

CONCILIATION, MEDIATION AND ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI

MNZ 481/2006

IN THE MATTER BETWEEN:

STAWU: MUSA FAKUDZE APPLICANT

And

SMI TRANSPORT RESPONDENT

PATRICK B. MKHONTA ARBITRATOR

AWARD - 19 MARCH 2007 (EXPARTE)

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A. Details of Parties, Representation and Hearing

1. The Applicant in this dispute is STAWU for Musa Fakudze of P.O. Box 3362 Manzini. I will, hereinafter, refer to STAWU for Musa Fakudze as the Applicant. The Respondent is SMI Transport of P.O. Box 1944, Matsapha. I will, hereinafter, refer to SMI Transport as the Respondent or the employer.

2. The arbitration hearing was held on 9 February, 2007 at 10.00 am at CMAC in Manzini. The arbitration hearing had originally been scheduled to take place on 14 December 2006. However, the arbitration could not proceed as planned due to the absence, without any reasonable explanation, of the Respondent. A second invitation was issued for the parties to attend the arbitration on 12 January 2007. Again the arbitration could not take place on this day due to the absence of the Respondent, without reasonable explanation. The only party that was present i.e. the Applicant agreed that the arbitration be postponed to give the Respondent one last chance to attend. Accordingly, a third invitation was issued for the parties to attend the arbitration on 9 February 2007 at 14.30 hours. On this day only one party was present i.e. the Applicant. The Applicant confirmed that he personally served the Respondent with a copy of CMAC's Form 9, being an invitation to arbitration set for 9 February 2007 at CMAC Manzini. In the absence of the Respondent for the third time without any reasonable

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explanation a decision had to be taken as to the fate of the arbitration. The party that was present made an *ex parte* application for the proceedings to continue in order to bring the dispute to finality. The application was granted. Accordingly the arbitration proceedings continued in the absence of the other party i.e. the Respondent.

3. The Arbitrator explained the arbitration process to the party that was present and proposed a procedure to be followed in the proceedings. The party that was present confirmed that the dispute had been properly brought before the arbitration; and agreed on the language to be used.

4. The arbitration proceedings were recorded.

B. Background

The Applicant, a former employee of the Applicant, reported a dispute to the Commission on 12 June 2006. Both parties were invited for conciliation and participated in the conciliation meeting(s) that took place in the month of July 2006 at the Commission's offices in Manzini. However, the conciliation process was unsuccessful because the parties failed to reach a settlement. Subsequently, the dispute was declared an unresolved dispute. By agreement of the parties, this dispute was referred to arbitration on 8 August 2006 and I was appointed as Arbitrator on 29th September, 2006.

C. Issues in Dispute

The Applicant alleges that the dispute arises out of the Respondent's decision to dismiss him from employment. He argues that there was no valid reason or a fair reason for his dismissal.

D. Questions to be decided

It must be determined whether the Applicant was unfairly dismissed or not.

E. Summary of Evidence and Arguments on the Merits THE APPLICANT'S CASE

The Applicant submits that:

- (I) he was employed at SMI Transport as a conductor (assistant to a driver) responsible for the company truck(s) that ferry goods from Swaziland to South Africa;
- (II) he was paid a salary of E 600.00 per month;

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- (III) he was dismissed unfairly by the Respondent on 20 May 2006 after having been in continuous employment from 4 July 2005.
- (IV) his dismissal stemmed from a motor vehicle accident that occurred in South Africa involving a company truck/lorry for which he was the conductor;
- (V) he was in the truck/lorry when the accident happened. The truck was driven by Calvin, a company employee/driver who had been assigned to (drive) it;
- (VI) he sustained injuries when the truck in question crashed and/or overturned and went to hospital for treatment. He consulted several times with the doctor until he was given the green light to return to work. Two copies of medical reports (annexure A and annexure B) were submitted as proof of treatment for the injury sustained;
- (VII) the accident was reported to the Company branch in Durban -South Africa. He was advised by the Company officials in South Africa to produce a written report explaining how the accident happened. The report was produced as required;
- (VIII) the Respondent informed him, verbally, whilst still in Durban -South Africa, that he has been dismissed from the Company. No letter was written to this effect. Upon learning of his dismissal he returned to Swaziland;

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- (IX) he considers this decision to have been unfair since there was no valid reason for the company to reach the decision to dismiss him;

APPLICANTS PRAYERS

Therefore the Applicant submits that he is entitled to the following:

1. Notice Pay- E 783.73
2. Leave Pay- E 376.75
3. Underpayment - E 3 837.30
4. Maximum Compensation for unfair dismissal

F. Analysis of Evidence and Argument

The arbitration must determine whether the Company's decision to dismiss the Applicant was fair or not. The Applicant's case is that the truck to which he had been assigned to work as assistant crashed whilst in the course of duty in South Africa. The vehicle was being driven by Calvin, a company driver, who had officially been assigned to drive it from Swaziland to South Africa on the day in question. The Applicant got injured and went to hospital where he received treatment. He submitted documentary

proof to support this

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particular claim - this being the two medical reports from St Augustine Hospital.

The Respondent was absent in these arbitration proceedings. Therefore, the arguments advanced and evidence adduced by the Applicant were not challenged. I can only base my decision on the evidence of the party that was present.

It must be case that the Applicant was dismissed for an offence connected to the accident involving the truck in which he was an assistant or conductor. However, from the evidence before this arbitration there is nothing to suggest that the Applicant committed an offence that warranted a dismissal or any other penalty for that matter.

G. Conclusion

I find on a balance of probabilities that the Respondent's decision to dismiss the Applicant was substantively unfair. I can find no valid or fair reason for the dismissal of the Applicant.

H. Award

1. The Respondent shall pay the Applicant the total amount of E 9,600.16 not later than 30 April 2007.

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2. The break down of the amount to be paid to the Applicant is as follows:

1. Notice Pay- E 783.73
2. Leave Pay- E 376.75
3. Underpayment - E 3 837.30
4. Maximum Compensation for unfair dismissal for six months only -E 4702.38 March 19 2007

PATRICK MKHONTA

ARBITRATOR

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