

**IN THE COURT OF APPEAL OF BOTSWANA**  
**AT LOBATSE**

**CIVIL APPEAL NO. 39/2001**

In the matter between:

**BAMB WORKERS UNION**

**Appellant**

And

**AGRICULTURAL MARKETING BOARD**

**Respondent**

**Mr. K. P. Gaoboi for the Appellant**

**Mr. B. B. Tafa for the Respondent**

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**J U D G M E N T**

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**CORAM: Korsah J.A.**  
**Lord Sutherland J.A**  
**Dibotelo J. A**

**SUTHERLAND J.A:**

A trade dispute arose between the appellant Union and the respondent Board. The dispute related to the size of wage and salary increases for the appellant's members. It was agreed between parties at a pre-trial meeting that members of the appellant went on industrial action from 4<sup>th</sup> to 13<sup>th</sup> January 2000 inclusive. It is not now suggested by the respondent that the strike was unlawful as that is defined in Section 2(1) of the Trade Disputes Act (Cap 48:02). The respondent

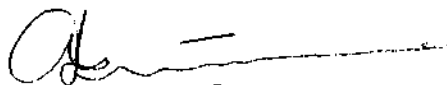
made deductions from wages and salaries in respect of all the appellant's members who were on strike in respect of the period mentioned above. The appellant maintained that these deductions were unlawful. That dispute was referred to the Commissioner of Labour, who in turn referred it to the Industrial Court. After hearing parties, the Judge President of the Industrial Court determined that the respondent was entitled to invoke the rule 'no work, no pay', and that the lawfulness of a strike did not deprive an employer of the right to invoke that rule. It is against that decision that the present appeal is taken.

A number of grounds of appeal were lodged, and these were expanded upon in the appellant's heads of argument. However, at the hearing before this court it was accepted that the decision of the Industrial Court was correct in holding that the common law rule of 'no work, no pay' was not superseded by any statutory provision, and was also correct in its application of the rule in the circumstances of this case. This effectively disposed of all of the grounds of appeal which had been advanced by the appellant. Having made these concessions, counsel nevertheless sought to argue that the Industrial Court had failed to have regard to the provisions of the collective labour agreement, and in particular Clause 3.2 of the Memorandum of Agreement. It then transpired that this document did not appear in the record, which was perhaps not surprising as it had never been referred to in the court below, nor did it make any appearance in the grounds of appeal or the heads of argument. The court refused to allow counsel to proceed with an argument based on the provisions of a document which was making its

making its very first appearance at this stage of the proceedings. Counsel then accepted that there was nothing else he could say, and having rejected a suggestion that he should withdraw the appeal invited the court to proceed to judgment. Counsel for the respondent was not called upon on the merits of the appeal, but moved for costs on the higher scale on the basis that the appeal was devoid of merit and ultimately only proceeded on the basis of a document which was not properly before the court.

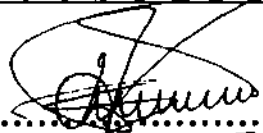
As I am entirely satisfied that this appeal is wholly devoid of merit, it will be dismissed. The appellant having conceded that the original grounds could not be argued should have withdrawn the appeal. Instead Counsel endeavoured to argue a point not previously taken and based on a document which had not previously seen the light of day. When the impossibility of that approach was pointed out to him, he nevertheless insisted that the court proceed to judgment. In these circumstances the costs will be on attorney and client scale.

**DELIVERED IN OPEN COURT THIS <sup>30<sup>th</sup></sup> DAY OF JANUARY 2002**



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**LORD SUTHERLAND**  
**(JUSTICE OF APPEAL)**

  
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**K.R.A. KORSAH**  
**(JUSTICE OF APPEAL)**

  
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**M. DIBOTELÓ**  
**(Ag. JUSTICE OF APPEAL)**