

IN THE INDUSTRIAL COURT OF SWAZILAND

CASE NO.38/83

In the matter of

SIZO SIMON MKHATSHWA Applicant

vs

LESOTHO & SWAZILAND

EXAMINATION COUNCIL Respondent

For Applicant: Mr. Paul Shilubane

For Respondent: Mr. Rweyemamu

ORDER

In this case the applicant is claiming compensation on account of wrongful dismissal.

Mr. Rweyemamu appearing for the Respondent Council raised in limine a preliminary objection. He stated that this court has no jurisdiction to hear and determine the application on the grounds that this dispute was not reported to the Labour Commission; as required under Part VII of the Industrial Relations Act No.4 of 1980. He referred to various sections which were relevant to this matter.

Mr. Shilubane on the the other hand took up the position that the said dispute was reported to the Labour Commissioner and he drew my attention to the Certificate dated 30/11/83.

Therefore the main point to be decided is whether or not this dispute was referred to the Labour Commissioner as contemplated under Part VII.

According to the papers filed by the applicant I find that he has annexed to the application a Certificate from the Labour Commissioner wherein para. 4 states as follows -

"failure by respondent to appreciate that the dismissal of applicant was unfair and wrongful. Respondent is -directed himself."

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This clearly suggests that this dispute had been referred to the Commissioner for his necessary action.

However on 9/2/84, another Certificate presumably emanating from the Labour Commissioner on the same matter was filed, where para. 4 is as follows -

(a) "the matter was not reported to the Labour Commissioner as provided in Part VII of the Industrial Relations Act."

(b) "by his act applicant by-passed the conciliation exercise."

The court is now faced with two conflicting reasons and no satisfactory explanation has been advanced for the filing of the 2nd certificate.

As far as the 1st certificate is concerned, I find that it is in order and has been properly processed to court. In the circumstances I hold that this dispute has been reported to the Labour Commissioner as

required under Part VII of the Act.

In view of this I dismiss the preliminary objection raised by the Respondent Council in limine without cost.

J.A. Hassanali

JUDGE PRESIDENT