

IN THE COURT OF APPEAL FOR THE REPUBLIC OF BOTSWANA
HELD AT LOBATSE

CIVIL APPEAL NO. 1 OF 1999
[HIGH COURT MISCA. APPLICATION NO. 465 OF 1998]

In the matter between:

BOTSWANA RAILWAYS

Appellant

and

BOTSWANA RAILWAYS AMALGAMATED UNION
TOLANI LUCAS MASWIBILILI
PATRICK DAFIDE CHENGETA

1st Respondent
2nd Respondent
3rd Respondent

Mr. C.D.A. Loxton [SC] and Mr. A.E. Franklin with Mr. B.B. Tafa for the
Appellants
Mr. D. Boko for the Respondents

J U D G M E N T

CORAM: A.N.E. AMISSAH P.
P. H. TEBBUTT J.A.
M. KUMLEBEN J.A.

AMISSAH P.:

The Appellant appeals from a judgment of Reynolds J. in which the learned Judge held that the Respondents were civil servants in Botswana, and therefore, not bound by specified provisions of the Trade Disputes Act [Cap. 48:02]. The decision is of some importance because, if it is correct, members of the 1st

Respondent Union would automatically get the same salary increases as were granted to members of the Civil Service by Government in July 1998. It would also mean that the Respondents would not be governed by the Trade Disputes Act, and would, therefore, not be subject to sections 43 to 45 of that Act. If, on the other hand, the learned Judge was wrong, the salary increases to Civil Servants would not automatically enure to the benefit of the 1st Respondent's members, and any strike or other industrial action taken by them to achieve that objective or any other benefit, without compliance with sections 43 to 45 of the Trade Disputes Act, would be illegal.

The case accepted by the learned Judge a quo was that some time after receiving a petition delivered on 1 October 1998 by the 1st Respondent demanding:

- [a] the same salary increases for its members as were given to Civil Servants in July 1998;
- [b] that a Commission of Inquiry be established to investigate certain practices "occurring within the Appellant's field of operations; and
- [c] the termination of the Appellant's General Manager's contract of employment,

the Appellant's management suspected that the members of the 1st Respondent Union were about to engage in strike action to press their demands. The Appellant considered that if such industrial action took place, it would be highly prejudicial to the interests of the country. The Appellant also considered that such industrial action would be contrary to the provisions of the Trade Disputes Act, as amended by Act 23 of 1992. Accordingly, an urgent application was brought ex parte by

the Appellant in the High Court for the issue of a rule nisi, inter alia, to interdict the Respondents from taking any such action. The rule also required the Respondents to show cause why orders should not be made by the Court declaring the alleged threatened action by members of the 1st Respondent's Union illegal as being in breach of the Trade Disputes Act. Further declarations and interdicts were sought, including a declaration that the members of the 1st Respondent Union were not Civil Servants, and consequently, not exempted from the application of the Trade Disputes Act.

The urgent application made by the Appellant was granted. On the return date, the learned Judge, after hearing arguments of Counsel, decided that:

“.....the applicant's [now Appellant's] employees, in regard to the functions, operations and status are Civil Servants, and are not bound by Sections 43, 44 and 45 of the Trade Disputes Act [Cap. 48:02]”

He accordingly discharged the rule issued by the Court on 31 October 1998, with costs.

In arriving at his decision, the learned Judge took the view that the question of the status of the Appellant's employees had been adjudicated upon before. Thus, he said:

“The issue arose directly in the Industrial Court in 1995 and 1996 in two different matters. These were Selefa Ditshwane v. Botswana Railways Organisation, case No. IC 90/95 and Samuel Ranthoyakgale v. Botswana Railways Organisation, case No. 30/96. In both cases it was held that the terms of the Botswana Railways Act, 22 of 1986 [the enactment presently under examination] indicated that the employees of the then respondent were civil servants, and the provisions of the Trade Disputes Act were not applicable to them as a result. Similar conclusions were reached, indirectly, in matters appearing both

before this Court, and in a subsequent Industrial Court case, both of which involved a statute couched in virtually identical terms to the Botswana Railways Act, 22 of 1986 [the Act]. These cases are Botswana Postal Services Union v. Director-General [for Postal Services] High Court case No. 111/97, and Botswana Postal Services Workers Union v. Botswana Postal Services, case No. IC 20/96."

In adopting the decisions given in the cases referred to in the above citation, the learned Judge drew inspiration from three statutory provisions. From the Botswana Railways Act, his reference was to section 10[11] which he quoted as follows:

"Officers and employees of the Botswana railways [sic], shall in so far as it is not inconsistent with the provisions of this Act, be public officers" [the learned Judge's own underscoring].

