

IN THE CONCILIATION, MEDIATION AND ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI REFNO: SWMZ445/09

In the matter between:

MUSA DLAMINI APPLICANT

AND

TIME ELECTRICAL RESPONDENT

CORAM

ARBITRATOR: VELAPHI DLAMINI

FOR APPLICANT: BASIL TFWALA

FOR RESPONDENT: MUZI MOTSA

ARBITRATION AWARD

NATURE OF DISPUTE: UNFAIR DISMISSAL

DATE OF HEARING: 4TH MARCH, 2010

-1-

VENUE: CMAC OFFICES, 4TH FLOOR SNAT BUILDING

1. DETAILS OF HEARING AND REPRESENTATION

1.1 The matter was heard on the above date at the Conciliation, Mediation and Arbitration Commission offices (CMAC or Commission) situated at 4th Floor, SNAT Cooperative Building, Manzini.

1.2 The Applicant is Musa Dlamini, an adult Swazi male of P.O.Box 308, Manzini. Dlamini was represented by Mr. Basil Tfwala, a consultant.

1.3 The Respondent is Time Electrical Proprietary Limited, a limited liability company incorporated under the company laws of Swaziland of P.O.Box 345, Matsapha. Time Electrical was represented by Mr. Muzi Motsa, an Attorney.

2. BACKGROUND FACTS

2.1 On the 2nd September 2009, the Applicant reported a dispute for unfair dismissal at the Commission's offices at Enguleni Building, Manzini.

-2-

2.2 In his statement, Dlamini mentioned that he was employed by the Respondent on the 8th May 2008 as a motor mechanic; however he was not furnished with written particulars of employment.

2.3 The Applicant disclosed that he was paid a gross wage of E 1 500.00 per month.

2.4 According to Dlamini, it transpired that on the 30th May 2009, whilst still in the Respondent's employ, the latter terminated his service in writing. The Applicant stressed that following an altercation he had with a colleague over a missing motor vehicle battery, the company, informed him that it was closing down the workshop due to alleged irresponsible behaviour by the workshop employees.

2.5 The Applicant stated that despite the resolution taken by the Respondent to close down the workshop, with his exception, all the other employees were still employed.

2.6 Dlamini asserted that when he appealed against his dismissal, the Respondent reinstated him,

however he was instructed not to work at the workshop, but

-3-

should wait in the yard for further instructions and he perceived that the company maintained its stance of terminating his service.

2.7 The Applicant averred that this dismissal was procedurally unfair because it was not preceded by a disciplinary inquiry. Further it was his view that the termination of his services was substantively unfair, because his job was not abolished since the other employees continued to work at the workshop.

2.8 The outcome Dlamini required from the conciliation was the following; twelve months compensation for unfair dismissal (E18 000.00) and further or alternative relief.

2.9 The dispute was conciliated, however, it remained unresolved and a Certificate of Unresolved Dispute No.592/09 was then issued by the Commission. On the 29th September 2009, the parties requested for arbitration in terms of Section 85(2) and (3) of the Industrial Relations Act 2000 (as amended) and I was appointed on the 17th November 2009 to decide the matter.

-4-

3 SUMMARY OF EVIDENCE

3.1 COMMON CAUSE FACTS

3.1.1 The Applicant's date of employment, position and wages are not in dispute.

3.1.2 It is common cause that the Applicant was employed on an indefinite contract commonly referred to as a permanent contract of employment.

3.1.3 On the 30th May 2009, the Applicant and a colleague, one Royal Dlamini were involved in a wrangle and in the process threatened to assault each other. The source of the remonstration was a missing truck battery and the bone of contention was, who was responsible for losing it.

3.1.4 The two employees' bickering occurred in the presence of the director and a third party. These employees had a history of clashing and seemingly they had a frosty relationship.

3.1.5 On the 1st June 2009, the Respondent's Director wrote letters to the two employees advising them that he was closing down the workshop (their designated working area), with effect from Saturday 30th May 2009 and the rationale

-5-

for the closure was that, the Applicant and Royal Dlamini had failed to work as a team and their behaviour demonstrated lack of responsibility and prudence.

3.1.6 The director informed the Applicant through the letter that the workshop had to be closed to prevent unnecessary accidents since they were running the workshop not as a team but as enemies.

