

**IN THE CONCILIATION, MEDIATION AND ARBITRATION COMMISSION**

**HELD AT MANZINI SWMZ 459/09**

**In the matter between:**

**Sicelo R. Dlamini Applicant**

**And**

**Crime Stop Security Respondent**

**Arbitrator : Khanyakwezwe Khumalo**

**Nature of dispute : Unpaid wages**

**Date of arbitration : 29<sup>th</sup> March 2010**

**ARBITRATION AWARD**

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**1. DETAILS OF HEARING AND REPRESENTATION**

1.1 This arbitration hearing was held at the Conciliation, Mediation and Arbitration Commission (CMAC) offices, situated in Manzini. The arbitration hearing was held on the 29<sup>th</sup> March 2010.

1.2 Mr. Sicelo R. Dlamini of P. O. Box 2478, Manzini, was the Applicant in this matter and shall be referred to as the Applicant or Mr. Dlamini.

1.3 On the other hand, Crime Stop Security of P. o. Box 1431, Manzini, a juristic person, was represented by Mr. Bongani Mkoko, the Human Resources Manager of the Respondent. He shall be referred to as the Respondent's representative or Mr. Mkoko.

1.4 Consequent to an allegation made by the Applicant against the Respondent that he failed to pay his wages for one and a half months, the Applicant subsequently reported a dispute to the Commission on the 14<sup>th</sup> September 2009. The dispute was conciliated upon and most regrettably, it remained unresolved and hence a Certificate of Unresolved Dispute was issued to the parties on the 26<sup>th</sup> November 2009. On the same date, parties elected to refer their dispute to arbitration for a final determination.

1.5 This arbitration hearing was preceded by a pre-arbitration conference whose main purpose was to:

- ❖ Enable parties to be familiar with the arbitration process.
- ❖ Remind parties to exercise their right to representation.
- ❖ Establish the need for an interpreter.

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- ❖ Agree on the exchange of documents, including their nature.
- ❖ Establish if witnesses were to be called, including the number of witnesses.
- ❖ Confirm the participation of the parties in this arbitration hearing.
- ❖ Set date(s) on which the arbitration proceedings will be held, including the venue and time.

1.6 At the beginning of the pre-arbitration and arbitration proceedings respectively, the parties consented that I must proceed and arbitrate this dispute under the auspices of the Commission. The arbitration itself went on well.

**2. BACKGROUND TO THE DISPUTE**

2.1 The Applicant stated that the Respondent employed him as a Security Guard on or about the 5<sup>th</sup> March 2009. The Applicant also stated that while employed by the Respondent he never received any written particulars of employment. The Applicant further stated that while employed by the Respondent, he earned a gross monthly salary of E900.00. It was the statement of the Applicant that the Respondent failed to pay him his salaries for one and half months valued at E1650.00.

2.2 On the other hand, the Respondent's representative contended that the Applicant was paid all his financial dues to the extent that the Respondent does not owe the Applicant any money in respect of wages. It is on that basis that the Respondent prayed the Applicant's Application must be dismissed by the Commission.

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### **3. ISSUES TO BE DETERMINED**

3.1 I am called upon to decide, in light of the evidence of the parties, whether or not the Respondent owes the Applicant any money in relation to unpaid wages.

### **4. SUMMARY OF EVIDENCE AND ARGUMENT**

#### **4.1 THE APPLICANT'S CASE**

4.1.1 In this arbitration hearing, the Applicant chose to represent himself and did not call any witnesses in support of his case.

4.1.2 In his testimony under oath, the Applicant pointed out that the Respondent employed him as a Security Guard on the 5<sup>th</sup> March 2009. The Applicant stated that the Respondent did not provide him with particulars of employment. It was the Applicant's testimony that he was promised by the Respondent that he was to be paid E900.00 per month.

4.1.3 The Applicant further averred that on the 25<sup>th</sup> March 2009 the Respondent paid him E330.00 and that was the equivalent of ten working days. The Applicant further testified that this essentially meant that the Respondent paid him from the 5<sup>th</sup> March 2009 up until the 15<sup>th</sup> March 2009. The Applicant averred that he was short paid for the month of March 2009 the equivalent of ten working days.

4.1.4 It was the testimony of the Applicant that until the end of April 2009, he had not been paid his salary. The Applicant averred that he kept on asking the Respondent about his wages but only gave him E200.00 and promised that he would be paid the rest later.

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4.1.5 It was the Applicants evidence that on the 11<sup>th</sup> May 2009, he wrote a letter and gave it to the Pay role Clerk, a one Tenele who told him that he must come at the end of May 2009 to collect his wages. The Applicant continued to state that the Managing Director (Respondent) pointed out that he did not have money then and that if he insisted on being paid his wages, he would give him a cheque that would definitely bounce at the bank.

4.1.6 The Applicant stated that on the 11<sup>th</sup> May 2009 he verbally informed the Respondent that he was leaving the Respondent's undertaking if he was not getting paid his wages and indeed he left.

4.1.7 The Applicant went on to state that after realizing that his wages were not paid in full, he called his Supervisor and the response was that he would be paid later. The Applicant also pointed out that he even went to the extent of writing a letter to the Responded, informing him that if he was not pay his wages in seven day's time, a Report of Dispute would be registered with the Conciliation, Mediation and Arbitration Commission (CMAC) and indeed he ended up reporting such dispute to the Commission.

4.1.8 Ultimately, the Applicant argued that the arbitrator must find that the Respondent owes him wages amounting to E1650.00 between 16<sup>th</sup> March 2009 and 11<sup>th</sup> May 2009.

