

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO; 45/89

In the matter between:

PAULOS SIHLONGOYANE Applicant

Versus

NDLELALULA BUS SERVICE Respondent

C O R A M : J.A.

HASSANALI President

MR MOTSA For Applicant

MR B. SIMELANE For Respondent

MR MOKGOKONG &

MR MATSEBULA Assessors.

JUDGMENT (Delivered on 17th May, 1990)

HASSANALI, P.

In this Case the Applicant is claiming from Mr. Wilson Twala, the owner of Ndlelalula Bus Service the following for his unfair termination –

6 months compensation E1320.00 1 month's Salary in lieu of Notice 220.00 4 days additional Notice 29.36 10 days severance allowance 73.30 2 months wages 440.00 E 2082.66

According to the applicant he was employed by Mr. Twala on 9/7/86 as a bus driver of a monthly salary of E.220/=. Sometime during the course of employment his vehicle started to give trouble in that it needed to be pushed before it could be started. He alerted the employer about this problem but nothing was done to remedy it. On 2/9/88 when the bus failed to start even after being given a push due to wet roads, the applicant once again informed Mr. Twala about it and refused to drive the vehicle unless its starter was either repaired or replaced. Mr. Twala said that he would bring a starter. Instead he returned with his wife and dismissed him from service.

Mr Twala in his evidence stated that he recruited the applicant as a bus driver on a

monthly salary of E300/= plus E2/= per day for meals. He denied that the vehicle had mechanical problems. He stated that it was in perfect working condition. He also denied that he spoke to the applicant either on the 2nd or 3rd September since he was ill and confined to bed,

Mrs Twala a witness for the Respondent said that on the day in question the applicant kept away from work. When she questioned him about it he became abusive. The vehicle that was supposed to be giving problems, was later driven by Ndwandwe, another driver. She further said that the applicant came the following day and collected his wages. All payments of applicant's wages were recorded in the Register maintained for that purpose.

Mr Twala maintained that the applicant left his services of his own accord after refusing to drive the vehicle. The applicant on the other hand contended that he did not refuse to drive the vehicle but had only requested that the starter motor be either repaired or replaced. Mr Twala however denied that the vehicle was mechanically defective. The same vehicle he said was later driven by Ndwandwe, another driver. Applicant admitted to it but said that he did so after the road had dried up. In my view Ndwandwe was a material witness and should have been called by the Respondent to substantiate the fact that the vehicle was in perfect running condition. His failure to do so, has cast doubts in my mind as to the truthfulness of the evidence of Mr & Mrs Twala and therefore I do not wish to place any reliance on their evidence on this point. It is quite possible that the Applicant would have informed Mr Twala about the mechanical defect in the vehicle and this led to his dismissal.

Mr Twala also maintained that he did not speak to the applicant either on the 2nd and 3rd September 1988, since he was ill and confined to bed. However in cross-examination he admitted that he did speak to him. Mrs Twala also stated that she thought that the applicant spoke to Mr Twala. I accept the evidence of the applicant and hold that he did speak to Mr Twala about the problems he had with the vehicle.

The applicant maintained that he was paid for the months of July and August while Mr Twala on the other hand contended that he had been paid and these payments were recorded in a register. However Mr Twala failed to produce the said register. In the circumstances I accept the applicant's evidence in preference to that of Mr & Mrs Twala and hold that the applicant was not paid for the months of July and August.

The applicant made a very favourable impression upon me as a witness though same cannot be said of Mr & Mrs Twala. The applicant gave his evidence in a calm and collected manner and seemed frank with his evidence. At the end of the cross-examination, his evidence remained unshaken and from the story he told I find him to be a reliable witness. Therefore taking the evidence in totality, I come to the conclusion that Mr Twala terminated the services of the applicant, which I consider unfair.

I now turn to the question of compensation. The applicant is 56 years old, married with 6 children. He stated that he did not make any attempt to get a job until December, 1989.

Taking the above into consideration and the circumstances under which he came to be dismissed, I am of the view that the applicant should be awarded the terminal benefits and two months compensation. Consequently I make the following Order

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Mr Twala, the owner of Ndlelalula Bus Service shall pay the applicant the following -

1 month's salary in lieu of Notice 220.00 4 days additional Notice 29.36

10 days severance 73.30

July and August Salaries 440.00

2 months Compensation 440.00

1202.66

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I enter this Order as an Award of this Court. My Assessors agree with my decision.

J.A. HASSANALI,

PRESIDENT.