This quotation is not an exact reproduction of the statute, because the Act itself uses the word "Organisation" instead of "Botswana railways". From the Constitution, the learned Judge cited section 127 [1] which defines "public officer" in the following manner:

"In this Constitution unless the context otherwise requires:

'public office' means, subject to the provisions of subsections [2] and [3] of this section, an office of emolument in the public service;

'public officer' means a person holding or acting in any public office;

'the public service' means the civil service of the Government."

And from the Interpretation Act [Cap. 01:04] his reference was to section 49 which defines "public office", "public officer" and "public service" by stating that:

**"In an enactment –
'public office' or 'public officer' and 'public service' have the
same meanings as in the Constitution."**

In this appeal, the decision of the Judge a quo and the reasons he gave therefor have been attacked by Counsel for the Appellant as erroneous. The first question for our consideration, therefore, is whether the learned Judge's judgment can be sustained.

The approach adopted by the learned Judge a quo is simple, direct and easy to understand. The Constitution of Botswana in section 127[1] defines "public officer" as a person holding or acting in any public office and "public office" as an office of emolument in the "public service", which in turn is defined to mean "the civil service of the Government". The Interpretation Act, which applies to the interpretation of all enactments, widens the definition of these expressions in the Constitution to apply to all enactments by stating, in section 49, that in an enactment, "public officer" has the same meaning as in the Constitution. The Botswana Railways Act, the enactment which established the Appellant organisation, provides in section 10[11] that officers and employees of the organisation shall in so far as is not inconsistent with the provisions of the Act be public officers. Ergo officers and employees of the Botswana Railways are civil servants.

Counsel for the Respondents supported this reasoning by pointing out that the relationship between the Appellant and the Government, as represented by the Minister responsible, is so close that it is impossible to conclude otherwise than that the Appellant is part of the Government; and that the Appellant is really one of

the commercial arms of the Government, with administrative and management powers delegated by Government to the Appellant's Board of Management. Thus Counsel points to the fact that according to section 4[1] of the Botswana Railways Act, the Board of Management of the Appellant is appointed by the Minister. According to section 7 of the Act, the members of the Board may be paid such remuneration, fees and allowance for expenses as may be approved by the Minister. The General Manager of the Appellant is, under section 10[1], appointed by the Minister. Section 16 of the Act gives the Minister power, after consultations with the Board, to give the Appellant organisation such directions of a general or specific character as to the exercise or performance of its powers. Such control exercised by the Minister is, according to this argument, wholly inconsistent with the contention that the Appellant organisation is separate and distinct from Government.

The position taken by the Appellant amounts to a submission that despite the suggested close relationship of its organisation with the Government, the reasoning of the learned Judge a quo was, with respect, superficial. According to its argument, a close examination of the Botswana Railways Act and the Trade Disputes Act, shows that the Appellant organisation was not intended to be part of Government, in the sense recognised by the Trade Disputes Act. The specific statutes dealing with the establishment and organisation of the Botswana Railways Organisation and with matters of employment, trade unions and employers, and the settlement of industrial disputes have to be looked at, not merely the definitions in the Constitution or the Interpretation Act, to give a correct evaluation of the status

of the employees of Botswana Railways Organisation vis a vis the Trade Disputes Act. That argument seems to me to merit attention.

The definitions of “public office”, “public officer” and “public service” in section 127[1] of the Constitution were obviously given for the purpose of interpretation of the Constitution itself. No disrespect or disregard is paid to the Constitution if an enactment has its own definition or usage of words which does not fit in exactly with the definition as found in the Constitution. The learned Judge a quo noted, however, that the definitions of the expressions mentioned above were given wider application by section 49 of the Interpretation Act to cover all other enactments, in that, that section provided that “In an enactment” those expressions should have the same meanings as in the Constitution. I agree. But that does not mean that in every enactment, whatever its own definitions, if any, the expressions “public office”, “public officer”, or “public service” must invariably be given the same definitions as provided by section 49 of the Interpretation Act. It is important to bear in mind that even in the Interpretation Act which extends the definitions of the expressions to all other enactments, section 2 provides that:

“2. Each provision of this Act applies to every enactment [whether enacted before, on or after the commencement of this Act] being-

[a] the Constitution;

[b] an Act [including this Act] of the Parliament of Botswana;

[c] an instrument made [directly or indirectly] under an enactment,

except in so far as the contrary intention appears.” [Emphasis supplied]

Accordingly, where an enactment has its own definition which does not conform to the corresponding definition in the Interpretation Act, or uses words and expressions differently from the Interpretation Act, it is the definition or usage in the particular enactment i.e. the dictionary in that enactment, which should apply to that enactment and not the definition in the Interpretation Act.