3.1.7 Finally, the Applicant was informed to collect his last wage at the end of June 2009.

3.1.8 The Applicant was paid his wage at the end or in June 2009. Whilst at home the Respondent delivered a letter to him on the 23rd July 2009, which was dated 1st July 2009, instructing him to report for work with immediate effect.

3.1.9 He reported for work on Friday the 24th July, 2009 and immediately went to the workshop and while repairing a motor vehicle which had a mechanical fault, the Director called him to his office, where he instructed him not to work there but he should wait within the yard for further instructions.

3.1.10 After some time the Director came to give him an instruction to convey the remains of a

relative of one of the employees to Nkonjwa area.

3.1.11 The Applicant returned the following day, on Saturday 25th July, 2009 and parked the company motor vehicle, but failed to report to the Director that he was back. He continued to wait within the company yard for further instructions.

3.1.12 On the 24th July, 2009, the Applicant was paid his whole wages for the month, despite working only two days.

3.2 DISPUTED FACTS

3.2.1 The Applicant testified that he was dismissed by the Respondent on the 1st June 2009, in writing and the subsequent reinstatement, was a smokescreen and of no force because the Director chided him for writing a letter demanding reinstatement and for also involving the Labour Department and the Swaziland Transport and Allied Workers Union(STAWU).

3.2.2 Dlamini's evidence was that, the Respondent's director uttered words to the

effect that even if the Applicant was practicing witchcraft, he was not intimidated

3.2.3 It was the Applicant's evidence that, the director remarked that the Respondent was his company and STAWU would not dictate to him to reinstate him and in the process of the exchange, the director became aggressive and violently pulled down the office curtains

3.2.4 The Applicant's testimony was that, the director advised him that he had no job for him and wondered why the Labour Department and STAWU were insisting that the Applicant should be reinstated.

3.2.5 It was the Applicant's evidence that at the Labour offices, a certain Mr. Vilakati wrote a letter inviting the Respondent and as a result the Director visited the Department of Labour offices in Manzini and the visit culminated in him being paid leave pay.

3.2.6 The Applicant asserted that the Respondent's director wrote a letter to the Labour offices, advising that he would only pay leave because the notice was paid in June 2009 when the Applicant was terminated.

3.2.7 For its part the Respondent, through its Director Richard Dlamini who testified that he never dismissed the Applicant. His intention for writing the letter dated 1st June, 2009 was to express his disappointment and disgust at the Applicant and Royal Dlamini's behaviour, he wanted them to cool off and reflect on the consequences of what they had done, when he said they should go home and come back at the end of June, 2009.

3.2.8 The director's evidence was that to prove that he only wanted them to reflect and reconsider their actions; he wrote a letter dated 1st July, 2009 instructing them to report for duty with immediate effect.

3.2.9 Mr. Richard Dlamini argued that the company's act of closing the workshop could not ipso facto render the Applicant dismissed, because he was not employed by the workshop, but the company. The workshop was not the core business of the company, but was established for servicing of company motor vehicles.

3.2.10 The Respondent denied that it informed the Applicant that his position was abolished. It

was the director's evidence that the Applicant disappeared on Saturday 25th July, 2009 only to re-emerge on another day to deliver a letter from the Department of Labour. 3.2.1 Whilst the director could not be specific when the Applicant came, it was denied that the date of delivery of the letter was 28th or 29th July, 2009.

3.2.12 It was the Respondent's statement that, the director visited the Department of Labour offices to drop a cheque for the Applicant's leave pay. Richard Dlamini denied that he wrote a letter confirming paying terminal benefits in the form of one month's notice.

3.2.13 The Director's evidence was that, he spoke to Mr. Basil Tfwala and further wrote a letter requesting STAWU to advise the Applicant to report for work with immediate effect, as his absenteeism was unauthorized and failure to report for duty would result in disciplinary action being taken against him.

3.2.14 The Respondent contended that although it had not dismissed the Applicant it was offering to reinstate him without any

-10-

retrospective effect, which would entitle him to be compensated.

3.2.15 The Applicant rejected the offer and stipulated that he would consider same if it would be retrospective.

4. ANALYSIS OF EVIDENCE AND LAW

4.1 In propounding a complaint of unfair dismissal, the employee is required to prove that he was protected by Section 35 of the Employment Act 1980, that is to say, she is not precluded by subsection(1) from challenging her dismissal. See section 42(1) Employment Act 1980.

4.2 It is common cause that the Applicant is not hit by the exclusionary criteria stipulated in Section 35(1), consequently he has been able to discharge his onus.

