

CONCILIATION, MEDIATION AND ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI MNZ 107/08

In the arbitration matter between:-

CELUCOLO SIFUNDZA Applicant

And

SPLASH PLUMBING Respondent

ARBITRATION AWARD

DATE OF ARBITRATION: 14th November 2008

VENUE: CMAC OFFICES, MANZINI

CORAM:

Arbitrator : Commissioner M.B. Mkhonta

For Applicant : Mr. Bongani Mkoko (Applicant's Representative)

For Respondent : Mr. Bongani Simeiane (Respondent's Representative)

1. PARTIES AND HEARING:

The Applicant in this matter is Mr. Celucolo Sifundza of P.O. Box 4055, Manzini, hereinafter referred as the Applicant or as the employee.

The Respondent is Splash Plumbing of P.O. Box 593, Manzini, hereinafter referred as the Respondent, or the employer.

2. REPRESENTATION

The Applicant was represented by Mr. Bongani Mkoko. The Respondent was represented by Mr. Bongani Simelane.

3. ISSUES IN DISPUTE

Applicant submitted that Zamahlubi Transport dismissed him unfairly both procedurally and substantively on the 26th January 2008 following reports of theft of company property. Applicant claimed notice pay, severance pay, additional notice, underpayments, overtime, leave pay and twelve (12) months compensation for unfair dismissal.

On the other hand, Respondent submitted that Applicant was fairly dismissed following theft of company property and that his claim for payments was therefore not warranted nor acceptable.

4. BACKGROUND INFORMATION

The background information to this dispute is that Applicant was employed as a Watchman at Respondents undertaking from 1st

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September 2005. Applicant remained in continuous employment at Splash Plumbing until his services were terminated on 26th January 2008. Applicant submitted that his termination followed an incident of theft of company property and that he was accused by Respondent of colluding with the thieves. In addition, Applicant submitted that his dismissal was verbal and that no disciplinary hearing preceded the dismissal decision.

Respondent confirmed that Applicant was employed as a Watchman from the 1st September 2005 until the 26th January 2008. Respondent however noted that Applicant willingly signed an admission of theft through a signed confession hence there was no need for a disciplinary hearing.

The dispute was conciliated by CMAC and a Default Judgement was issued against the Respondent which was however rescinded in May 2008 by CMAC. Both parties then consented to arbitration and I was appointed Arbitrator on the 14th November 2008.

5. ANALYSIS OF EVIDENCE AND ARGUMENTS

At the start of the process of submitting evidence, it became clear that the parties wished to once again explore the possibilities of mutually settling this dispute. With the consent of the parties, the Arbitrator then undertook a process of conciliation within the arbitration'.

Various settlement options suggested by the Respondent were discussed between the parties and a full and final settlement

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agreement wherein the Respondent would pay the Applicant an amount of E5, 184.00 was finally agreed to by the Applicant.

6. CONCLUSION

In view of the acceptance of the settlement offer by the Applicant, a Memorandum of Agreement dated 14th November 2008 (copy attached) was then entered into by the parties, which signalled that the dispute had been successfully resolved by mutual consent. The terms of the agreement were: -

- a) That the Respondent undertook to pay Applicant the amount of E5, 184.00;
- b) That this payment was in full and final settlement of the dispute Applicant had with the Respondent and Applicant confirmed that he will no longer have any dispute with Splash Plumbing whatsoever, arising from his employment to Splash Plumbing; and
- c) That payment by Splash Plumbing will be made in three (3) equal installments starting November 2008 payable to CMAC Manzini.

7. AWARD

Based on the Memorandum of Agreement and in terms of the details of the report of dispute, I hereby make the following award: -

- a) That the Respondent pay Applicant the amount of E5, 184.00;
- b) That this payment is in full and final settlement of the dispute Applicant had with the Respondent and Applicant confirms that

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he will no longer have any dispute with Splash Plumbing whatsoever, arising from his employment to Splash Plumbing; and

- c) That payment by Splash Plumbing will be made in three (3) equal installments starting November 2008 payable to CMAC Manzini.

DATED AT MANZINI ON THIS 28TH DAY JANUARY 2009.

MAX B. MKHONTA CMAC ARBITRATOR