The Respondents, as we have noted, justify their claim to the status of civil servants by the closeness of their relationship to the Minister responsible for the administration of the Botswana Railways Act and by reference to section 10[11] of the Act which provides that “Officers and employees of the Organisation shall in so far as it is not inconsistent with this Act be public officers.” I will comment on the relationship between the Government and the Appellant organisation presently. With regard to section 10[11] of the Botswana Railways Act, I give emphasis to the clause “in so far as it is not inconsistent with this Act” because I think it is of some significance. The provision itself suggests that there are, or at the very least, there may be, situations or occasions disclosed in the Act itself when, due to the inconsistency arising from the provisions of the Act, the officers and employees of the Organisation cannot be public officers.

In the subsection immediately following section 10[11] that is, in section 10[12], appears this provision:

“[12] Officers and employees of the Organisation may become members of an appropriate trade union.”

The provision presents the first obstacle to accepting the officers or employees of the Appellant organisation as public officers for employment relations

or trade union purposes. The question for consideration which immediately suggests itself from this provision is whether the employees of Appellant if they are to be regarded as public officers could be members of a trade union or trade unions. I must here advert to the fact that I do not necessarily accept the proposition, as suggested in the course of argument, that the reason for the use of the expression "an appropriate trade union" in section 10[12] of the Act means that officers and employees of the Appellant organisation could each choose a particular existing trade union, as he thinks appropriate, to join. The use of the word "appropriate" may well be due to the realisation by the Legislature that certain grades of officers or employees of the Organisation may choose by reason of their particular interests, to form, or be members of, a union separate or distinct from the union to which other grades belong. But I do not have to decide that point for the purposes of this case.

The enactment which governs the affairs of trade unions is the Trade Unions and Employers Organisations Act [Cap. 48:01]. But according to that Act, an employee does not include a public officer. Section 2[1] of the Act defines the word "employee" for the purposes of that Act as:

"`employee' means any individual who has entered into a contract of employment for the hire of his labour.
 Provided that the expression does not include –
 [i] a public officer, or
 [ii] a person employed by a local authority unless he belongs to the industrial class.

Section 21[1] of that Act provides that:

"21[1] No person shall be admitted to membership of a trade union unless he is an employee in an industry with which the trade union is directly concerned."

And "trade union" is also defined in section 2[1] of the Trade Unions and Employers' Organisation Act as:

"`trade union' means an organisation consisting, wholly or in part, of more than 30 employees the principal objects of which include the regulation of relations between employees and employers or employers' organizations or between employees and employees."

If a public officer is not an employee for the purposes of the formation of, or admission to, a trade union, under what regulatory regime would the employees of the Appellant organisation who join an appropriate trade union fall? That question, when put, could elicit no satisfactory answer from Counsel for the Respondents.

The enactment which governs trade disputes is the Trade Dispute Act. That Act, according to its preface, provides "for the settlement of trade disputes generally and for the settlement of trade disputes in essential services, for the control and regulation of industrial action and for matters incidental thereto." It is to that Act, therefore, which we must first turn to find out matters such as, who are subject to its operation, what is a trade dispute, who could be parties to a trade dispute regulated by it, who may take industrial action in furtherance of a trade dispute, and under what conditions etc. Trade disputes occur between employees and their employer.

The Trade Disputes Act defines "trade dispute" in section 2[1] as:

“ ‘trade dispute’ means any dispute or difference between an employer or employees or between employees and employees in that trade or industry or with the terms and conditions of or affecting that employment.”

Section 2[1] also defines “employee” as:

**“ ‘employee’ means any person who has entered into a contract of employment for the hire of his labour:
Provided that the expression shall not include any officer or servant of the Government unless he belongs to a category of such officers or servants the members of which are declared by the Minister under the Employment Act to be employees for the purposes of that Act.”**

It will be noticed from a reference to the definition of “employee” in section 2[1] of the Employment Act [Cap. 47:01] that the two definitions are practically the same except that the Employment Act definition goes on to specify that the declaration of the application of the definition to any category of officers or servants of Government, which by section 175 can only be made by the Minister responsible, must be made by regulations. If no applicable regulations have been made by the Minister, an officer or servant of the Government cannot be an employee under the Employment Act or the Trade Disputes Act. It is common cause that no declaration in this respect has been made by the Minister.