4.3 Equally the Employer bears an onus to prove that the reason for the termination was one endorsed by section 36, and that, taking into consideration all factors in the case, it was reasonable to terminate the services of the employee.

See Section 42(2) of Employment Act

-11-

4.4 The Respondent repudiated the Applicant's allegation that it had dismissed him on the 30th May 2009, through a letter dated 1st June, 2009.

4.5 Time Electrical's contention is that, the Applicant's services were never terminated by the aforesaid letter or alternatively, if it is found that the letter in fact terminated the applicant's services, the written offer to reinstate him dated the 1st July, 2009 rescinded the earlier dismissal.

4.6 For prudence and lucidity, it is incumbent upon the arbitrator to reproduce the contents of the letter.

4.7 The body of the letter dated 1st June, 2009 addressed to the Applicant reads as follows:

"Re: Closure of workshop due to lack of responsibility

1. The above refers
2. I write this letter to express my sentiments as well as my disappointment concerning how this is being handled by yourself.

3. On April 2009, we held a meeting at the workshop where I expressed a serious concern about a loss of tools and equipment at the workshop. In our meeting it was resolved that the option of closing down the workshop was a better option until

-12-

responsibility is achieved by all persons involved.

4. My capabilities of understanding has been put to (sic) test again when Royal Dlamini and Musa Dlamini were at loggerheads last Saturday when they shouted at each other over a missing truck battery. The shouting was done even during my presence. That was very annoying and very disrespectful. This was done even in front of a stranger showing how less respect you had for me. Of record I can tell you how belittled I felt.
5. Your behaviour showed me that you guys are not running the workshop as a team but as enemies. This is disappointing and disturbing for matured adults like you to behave like this.
6. I therefore take this opportunity to inform you that I have since decided to close down the workshop as at (sic) end of Saturday 30th May, 2009, before we encounter unnecessary accidents since you guys 'anibambisani' kusuka nje nitawulimatana.
7. You are therefore expected to come for your last pay at the end of June 2009

-13-

Yours faithfully

Richard Dlamini

Managing Director"

4.8 The above letter does not require any tools of interpretation, it should be given its literal meaning, that is, the Managing Director expressed his displeasure at the respective incidents of disappearance of company property, and the incident of the 30th May 2009, where the Applicant and a colleague were engaged in an invective and bellicosity over a missing truck battery.

4.9 The latter incident seemed to have broken the camel's back, as a result of which the Managing Director took a unilateral decision to close the workshop with effect from the 30th May 2009. The antagonists were instructed to come for their last pay at the end of June, 2009.

4.10 Despite an attempt by the Managing Director to give the letter, especially the last two paragraphs, a purposive meaning, the literal meaning and effect of the two paragraphs was clear; firstly that with effect from Saturday 30th May,2009, the Applicant's job no

-14-

longer existed, secondly his last wage was Tuesday 30th June,2009.

4.11 It is common cause that the Applicant was employed by the Respondent as a motor mechanic and his designated workplace was the workshop. It is clear that with the skill he had and the job he was hired to do, if you close the workshop, you would have virtually abolished his job.

4.12 Now, the Managing Director argued that what he meant in the last two paragraphs was that, he was closing down the workshop and would re-assign and or re-deploy the Applicant to another department since he owned three vibrant companies. It was his proposition that the Applicant was not employed by the workshop, but by the Respondent. Further the Respondent asserted that when it said the Applicant should collect his last pay, it meant his last wage at the workshop.

4.13 The Managing Director left an impression of being an astute entrepreneur and eloquent communicator, it escapes the arbitrator's mind therefore that if he meant what he now seeks to establish by his embellishing address, why did he not state in the letter dated 1st June, 2009. he could

have simply

-15-

said that he was closing the workshop, and re-deploying the employees.

4.14 The aforesaid letter communicated nothing but the dismissal of the Applicant with immediate effect and that is the finding I make on this issue.

4.15 Notwithstanding any motivation for the decision he took, the Managing Director adopted a high-handed approach and became prosecutor, judge and executioner in the same cause.

4.16 The Industrial Court of Swaziland has pronounced that even in cases where an employer is convinced of the guilt of an employee, a disciplinary inquiry can not be dispensed with.

See *Alpheus Thobela Dlamini v Dicrue Agricultural Holdings* (IC case no. 123/05), *Maria Vilakati and Another v Ngwenya Glass (Pty) Ltd* (IC case no. 139/04).

