

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE:

CASE NO: 44/90

In the matter between:

NS'IZWA SIMELANE	Applicant
VS SWAZILAND UNITED BAKERIES	Respondent
C O R A M	J. A.
HASSANALI	President
MR MOTSA	For Applicant
MR BINGHAM	For Respondent
MR MATSEBULA & MR DLAMINI	Assessors.

AWARD

(Delivered on 18/7/90

Hassanali P.

In this application, the applicant is claiming from the Respondent Bakery a sum of E17348.88 as overtime for the period 1/9/81 to 31/8/88.

Mr Bingham representing the Respondent has raised the following objections in limine and applied that these be determined first and disposed of before going into the merits of the Case –

- (1) that the dispute herein arose on 1st September 1981 or alternatively during July, 1987.
- (2) that the dispute was only reported by the Applicant on 12th July, 1989
- (3) that the provisions of Sec. 50(3) of the Industrial Relations Act have not been complied with.

The facts briefly in this matter are as follows-

The Applicant was employed by the Respondent on 1/10/73 as a security guard and worked 48 hours a week. On 1/9/81 the

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Respondent unilaterally increased his working hours to 72. When the applicant complained about it, the Company on 1/2/87 increased his wages by E17/50 per

week, but in July 1987, this was withdrawn, thus necessitating the Applicant to report this as a dispute to the Labour Commissioner.

On the 1st objection, Mr Bingham took the view that this dispute first arose on 1/9/81 and therefore the Certificate for the Extension of time issued by the Labour Commissioner did not cover the period. Thus the Applicant's application was out of time and should be rejected.

I cannot agree with Mr Bingham on this point. Though the working hours of the Applicant were increased on 1/9/81 from 48 hours to 72, his weekly wages were also increased by E17/50 to commensurate for the additional hours he worked. The applicant accepted this arrangement without demur. However when the Respondent withdrew this amount in July, 1987, the Applicant complained about it to the Respondent. Therefore it was at this period that the dispute first arose between the parties. As such what has to be decided now is the actual time on which the dispute arose. Was it at the beginning of July, 1987 or at the end? The application of the applicant is silent on this and no evidence was led to show on what date the dispute really arose. In view of this, my only conclusion is that applicant was paid his wages at the end of the month and therefore it would have been only then that he would have noticed that the sum of E17/50 had been withdrawn. Therefore I am of the view that the dispute arose for the first time at the end of July, 1987.

On the 2nd point, Mr Bingham very rightly mentioned that there was some confusion regarding the date of the report of the dispute both in the Certificate of Extension of time and in the Certificate of Unresolved Dispute and as such the Certificate for the Extension of time should be rejected. I have perused both the Certificates and have noticed that the dates are not the same. The Certificate for the Extension of time reflects that the Report

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to the Labour Commissioner was made on 23/6/89, while the Certificate of Unresolved Dispute shows that it was on 12/7/89. Since the date of report is essential to the Case, the applicant should have called the Labour Commissioner to clarify it. Furthermore the Certificate for Extension of Time states that the Dispute first arose on 31/8/88 which in my view is incorrect. Mr Motsa representing the applicant himself admitted that the dispute arose for the first time in July, 1987. Therefore in my view the Certificate for the Extension of Time does not correctly reflect the dates and in the circumstances it should be rejected.

Taking the 3rd point, Mr Bingham has stated that the Labour Commissioner did not hold an Inquiry to decide whether there was any justification for him to recommend to the Minister of Labour and Public Services for the Extension of Time in terms of Sec.50(3) of the Act. Since this objection was specifically pleaded by the Respondent, the Applicant should have called the Labour Commissioner to clarify whether such an Inquiry was held in terms of the High Court Appeal Case No.2/87. In view of the applicant's failure to do so, I have no other option but to hold that no such Inquiry was held.

Consequently taking all the above into consideration, I have no other alternative but

to dismiss the applicant's application.

Application dismissed.

My Assessors agree with my decision.

J.A. HASSANALI,

PRESIDENT