



**CONCILIATION, MEDIATION AND ARBITRATION COMMISSION
(CMAC)**

HELD AT MANZINI

SWMZ 277-08

In the arbitration matter between:-

MDUDUZI MOKOENA

Applicant

and

EMAPHOTHOLOZI BUTCHERY

Respondent

ARBITRATION AWARD

DATE OF ARBITRATION: 11th November 2008

VENUE: CMAC OFFICES, MANZINI

CORAM:

Arbitrator : Commissioner M.B. Mkhonta

For Applicant : Mr. Sandile Zwane (Applicant's Representative)

For Respondent: Ms. Lobenguni Manyatsi (Respondent's
Representative)

1. PARTIES AND HEARING:

The Applicant in this matter is Mr. Mduduzi Mokoena of P.O. Box 7442, Manzini, hereinafter referred as the Applicant or as the employee.

The Respondent is Emaphotholozu Butchery of P.O. Box 1816, Manzini, hereinafter referred as the Respondent, or the employer.

2. REPRESENTATION

The Applicant was represented by Mr. Sandile Zwane. The Respondent was represented by Ms Lobenguni Manyatsi.

3. ISSUES IN DISPUTE

Applicant submitted that Respondent dismissed him unfairly both procedurally and substantively on the 5th June 2008. Applicant claimed underpayments, leave pay and twelve (12) months compensation for unfair dismissal.

On the other hand, Respondent submitted that Applicant was fairly dismissed following a disciplinary hearing and that other than his claim for underpayments and leave pay, Respondent was not willing to pay him any compensation for unfair dismissal.

4. BACKGROUND INFORMATION

The background information to this dispute is that Applicant was employed at Respondents undertaking as a Blockman earning E1, 000 per month from July 2007. Applicant remained in continuous employment at Emaphotholozu Butchery until his services were terminated on 5th June 2008. Applicant submitted that he was injured

on duty in April 2008 and was booked off for five days which the employer refused to pay. In addition to that he also fell sick for six days between the end of June to the 3rd July 2008 but again the employer refused to pay him sick leave days. Applicant submitted that on return to work he was told he no longer was employed thus he took up his matter with the Labour Department and later CMAC.

Respondent disagreed with Applicant and highlighted that the dismissal decision was fair and that it was taken after a disciplinary hearing after Applicant had absconded work without permission between the 28th May and the 3rd June 2008. Respondent also pointed out that the dismissal decision was appropriate taking into consideration the nature of the misconduct and the employee's personal circumstances.

The dispute was conciliated by CMAC and a Certificate of Unresolved Dispute No: 585/08 was issued by CMAC. Both parties then consented to arbitration on the 6th October 2008 and I was appointed Arbitrator in the same month.

5. ANALYSIS OF EVIDENCE AND ARGUMENTS

At the end of the pre-arbitration proceedings, 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 by the parties resulting in a full and final settlement agreement wherein the Respondent would pay the Applicant an amount of E3, 046.90, being 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 will pay Applicant the amount of E3, 046.90;
- b) That this payment is in full and final settlement of the dispute Applicant has with the Respondent and Applicant confirmed that he will no longer have any dispute with Emaphotholozhi Butchery whatsoever, arising from his employment to Emaphotholozhi Butchery; and
- a) That payment by Emaphotholozhi Butchery will be made in two (2) installments of E1, 500 and E1, 546.90 respectively effective December 2008 and 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: -

- c) That the Respondent is ordered to pay Applicant the amount of E3, 046.90;
- d) That this payment is in full and final settlement of the dispute Applicant has with the Respondent and Applicant confirmed that he will no longer have any dispute with Emaphotholozhi Butchery whatsoever, arising from his employment to Emaphotholozhi Butchery; and

e) That payment by Emaphotholozu Butchery will be made in two (2) installments of E1, 500 and E1, 546.90 respectively effective December 2008 and payable to CMAC Manzini.

DATED AT MANZINI ON THIS 28TH DAY JANUARY 2009.

MAX B. MKHONTA
CMAC ARBITRATOR