4.17 However, on the 1st July, 2009, the Respondent wrote a letter purportedly reinstating the Applicant. Similarly I am duty bound at this stage to reproduce that letter which reads;

"Dear Sir

Re: Closure of workshop

With reference to our letter dated 01 June 2009, you are hereby instructed to report back to work with

-16-

immediate effect. You are therefore requested to have reported to work on or before 20th July 2009.

Failure to honour this instruction might lead to you being hauled into a disciplinary hearing

Thank you

Richard Dlamini

Managing Director"

4.18 Now for purposes of making a finding whether the foregoing letter and the relevant events that followed, were in law tantamount to a reinstatement, it is immaterial when the letter was delivered to the Applicant.

4.19 The proven facts which are common cause and in my view are central to the determination of the second issue are these; on the 24th July, 2009 the Applicant reported for duty as instructed, although he did not announce his presence to the Managing Director, it is not in dispute that he found the workshop operating. He then proceeded to repair a truck without the knowledge of the Managing Director.

-17-

4.20 What then transpired thereafter is that the Managing Director came to the workshop and found him busy with the repairs, he then ordered the Applicant out of that area and instructed him to wait outside the building for further instructions. The Managing Director asserted he did this because he wanted to re-assign and or re-deploy the Applicant to another job.

4.21 True to his word, Mr. Richard Dlamini, instructed the Applicant to ferry the corpse of a relative of one of the employees. It was further contended by the Respondent that the Applicant was paid his July 2009 wages, despite not having worked for that month.

4.22 The Applicant claimed that, the Managing Director advised him in no uncertain terms that, his job has been abolished and the director further said he could not understand why the Department of Labour and STAWU were persistent that Applicant should be reinstated.

4.23 Musa Dlamini allegation that he was informed by a labour department official that Mr. Richard Dlamini had said he dismissed the Applicant and paid him notice amounted to hearsay thus inadmissible.

4.24 The Applicant's demeanor and the credibility of his version of the events following his return to work

-18-

were doubtful. His evidence during cross-examination proved that he had lied not once, but several times. I therefore do not give credence to his story that the Managing Director challenged the union and labour department to show him where Applicant would work.

4.25 Moreover his story can not stand in view of the fact that there was communication between STAWU and the Respondent, whereupon the issue of his reinstatement was discussed and the tone between the union and the Respondent was cordial.

4.26 The finding I come to below is premised on the proven facts enumerated above, that is, the Respondent removed the Applicant from the workshop and instructed him to wait for further orders. In fact the Managing Director seems to have made his mind to re-appoint the Applicant to be a driver.

4.27 Now, the concept of reinstatement in the labour law, has been examined in a number of South African, as well as Swaziland judgements of the Labour Courts. There seems to be unanimity and uniformity in the import of the principle.

-19-

4.28 In *Dinabantu Ndwandwe v Vuka Sidvashini Farmers Association*(IC case no.520/06)

Dunseith JP remarked as follows at page3;

"The definition of 'reinstatement' as contained in the Industrial Relations Act 2000(as amended) must be seen in the context in which the term is used in the body of the Act, and in particular in Section 16 of the Act. This context is that of an unfair dismissal, for which the remedy of reinstatement is provided. The Industrial court is empowered to order specific performance of an employment contract by way of reinstatement The object of such an order is to attempt to restore the employee to the same position in which he would have been, if he had not been unfairly dismissed."

4.29 Section 2 of the Industrial Relations Act 2000(as amended) defines 'reinstatement' as follows'

"an action or situation whereby an employee' services or employment are treated as if the services or employment have never been terminated, including the payment of wages, salary and any remuneration payable by virtue of the services or employment."

-20-

4.30 The Concise Oxford Dictionary(11th Ed) defines 'reinstatement' as "restore to former position or state"

4.31 The Oxford School Thesaurus(2nd Ed) enumerates the synonym of 'reinstatement' as;

"restore, reestablish, reinstall, reappoint, take back, recall" See *S.E.B V Collie Dlamini* (ICA case no.2/07)

4.32 If in fact and in law to reinstate an employee is to restore her to the same position she occupied before dismissal, then what Respondent did on the 24th July 2009, to the Applicant was not a reinstatement. In fact in his own words, the Managing Director says he had resolved to redeploy him to the driving pool.