Section 2[1] of the Trade Disputes Act also defines an “employer” as:

“ ‘employer’ means any person who has entered into a contract of employment to hire the labour of any person and includes –

- [a] the Government in respect of any of its officers or servants who belong to a category of such officer or servants the members of which are declared by the Minister under the Employment Act to be employees for the purposes of that Act;**
- [b] a public authority, and**

[c] the person who owns or is carrying on for the time being or responsible for the management of the undertaking, business or enterprise of whatever kind in which the employee is engaged."

It is significant that "the Government" in sub-paragraph [a] and "a public authority" in sub-paragraph [b] are separately mentioned and differently treated in the definition of "employer" because there is a sense in which the expression "the Government" would include not only the central government but also local government institutions and other agencies with duties of a public nature which would entitle them to be described as "government". But the expression could also be used in a narrower sense meaning the central authority governing a State, thus excluding other public authorities and agencies. It seems to me that it is in that narrower sense that the expression "the Government" is used in the Trade Disputes Act.

On the question of trade unions, it would make little sense if Appellant's employees were to be permitted by section 10[12] of the Botswana Railways Act to join an appropriate trade union but then be precluded from doing so because they are officers or servants of the Government.

If the members of the Botswana Railways Organisation do join an appropriate trade union, they must surely have to join a union which is directly concerned with catering for the railway employees. The manifestation of that proposition is the establishment and continuing existence of the 1st Respondent itself. But if they are public officers, and therefore cannot come within the definition of "employees" in the Trade Unions and Employers' Organisations Act,

or cannot be admitted into a trade union, they are left in limbo with no law regulating their affairs unless they take refuge under the Public Service Act. They cannot derive any benefits under the Trade Disputes Act because they reject the obligations under the Act, and with that rejection, they reject regulation by the whole Act.

As stated earlier, the learned Judge a quo declared that the employees of the Appellant, in regard to their functions, operations and status were civil servants. If that were so, they must come under the regime of the Public Service Act, 1998 [Cap 26:01] and related legislation. Their supreme administrative authority would be the Director of Public Service Management. Power to appoint, remove or exercise disciplinary control in the case of an officer on the superscale [other than in an office to which section 110 of the Constitution applies], is vested in the Permanent Secretary to the President. The same powers are vested in the Director of Public Service Management in all other cases. The Act and related regulations make detailed provisions for matters such as appointment and dismissal, conditions of employment and discipline of public servants. These same matters, however, are dealt with in the case of employees of the Appellant by the Botswana Railways Act and its regulations. It is the Board of Management which, according to section 10[6] of the Act, determines the terms and conditions of employment of the Organization's staff. It is the Board, acting on the recommendations of the General Manager which, according to section 10[7], determines the appointment, dismissal and discipline of persons designated by the Appellant as being senior officers. The

power of appointment, dismissal and discipline of all other staff is conferred by section 10[8] on the General Manager or such senior officers as he may delegate.

It is quite clear to me, after the foregoing review of the various statutes referred to above, and related matters, that it was not the intention of the Legislature to exclude the employees of the Appellant Organisation from the operation of the employment and trade union legislation like the Employment Act and the Trade Union and Employers Organizations Act. Were it not so, the foundation enactment of the Organisation would not have created the elaborate structure for the employment, dismissal and discipline of the employees with the authority to control these matters left to the Board or the General Manager of the Organisation. Nothing would have been easier than for the Legislature to leave these matters to the regime created by the Public Service Act. It is, to my mind, inconceivable to allow the officers and employees of the Organisation to become members of appropriate trade unions if their unions or themselves were not to be subjected to the Trade Unions and Employers' Organisations Act or the Trade Dispute Act. If they were civil servants, they would be beyond the control of this Act, without having any regulatory regime to govern their affairs.

The relationship of Government with a public corporation like the Appellant Organisation cannot be denied. But the relationship, close though it may seem, because of Minister's powers under the Botswana Railways Act, does not make a public corporation wholly owned by Government, part of the Government in the sense of the governing power of the State. There would otherwise have been no need to create a separate corporate entity with power to sue and be sued; or with

assets of its own against which execution of judgment can be levied. The requirement that the Organisation shall conduct its affairs on sound commercial principles in section 17 of the Act and the provisions on finance in the Act appear inconsistent with the normal operations of a Ministry or Department of State. Section 3[1] of the Act governing the Organisation provides that sections 3 and 6 of the State Proceedings [Civil Actions by or against Government or Public Officers] Act [Cap. 10:01] do not apply to the Organisation. The only reason for this is to make the Organisation a distinct and separate entity in proceedings in Court. It is an Act which negates the thesis advanced by the Respondents that the Organisation is part of Government in the sense which takes its employees out of the ambit of the membership of trade unions and of the operation of the Trade Disputes Act. Other examples may be given, but I think I have said enough on this point in this case.

