

Held in Mbabane

In the matter between:-

WALTER MALINGA

APPLICANT

and

WORLD FURNISHERS T/A SCORE

RESPONDENT

QUORRAM:

M.S. BANDA

PRESIDENT

MR. V. DLAMINI

ASSESSOR

MR. A.N. MATSEBULA

ASSESSOR

MR. DHLADHLA for

APPLICANT

JUDGEMENT

The Applicant in this matter is claiming compensation for his unlawful dismissal from his employment by the Respondent. Briefly outlined the Applicants claim is made up as follows:-

- | | |
|-------------------------------------------------------------------------|------------|
| (a) Bonus in respect of the period 1st April 1987 to the 30th June 1989 | E 3000.00 |
| (b) Compensation for 6 months | E10,800.00 |

This was an uncontested case and proceeded ex parte after the Applicant through his counsel satisfied the court that the proceedings i.e. Applicants application was served upon the Respondent and signed by the Respondent's manager at Nhlngano. The proceedings were served by Applicants counsel upon the Respondents manager Mr. McArthur who is the manager at Nhlngano.

The history of the case is as follows:-

On the 1st September 1983 the Respondent employed the Applicant: On the 13th August, 1987 the Respondent unlawfully and unfairly dismissed Applicant from its employ.

As at the date of his dismissal from Respondents employ Applicants salary was E1800 a month.

On or about the 30th June 1987 the Applicant was entitled to E3000.00 being the bonus payable by the Respondent to the Applicant for achieving sales and cash target.

When the Applicant was dismissed he was paid E3184.54 only made up thus:-

- 14 days in respect notice
- 12 days in respect of Additional Notice
- 20 days in respect of Severance Allowance

The Severance Allowance was calculated on the basis of 20 days instead of 30 days. The money due to the Applicant for compensation for 6 months and the E3000.00 bonus aforesaid was not paid to the Applicant.

The Applicant now claims

- (1) E3000.00 being the bonus in respect of the period 1st April 1987 to 30th June 1989.
- (2) E10,800 being compensation for six months.
- (3) E600.00 being severance allowance for the remaining ten days aforesaid.

Applicant testified in support of his claim. He stated that he was employed in September 1983 and was dismissed on 13th August 1987. Applicant was given a paper saying that he had misused the vehicle and mismanaged the shop and that he worked under the influence of alcohol. Applicant stated that it was not true that he worked under the influence of alcohol. This allegation was raised by one of his junior staff telling his General Manager on one day in July 1987 Applicant disappeared from the shop and came back drunk. It was one of the reasons that Applicant was fired. There was no proof that Applicant was drunk.

Applicant was doing his job and he had recommendations from the executive chairman of the company from the head office saying that he was doing well.

Applicant has letters here, a trip to Mauritius in 1987 for 7 days with his wife for a job well done. Respondent wanted 7 shop managers. Applicant was number 5. Eventually Applicant was dismissed and matter was reported to Labour Commissioner. Applicant reported to the Labour office in Nhlango on the 14th August, 1987. This was before the expiration of 6 months.

Applicants basic salary was E1800.00 per month. The bonus the Respondent was obliged to pay because E12,000.00 was set aside each year for every shop manager when he has achieved his sales target and cash target and which Applicant never went below his target during his term of office. He was always double the target for his shop. The condition was that Applicant reaches his target and as such it was his entitlement.

For the period from January to June which was two quarters Applicant reached his target for each month. Applicant was not sure of the figure. The records are with the company.

Applicant was paid a sum of E3184.54 representing

- (a) 14 days in respect of Notice
- (b) 12 days in respect of Additional Notice
- (c) 20 days in respect of severance allowance

Applicant is asking the court to award him compensation up to 6 months. Severance allowance which was put at 20 days instead of 30 days. He was also asking for bonus of E3000.00 which he was entitled to:-

Applicant did not put any documentary evidence before court to show that he was indeed entitled to the bonus he was now claiming. Applicant stated that the records were with the employer. He was not sure of the figure but that during his term of office he never went below his target but was always double the target for his shop. The only document before court is a letter dated 22nd September 1987 exhibit 3 from the Respondent which states that for the period up to end of July 1987 Applicants shop did not show any profit.

Be that as it may the jurisdiction of this court does not include the awarding of bonus.

The court is not satisfied that the Applicant was under paid on severance Applicant was employed on the 1st September 1983 at the time of dismissal on the 13th August 1987 he had not completed a period of 4 years service. He had completed 3 years service. The first year of service is excluded in the calculation of severance allowance. This leaves 2 years service. Each year of completed service earns 10 days severance allowance. For the 2 years service Applicant was entitled to 20 days severance. This is the 20 days severance allowance which he was paid by the Respondent. The payment is confirmed by the Applicant in both his application and in evidence before court. The claim for severance allowance is accordingly dismissed.

We now come to the 6 months compensation in lieu of reinstatement that has been claimed. As earlier stated this is an uncontested application. We have not had any evidence as to why the Applicant should not be awarded this heard of claim.

The Applicant has only to satisfy the provision of Section 13(3) of the Industrial Relations Act.

The Applicant is now aged 47 years at the time of his dismissal on the 13th August 1987 the Applicants age was approximately 43 years. The Applicant has testified that he is currently unemployed. He is married and has 6 children. The Applicant has lost as a result of his dismissal receipt of receipt of a comfortable salary of E1800.00 per month and bonus. No evidence was lead as to the Applicants prospectus of obtaining equivalent employment. No evidence was lead as to the actual and future financial loss likely to be suffered by the Applicant as a result of the dismissal. No evidence was lead on the circumstances of the dismissal that is the atmosphere in which the dismissal was effected.

Consequently this court is not able to properly assess the correct amount of compensation to be awarded.

This court has merely made a learned guess of the compensation to be paid to the Applicant and has decided that he be paid one month as compensation.

My assessors concur.

MARTIN S. BANDA
INDUSTRIAL COURT PRESIDENT