4.33 The Respondent argued that Applicant was instructed to return to work and he did as such the earlier dismissal was expunged. The contention further was that, if there was any merit in the Applicant's complaint about the Respondent's conduct towards him after he returned, the Applicant should have invoked Section 37 of the Employment Act, that is to say, claim constructive dismissal, but not to revert to the letter dated 1st June, 2009 and allege unfair dismissal on the basis of same.

4.34 Although the argument is glossy, I do not agree with it. The Managing Director unilaterally and

-21-

arbitrarily decided that the Applicant should be a driver, without the latter's consultation. In his own words he says he had resolved that he should drive, not that it was a temporary measure pending negotiations.

4.35 I am mindful of the fact that the acrimony between Royal Dlamini and the Applicant gnawed the director's mind and his action may have been intended to separate the two, because their frosty relationship might result in an industrial accident, if the two worked in close proximity.

4.36 However; the Applicant was not consulted prior to the decision. Secondly the Applicant testified that he found Royal Dlamini at the workshop when he came earlier to collect some money. The question that begs an answer is; what criteria did the Respondent use to determine who should remain at the workshop and who should be re-deployed?

4.37 It has been held by the South African Industrial Courts, that where the offer of reinstatement is conditional and defective, that offer is inadequate and insufficient and as such the employee is entitled to reject the offer and proceed to court.

See Usher v Linvar (Pty) Ltd (1992)13 ILJ 243(IC)

-22-

4.38 In United People's Union of SA on behalf of Phiri v Meshrite (PTY) Ltd(2006) 27 ILJ 431 (BCA), the court held that an offer to reinstate an employee on the terms and conditions upon which he was employed obliterates the earlier dismissal. However, the terms and conditions are not identical, that employee established a prima facie case of dismissal.

4.39 It follows from the above authorities that, when the Respondent varied the terms and conditions of the Applicant's contract upon his return, the dismissal of the 1st June, 2009 remained valid, because the Applicant rejected the purported offer when he left on the 25th July, 2009.

4.40 If the Applicant's dismissal of the 1st June, 2009 remained in force on the 25th July, 2009 then the Respondent's argument that he deserted and or absconded from work on the 25th July, 2009, is without substance.

5. REMEDY

5.1 The Applicant has prayed for maximum compensation for unfair dismissal in the sum of E 18 000.00 and any further or alternative relief.

5.2 In the course of the proceedings, the Respondent offered to reinstate the Applicant. Although the

-23-

Managing Director did not spell out the details of such offer, since he now had the services of a legal practitioner, I am assuming that he meant to reinstate the Applicant as defined by the Act.

5.3 Moreover when the offer was made to the Applicant, after a brief adjournment, for consultation on the offer, the Applicant and his representative only took issue with the issue of back pay, which was an indicator that on all the other terms and conditions, the parties were in consensus.

5.4 What is imperative though is that, even if the parties were not in consensus about the offer, if in the exercise of my discretion I award reinstatement as opposed to compensation, such award will be the one envisaged by Section 2 and 16 of the Industrial Relations Act 2000(as amended)

5.5 The Applicant rejected the offer on the grounds that it was not accompanied by an offer to pay arrears wages or some compensation, to assuage his hardship during the period he was unemployed.

5.6 Although during his evidence-in- chief, in his personal circumstances, the Applicant did not say

-24-

that he was unemployed. His interest in being reinstated subject to back pay is an indicator that he did not have another work commitment.

5.7 I did not get the sense that the employment relationship had broken down or would be intolerable. Both parties were willing to resuscitate the relationship, the only obstacle was the one already mentioned.

5.8 The Respondent was opposed to back pay because it was its argument that the Applicant absconded and or deserted work.

5.9 In *Feast v Edmar Engineering* cc(2006) 27 ILJ 222 (BCA) it was held that where an employee's refusal of an offer of reinstatement is unreasonable, it is not appropriate to award compensation.

5.10 The Labour Appeal Court of South Africa in *Mkonto v Ford NO and Others*(2000) 21 ILJ 1312 (LAC) opined that the guiding principle whether to compensate an employee who has rejected an offer is fairness.

5.11 Before I examine whether the Applicant's rejection of the offer is reasonable and will it be fair to award compensation in view of his stance? I

-25-

wish to refer to Section 16 of the Act, wherein the remedy of reinstatement is provided.