There is no doubt in my mind that the employees of the Appellant Organizations perform an essential public service, namely the organisation and operation of railway transport services for the community.

Considering all these matters, I am of the opinion that as the Botswana Railways Organisation is not "the Government" as set out in the Trade Disputes Act, the learned Judge a quo erred in his decision that the officers and employees of the Botswana Railways Organisation were civil servants. They are not "officers or servants of the Government". It follows that they are subject to the Trade Disputes Act, and as employees of an essential service, subject to sections 43,44 and 45 of the Act .

Mr. Boko who appeared for the Respondents, raised two further aspects which more correctly fall within the realm of costs, although in respect of the first one of them he submitted that it was a sufficient ground for dismissing the appeal. It was that the Appellant had no reasonable cause for apprehension that the members of 1st Respondent were about to go on strike and that its seeking of the interdict restraining them from doing so was not only premature but indeed unnecessary. A finding to that effect would, so Mr. Boko submitted, mean that the relief sought was correctly refused by the Court a quo and consequently for this reason alone, apart from any finding on the main issue in the appeal, it should fail. In support of this argument, Mr. Boko outlined how the First Respondent's officials were at the time in discussion with the management of Appellant in regard to the wages issue. With not only its officials but also its members being spread over wide areas of Botswana, consultation with them on management's proposals took time. When the Appellant approached the Court on 31 October 1998 that consultative process was still being conducted and, apart from speculative rumours, so the contention went, there was nothing to suggest even remotely that the Respondents were either planning or about to embark on a strike or that they were about to violate the Trade Disputes Act. As against this, the Appellant's counsel submitted that on 23 October 1998 the Appellant required of the 1st Respondent an undertaking that neither it nor its members would be embarking upon strike action. The response, so it was argued, was equivocal. Instead of stating clearly that it did not intend to embark on strike action, it questioned the source of the Appellant's information. Although it reiterated that it was still in the process of consultation

this was scant comfort to the Appellant as such consultations could have ended at any moment and, having regard to the fact that First Respondent considered that it was not bound by the provisions of the Trade Disputes Act in regard to essential services, it could have embarked on strike action at any time. The absence of an undertaking not to go on strike thus created a reasonable apprehension entitling the Appellant to bring its application as a matter of urgency.

The Court a quo did not consider this issue or come to any conclusion on it. In view of the disputes of the fact that are apparent on the versions of the parties as to what preceded the bringing of the application it would have been impossible for the Court a quo to come to any finding on them. This court is in a similar position. It is accordingly unable to accede to Mr. Boko's invitation for it to dismiss the appeal on the grounds that the application was brought unnecessarily or prematurely.

The second aspect raised by Mr. Boko is that the relief sought by the Appellant was so broad and its effect on 1st Respondent and its members so wide that Respondents were obliged to contest the application in the Court a quo for that reason alone, apart from the main issue raised in the application. This would have cost implications in respect of the proceedings in the Court a quo.

There is substance in these submissions. In its notice of motion Appellant sought not merely an interdict in respect of the apprehended strike action but went further and sought a number of declarators of wide-ranging import materially affecting the 1st Respondent and its members. In this Court the Appellant, obviously aware that those declarators were inappropriate for the relief it required

from the Court a quo, placed before the court a draft order, in the event of the appeal succeeding, which did away with most of the declarators sought and contained only one viz. "that members of the 1st Respondent are not public servants for the purposes of the Trade Disputes Act". That was subsequently amended to substitute for "public servants" the words "officers or servants of the Government". It is apparent from the foregoing that the orders now being sought from this court differ materially from those which Respondents were called upon to face in the Court a quo. That they were justified in opposing them is undoubted and such justification is underlined by the Appellant's now seeking another declarator to the original ones sought by it. It needs to be said that a decision on whether the employees are "public servants" as initially sought, or whether the appellant is part of the "Government", as subsequently contended, are both matters of importance to the parties.