## **4.2 RESPONDENT'S CASE**

4.2.1 The Respondent was represented by its Human Resources Manager Mr. Mkoko and did not call witnesses in support of his case. The Respondent's representative premised his averment on the fact

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that the Applicant was paid all his wages right from the 16<sup>th</sup> March through to the 11<sup>th</sup> MAY 2009.

4.2.2 The Respondent's representative averred that the Applicant was paid E330.00 at the end of March 2009. Mr. Mkoko further stated that at the end of April 2009, he was paid E900.00. It was yet the statement of Mr. Mkoko that the Respondent paid the Applicant E300.00 for the month of May 2009.

4.2.3 The Respondent's representative further revealed in his evidence that the Applicant owed the Respondent in respect of a salary advance of E400.00 and this amount was deducted from his salary.

4.2.4 Quizzed by the Applicant as to the evidence that he was paid in full by the Respondent, the Respondent's representative stated that even though he did not sign for all his wages while working for the Respondent, but all the information was recorded.

4.2.5 In the final analysis, the Respondent's representative submitted that the Applicant was paid all his wages while employed by the Respondent so much that the Respondent single most important prayer was that the arbitrator must dismiss the Applicant's application.

## **5. ANALYSIS OF EVIDENCE**

5.1 I wish to clearly state that I have not endeavoured to relate all the evidence that was adduced by the parties in this arbitration hearing. However, I have tendered to focus on the key evidence that will ultimately be commensurate with the arbitration award in this matter.

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5.2 During the arbitration hearing, the following were agreed facts between the Applicant and the Respondent:

- ❖ That an employment relationship existed between the 5<sup>th</sup> March 200 and the 11<sup>th</sup> May 2009;
- ❖ That on the 11<sup>th</sup> May 2009 the Applicant resigned from the Respondent's business;
- ❖ That the Applicant was promised E900.00 monthly salary by the Respondent.

5.3 It is my finding that that the Applicant should not have been paid E900.00 per month as envisaged by The Regulation Of Wages (Security Services Industry) Order, 2008. According to the above mentioned regulation of wages order, considering that the Applicant commanded less than three months continuous service at the Respondent's undertaking, he should have been earning E1112.80 per month.

5.4 The Applicant averred that the Respondent failed to pay him his full salary in March 2009 as he was only paid E330.00 instead of the contemplated E984.40 by The Regulation Of Wages (Security Services Industry) Order, 2008. I find that the Applicant was short paid by the Respondent a total amount of E654.40 between the 5<sup>th</sup> March 2009 and 31<sup>st</sup> March 2009.

5.5 The Applicant argued that the Respondent only paid him E200.00 for the whole of April 2009. However the Respondent contested the averment of the Applicant, arguing that he was paid in full for April 2009, except that the Applicant did not sign for it. The Respondent further contended that the paid wages of the Applicant for April 2009 were recorded by him. Firstly, it ought to be pointed out that the Respondent failed to produce evidence that the Applicant signed for the full salary for April 2009. Secondly, he failed to furnish the Applicant and the arbitrator with a record that indicated that the

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Applicant was fully paid for April 2009. I am fully convinced in my mind that the Respondent dismally failed to produce evidence that the Applicant was paid in full for the month of April 2009. In his evidence, the Applicant stated that the only payment he received from the Respondent was E200.00 only in respect of the salary for April 2009.

5.6 This then brings me to the conclusion that the Applicant's wages for the month of April 2009 should have been E1112.80 less E200.00. I therefore find in favour of the Applicant that the Respondent owes him a total sum of E912.80 in respect of unpaid wages for April 2009.

5.7 It is certainly not in dispute between the parties that the Applicant ceased to work for the Respondent on the 11<sup>th</sup> May 2009. Despite the fact that the Respondent's representative insisted that the Applicant was paid in full for the period between the 5<sup>th</sup> March 2009 and the 11<sup>th</sup> May 2009, regrettably there is no evidence before me that demonstrates that indeed the Applicant was paid in full by the Respondent.

5.8 In my view, the Applicant is owed by the Respondent ten days in relation to unpaid wages from the 1<sup>st</sup> May 2009 to the 11<sup>th</sup> May 2009. I find that the Respondent owes the Applicant a total of E428.00.

## 6. CONCLUSION

6.1 It is not in dispute that the Respondent employed the Applicant from the 5<sup>th</sup> March 2009 up until the 11<sup>th</sup> May 2009.

6.2 Despite the fact that the Respondent is a custodian of employee records, he however failed to produce evidence to the effect that he ever paid the Applicant's wages in

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full.

6.3 Besides, the Applicant was in breach of The Regulation Of Wages (Security Services Industry) Order, 2008 which stipulates the legal wage for employee of the Applicant's caliber was E1112.80 per month instead of E900.00.

6.4 In light of the evidence before me, I find that the Applicant is owed by the Respondent a total sum of E1995.20.

6.5 It is my view that, on a balance of probabilities, the Respondent clearly short paid the Applicant and is entitled to the sum of money mentioned above.

## 7. AWARD

7.1 My award in this matter has taken into account the fact the Applicant was paid by the Respondent E300.00 and E200.00 in March 2009 and April 2009 respectively.

7.2 I make the following award to the Applicant:

7.2.1 Between the 05/03/09 and 31/03/09	=E 654.40
7.2.2 Whole of April 2009	=E 912.80
7.2.3 Between the 01/05/09 and 11/05/09	=E 428.00
Total	=E1995.20

The Respondent is ordered to pay the Applicant on/or before the 7<sup>th</sup> June 2010.

DATED AT MANZINI ON THIS 20<sup>TH</sup> DAY OF MAY 2010

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KHANYAKWEZWE KHUMALO

ARBITRATOR