IN THE INDUSTRIAL COURT OF SWAZILAND		
CASE NO. 17/85		
In the matter between:		
THOMAS DLAMINI		APPLICANT
VS.		
NATIONAL INDUSTRIAL DEVELOPMENT		
CORPORATION OF SWAZILAND TINKHABI		
TRACTOR PROJECT		RESPONDENT
CORAM		
PRESIDENT:		J. A. HASSAMALI
FOR APPLICANT:	MR.	S. MOTSA
FDR RESPONDENT:	M.R	J. OSCRAFT
ASSESSORS:	MESSRS	B. STEPHENS AND A. N. MATSEBULA
ISSUE IN DESPUTE		UNFAIR DISMISSAL
AWARD		

(Delivered on)

HASSANALI, PRESIDENT

In this case the applicant is claiming re-in9tatement or in the alternative, compensation for his unfair dismissal together with his terminal benefits.

Tinkhabi Tractors was a project of National Industrial Development Corporation of Swaziland whose principal activity was the manufacture of small sized tractors. Besides this, it also welded and fabricated all types of agricultural equipments.

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The applicant was first employed by the Project as a labourer and thereafter became an assistant welder. Later he was sent to Swaziland College of Technology for further training and an his return was appointed a welder in 1979. In 1982 he became a Supervisor of the welding section. He was a member of the Worker's Committee and during the middle of 1983, became its Chairman. This appointment resulted in rift between himself and Mr. Cattrick, the Project Manager, as Mr. Catterick felt that he was getting too involved in the workers activities, thus jeopardising the cordial relationship that existed between himself and his employees.

The applicant was subsequently relieved of his posts as Supervisor and reverted to his original position as a welder, on the grounds that his supervision of labour and his work per- formance had considerably deteriorated. After this he received a number of warning letters in quick succession. The first of these was on 4/10/83 (Ex. A) and then on 6/10/83 his employment was terminated. (Ex .8). But he was re-instated as a result of the intervention of the Labour Department, when it was discovered that the work referred to

in Ex. A for which his services were terminated was in fact done by another employee, one Themba Dlamini. Again on 1/2/84, the applicant received another letter (Ex. E) but there again it was found that he was not responsible for the work complained of, and consequently the warning was withdrawn. However Mr. Nkambuls the Supervisor, admitted that there was some fall off in the applicant's work performance but he said that these did not warrant strictures or warnings as they were not of a serious nature.

It Seems to me that the applicant's services were terminated under Sec.36 of the Employment Act No.5 of 1980 which reads as follows-

"It shall be fair for an employer to terminate the services of an employee for any of the following reasons (portions that are not relevant to this matter have been omitted)

a) because the conduct or work performance of the employee has after written warning, been such, that the employer cannot reasonably be expected to continue to empliy him.

There is no doubt that there had been some deterioration in in the applicant's work performance and this has been reasonably confirmed by Mr. Nkambule and Mr. Catterick. But the evidence does not disclose that he lacked the ability or capacity to perform his tasks. Incompetence which results from carelessness is not necessarily gross to merit a dismissal. Therefore I hold that the applicant did not show sufficient interest in his work after his Election as Chairman.

Although it did not come out very clearly in evidence, it seems to me that the main reason for the applicant's termination was his active involvement in the workers Committee; thus placing the employees interest above the employers. Termination under such circumstances is not just, nor does it res tors harmony between labour and capital or ensure normal flow of production. It would after all, be more fitting in modern society, to recognise positively the roll and place of Workers Committee/ Trade Union, to welcome it and to strengthen it, and allow it to flourish, rather than to stifle it. This would no doubt create a friendly atmosphere for a sound employer/employee relationship.

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Since I have some doubts as regards the reason for his termination, I wish to give him the benefit of that doubt and hold that he was unfairly dismissed because of his Union activities.

However taking into consideration the fall of in Applicant's performance. I do not wish to award him any compensation, nor terminal benefits other than the severance allowance.

Consequently I order the Respondent to pay the applicant his severance allownce of E1,010 only.

My Assessors agree with my award.

J. A. HASSANALI

PRESIDENT