The Appellant submits that the issue of whether members of 1st Respondent are or are not officers or servants of the Government for the purposes of the Trade Disputes Act, and therefore subject to its provisions was always at the heart of the relief sought by the Appellant and that the substantial bulk of the costs would have been incurred even if the relief now sought was sought ab initio. The Appellant's counsel submitted that if it is to be deprived of any of its costs such deprivation must be limited to those extra costs brought about by the relief sought being broader than it should have been.

That the Respondents are on this latter aspect entitled to some consideration in regard to any costs order which was made against them in regard to the

application in the Court a quo appears to be justified. Again on that first aspect, had the issue of the necessity for that application or its having been brought prematurely been the sole issue in the Court a quo, the disputes of fact in regard to it and an inability, as a result, for the court to make a finding on it would probably have resulted in no order as to costs being made. Having regard to both these aspects it seems to be fair to all parties if this court should order that, as it has found that the Appellant should have succeeded in the Court a quo on the main issue before it, the Respondent should be ordered to pay two thirds of the Appellant's costs in that court.

Finally on the question of the costs of this appeal Mr. Boko has severely criticised the Appellant for its conduct of the appeal. He points out that the Respondents were served with a comprehensive notice of appeal that was substantially pruned in Appellant's heads of argument. These heads were then abandoned in their entirety at the appeal and Appellant's new argument was then raised with which the Respondents were then forced to deal at extremely short notice. The inconvenience to the court and to the Respondents, he submits, is manifest and this court should mark its disapproval with an appropriate order as to costs. What Mr. Boko has said is, of course, completely correct. However, he and the Respondents instead of asking for a postponement with an appropriate costs order, to deal with the new argument, chose to deal with it immediately. They did so without any apparent embarrassment or difficulty. Mr. Boko's strictures are no doubt warranted. Therefore, while Appellant has succeeded in its appeal and is therefore entitled to its costs, there are two countervailing considerations to be

taken into account in favour of the Respondents. First, the fact, as indicated, that the Appellant substantially shifted its ground on appeal. Second, the Appellant conceded that the order granted a quo was too wide and was materially altered by Counsel before us during argument. The appellant rightly conceded that this may well have a bearing on the costs of appeal. It seems to this Court that having regard to the factors mentioned, and for the sake of fairness, it would be appropriate to award the Appellant two thirds of the costs of appeal.

In the event, the appeal against the decision of the Court a quo is allowed and the following orders made:

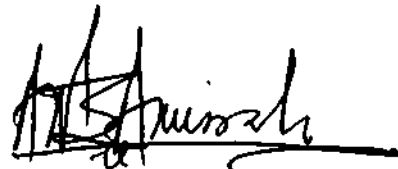
1. Declaring that members of the 1st Respondent are not officers or servants of the Government for the purposes of the Trade Disputes Act;
2. Declaring that the threatened or planned industrial action by the 1st Respondent's members that may have been planned to take place on Monday 2 or Tuesday 3 November 1998 would have constituted a breach of the provisions of the Trade Disputes Act [Cap. 48:02] and therefore amounted to an illegal and unlawful strike;
3. Interdicting and restraining all the Appellant's employees who are members of the 1st Respondent from embarking on any industrial action or from taking any steps whatsoever which would result in the withholding of labour or the retardation or obstruction of normal operations of the Appellant, whether by way of a general strike, a go-slow, a sit-in or otherwise, pursuant to any instructions or order or resolutions that may be passed or issued by or on behalf of the 1st Respondent in relation to the subject-matter of the present dispute between the parties; without compliance with the Trades Disputes Act.
4. Interdicting and restraining the 2nd and 3rd Respondents or any other officer or agent of the 1st Respondent from causing, countenancing, supporting or instigating any industrial action involving employees of the Appellant and members of the 1st Respondent, in relation to the present dispute between the

parties, without those persons first complying with the Trade Disputes Act.

5. As to costs –

- [a] the Respondents are ordered to pay two-thirds of Appellant's costs incurred in the Industrial Court.
- [b] the Respondents are ordered to pay two-thirds of Appellant's costs of the appeal, such costs to include the costs of two Counsel.

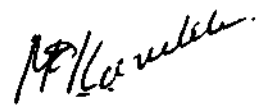
DELIVERED IN OPEN COURT AT LOBATSE THIS 23RD DAY OF JULY, 1999.


A.N.E. AMISSAH
[PRESIDENT]

TEBBUTT J.A., I agree


P. H. TEBBUTT
[JUDGE OF APPEAL]

M. KUMLEBEN J.A., I agree


M. KUMLEBEN
[JUDGE OF APPEAL]