the parties of such mistake, incidental error or omission and the rectification thereof.

(3) In the event of either an applicant or respondent requiring interpretation of all or part of a determination of any matter to which he was a party before the Court he shall notify the Court as soon as may be in accordance with Form D in the Schedule and the Court shall upon receipt thereof proceed to give its interpretation.

Application of High Court Rules and power to regulate procedure.

12. Subject to the Act and these Rules —

- (a) where these Rules do not make provision for the procedure to be followed in any matter before the Court, the High Court Rules shall apply to proceedings before the Court with such qualifications, modifications and adaptations as the President may determine; and
- (b) where, in the opinion of the President, the High Court Rules cannot be applied in the manner provided for in paragraph (a), the Court may determine its own procedure.

S6
SCHEDULE
FORM A.

Rule 3 (1)

The President,
The Industrial Court,
P.O. Box 19,
MBABANE.

Copy to the Labour Commissioner, P.O. Box 198, MBABANE.

APPLICATION TO THE COURT

In accordance with the Industrial Relations Act, 1980, and the Industrial Court Rules, 1981, application is hereby submitted to the Court for the determination/settlement* of the following question(s) (Each question to be detailed, if necessary on a separate sheet).

.....

.....

.....

.....

.....

The name and address of other parties affected by this application and to whom a copy of the application has been sent are:-

- (1)
- (2)
- (3)

The name, title and address of the applicant are:-

.....

.....

.....

Date:

Applicant:

Note: * Delete as necessary

S7
SCHEDULE

Rule 3 (1)

FORM B

The President,
The Industrial Court,
P.O. Box 19,
MBABANE.

APPLICATION FOR DETERMINATION OF AN UNRESOLVED DISPUTE

In accordance with Section 58 of the Industrial Relations Act, 1980 and the Industrial Court Rules, 1981 application is hereby made for the determination of an unresolved dispute between:

..... the employer
and representing

the following class or classes of employee of whom none/the following classes of employee * are employed in an essential service as defined by Section 65 of the Industrial Relations Act.

The issues in dispute between the parties are (detail each issue, if necessary on a separate sheet).

.....

.....

.....

The unresolved dispute falls/does not fall */to be dealt with under Section 58 (2) of the Industrial Relations Act.

Attached hereto is —

- (i) a certificate signed by the Labour Commissioner stating that the dispute is an unresolved dispute;
- (ii) a letter signed by both parties to the dispute requesting the Labour Commissioner to refer the dispute to the Court for determination. (Where the matter is one which falls to be dealt with under Section 58 (2) this letter may be omitted).

The issues forming the unresolved dispute have been discussed between the parties concerned in accordance with the procedures agreed between them, but without reaching agreement.

Date:

Applicant:

Notes: * Delete as necessary

- (1) Where the application is being made by the Labour Commissioner, copies of the application must be sent to the parties to the dispute.
- (2) Where the application is being made by one of the parties to the dispute, copies of the application must be sent to the Labour Commissioner and to the other party to the dispute.
- (3) Where the unresolved dispute concerns employees in an essential service, the Labour Commissioner is required to apply to the Court for settlement of the dispute and the consent of the parties thereto is not necessary.
- (4) Delete references in the application as necessary.

FORM C.

The President,
The Industrial Court,
P.O. Box 19,
MBABANE.

APPLICATION FOR INJUNCTION

In accordance with Section 63 of the Industrial Relations Act, 1980 and the Industrial Court Rules, 1981, application is hereby made for an injunction against the following parties:

The grounds on which the application is based are as follows:

Date: _____ Minister

Note: A copy of this application must be sent to the parties named in the application and to the Labour Commissioner.

FORM D.

The President,
The Industrial Court,
P.O. Box 19,
MBABANE.

APPLICATION FOR INTERPRETATION OF DECISION

In accordance with Rule 3 (1) of the Industrial Court Rules, 1981, application is hereby made to the Court for the interpretation of clause(s).....of the decision made by the Court in Case Number,.....

The applicant */respondent in that case submits that the determination requires interpretation in respect of the above mentioned clause(s) and enclosed is a memorandum in support of this submission. The applicant */respondent wishes/does not wish * to be heard in respect of this application and intends/does not intend * to call witnesses for this purpose.

Date:..... Applicant/Respondent:.....

Note: The application for interpretation must be signed by either the applicant or respondent in the case in respect of which the interpretation is sought.

* Delete as necessary.

C.J.M. NATHAN
Chief Justice

MBABANE,
13th May, 1982.