5.12 Section 16 (1) (a) of the Act provides;

"If the courts finds that a dismissal is unfair, the court may- order the employer to reinstate the employee from any date not earlier than the date of dismissal" (my emphasis)

5.13 In the *SEB V Collie Dlamini* (supra), the learned Justice Mamba JA, remarked as follows at 13-14;

"However, we do not find anything in the *Republication Press* case judgement which supports the Respondents contention that where the court orders reinstatement of a worker, as a matter of law and logic, such reinstatement is or must be with retrospective effect from the date of dismissal. Such interpretation would do violence to the clear words used in Section 16(1) (a) of the IRA. The section empowers the court to order an employee to reinstate the employee from any date not earlier than the date of dismissal. It could even conceivably be in the future, that is to say,

-26-

after judgement. The court has a discretion on the issue."

5.14 Not only does the court and by extension, an arbitrator, have the discretion to award any relief stipulated in Section 16 of the Act, subject to the qualification that where the dismissal was procedurally unfair only then compensation is awarded, the arbitrator also has a discretion in respect of the date of the reinstatement, in the event she deems this remedy fair and equitable in the circumstances of that particular case.

5.15 Now, I turn to examine whether the Applicant was reasonable in rejecting the offer of reinstatement.

5.16 The Managing Director stated that he directed three companies namely; Mega Glass, Time Electrical and Walls and Ceilings which all employed a workforce compliment of more or less 50 people, which owned a fleet of motor vehicles for servicing customers.

5.17 It was a proven fact that the workshop where Applicant worked as a mechanic, before his dismissal, was intended to service these motor vehicles.

-27-

5.18 In view of the authorities that have been cited above, I make the finding that, the Applicant is acting unreasonably by rejecting the reinstatement offer simply because it does not come with automatic arrear salaries from date of dismissal to date of arbitration.

5.19 Since I have a discretion on the issue in the event I order reinstatement, I may or may not award arrear wages and as to what extent depends on the factors below which are peculiar to the case.

5.20 The Respondent paid the Applicant his wages for June and July 2009, despite the fact that he did not work during this period.

5.21 The Company made continuous attempts to persuade the Applicant to come back, albeit its misguided notion of what constituted reinstatement.

5.22 The fact that such ill-conceived motion of reinstatement was not mala fide, but motivated by the desire to separate the two employees, who had been fighting for some time.

5.23 Despite the Applicant being convinced of the unfair dismissal he delayed for about a month and two weeks to report a dispute to the Commission.

-28-

5.24 The fact that once the dispute was reported at CMAC, the parties were not responsible for the delays that are caused by the processes.

5.25 The Applicant did not render his services for a period of 9 months to date.

5.26 However; I must also take into account the prejudice suffered by the Applicant occasioned by the lack of income, which affected his family.

5.27 The Respondent caused a delay in the finalization of the matter by its failure to attend arbitration on the 17th December 2009, such that the matter had to be re-scheduled to 21st January 2010.

5.28 For purposes of assessing the arrear wages, if any, the Applicant has been out of employment from August 2009 to April 2010. However, taking into account all the circumstances of the case, it would be unduly erroneous on the Respondent to pay arrear wages for nine months.

6. CONCLUSION

6.1 I have found that the Applicant's dismissal of the 1st June, 2009 remained valid on the 24th July, 2009, when the Respondent conditionally reinstated him and the Applicant rejected same.

6.2 Further it was my finding that In the circumstances, the Applicant's rejection of the

-29-

offer of reinstatement made during the course of arbitration, was unreasonable. I find further that it would not be fair to award compensation in the circumstances.

6.3 Further I have found that I have a discretion to order payment of arrear wages from any date after dismissal.

6.4 Having taken into account all the above observation and all the circumstances, the following order is therefore made;

7. AWARD

7.1 The Respondent is ordered to re-instate the Applicant in the position that he previously held, that is motor mechanic or any suitable position commensurate with his qualification and experience, and with a pay scale not less than that at which he was previously paid.

7.2 The Respondent is directed to pay the Applicant arrear wages for two months from 1st April 2010 to 31st May 2010 by no later than 30th June 2010.

7.3 The Applicant is to report at the Respondent's premises to resume his duties on the 1st June 2010.

7.4 There will be no order as to costs.

-30-

DATED AT MANZINI ON THIS 4TH DAY OF MAY 2010
VELAPHI DLAMINI ARBITRATOR

-31-