LEGAL NOTICE NO. 53 OF 1982

THE INDUSTRIAL RELATIONS ACT, 1980

(Act No. 4 of 1980)

THE INDUSTRIAL RELATIONS REGULATIONS, 1982

(Under section 82)

In exercise of the powers conferred upon him by section 82 of the Industrial Relations Act, 1980, the Deputy Prime Minister hereby makes the following Regulations:—

Citation.

1. These Regulations may be cited as the Industrial Relations Regulations, 1982 and shall come into force on the 1st July, 1982.

Deductions (from wages) of fees payable to organisation.

2. The form of authorisation for the deduction from wages of fees payable to an organisation under section 37 of the Industrial Relations Act, 1980, shall be in the form set out in the First Schedule.

Form of Notice in essential services.

3. The form of notice to be posted up by employers in an essential service under section 65 of the Industrial Relations Act, 1980, shall be in the form set out in the Second Schedule.

FIRST SCHEDULE

Section 37

AUTHORISATION FOR THE DEDUCTION FROM WAGES OF FEES PAY-
ABLE TO AN ORGANISATION

To:

.....("the organisation")

1. I hereby certify

- (a) that I am employed by
(employer's name and address);
- (b) that I am eligible to be a/a member of the organisation;
- (c) that the organisation is authorised to request my employer to deduct from wages due to me the amount ofeach calendar month and thereafter remit the amount so deducted to the organisation in payment of fees due to the organisation by me.

2. This authorisation takes effect as from the end of the month next following the month shown in the date hereunder.

3. This authorisation may be revoked by me by written notice to the organisation whereupon the organisation shall:—

- (a) notify my employer of such revocation within seven days of the receipt thereof;
- (b) request the employer to cease making the deduction authorised by paragraph 1(c) with effect from the pay period next following the month in which the written notice of revocation was submitted to the organisation by me.

Date:

.....
Employee

NOTICE

PROHIBITION OF STRIKES AND LOCKOUTS IN ESSENTIAL SERVICES

The attention of all employers and employees engaged in essential services is drawn to section 65 of the Industrial Relations Act which specifically prohibits strikes and lockouts in essential services. This section is reproduced below.

Strike action or lockouts prohibited in essential services.

65. (1) Without prejudice to section 62, the provisions of this section shall apply only to employees engaged in essential services as defined in sub-section (6) hereof.

(2) An employer or employee carrying on or engaged in an essential service shall not take strike action or institute a lockout in connection with any such essential service.

(3) An employer who contravenes sub-section (2) is liable on conviction to a fine of one thousand Emalangeni or to imprisonment for one year or to both such fine and imprisonment.

(4) An employee who contravenes sub-section (2) is liable on conviction to a fine of five hundred Emalangeni or to imprisonment for six months or both such fine and imprisonment.

(5) An organisation, the holder of an office in an organisation or any other person who calls for, or causes strike action to be taken in an essential service, or induces or persuades any worker in such service to take such action shall be guilty of an offence and liable on conviction —

- (a) in the case of an organisation to a fine of one thousand Emalangeni, and the Court may cancel the certificate of Registration issued under Part III;
- (b) in the case of the holder of an office in an organisation to a fine of five hundred Emalangeni or to imprisonment for six months or both, and such person shall be disqualified from holding office in any organisation for a period of five years after conviction therefor; or
- (c) in the case of an individual who is not the holder of an office in an organisation to a fine of two hundred Emalangeni or to imprisonment for three months or to both such fine and imprisonment.

(6) (a) For purposes of this section, essential services, by whomsoever such services are rendered to the Government or to any person are—

- (i) water services;
 - (ii) electricity services;
 - (iii) fire services;
 - (iv) health services;
 - (v) sanitary services;
 - (vi) postal, telephone, telegraph and broadcasting services;
 - (vii) teaching services in any school as defined in section 2 of the Education Act;
 - (viii) any service in a civil capacity in respect of the Government of Swaziland.
- (b) The Minister may, by notice in the Gazette, amend the list of essential services in paragraph (a).

(7) Every employer in an essential service shall cause to be posted up, on premises used for the purpose of that service, a printed notice containing the provisions of this section.

(8) Any employer, other than the Government, who fails to comply with sub-section (7) shall be guilty of an offence and liable on conviction therefor to a fine of two hundred and fifty Emalangeni.

A.R. SHABANGU
Permanent Secretary

MBABANE,
16th June, 1982.