Att: Mr Thulani Maseko (5)

IN THE INDUSTRIAL COURT OF SWAZILAND

Held at Mbabane Case No.31/90

In the matter of:-

BOOKIE S. MAMBA APPLICANT

and

SALES HOUSE (PTY)LTD RESPONDENT

QUORRUM:

PRESIDENT: M.S. BANDA

ASSESSORS: MR. V. DLAMINI
MR. A. NKAMBULE

FOR APPLICANT: MR. MALINGA

FOR RESPONDENT: MR. FLYNN

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:-

(1) Payment of the sum of E8400.00 being in respect of basic monthly salary plus commission for 6 months for wrongful and unlawful dismissal

(2) Payment for New Accounts canvassed as at date of termination but opened thereafter amounting to E20.00

(3) Costs of suit.

We propose to deal with the claim relating to costs of suit. Section 11 The Industrial Relations Act 1980 sets out the circumstances in which this court shall award costs. Per se this court is not supposed to award costs except in special circumstances namely:-

(a) Where the court holds that a party has acted frivolously or vexatiously or,

(b) With deliberate delay in the bringing or defending of a proceeding.

We were not addressed by either party as to why this court should award costs at all. If anything both parties were silent on the question of costs. There are no issues or facts in the present case that brings it within the ambit of Section '11 The Industrial RElations Act. This court therefore will not order costs.

Evidence was adduced by the Applicant in support of his claim. The Respondent also called evidence in support of their Defence. At the end of a long trial the parties were agreed that the Applicant had been given one written warning. The question that remained to be resolved was whether one written warning was adequate or inadequate pursuant to Section 36 (a) of the Employment Act for an Employer to terminate an employees services on the ground that the work performance of the employee has after written warning been such that the employer cannot reasonably be expected to continue to employ him.

For the Applicant it has been submitted that one written warning is not enough. For the REspondent on the other hand it has been submitted that one written warning satisfies the expectations of Section 36(a) Employment Act and that consequently the Applicant is not entitled to compensation arising out of a dismissal where one written warning has been given.

This court would be failing in its duty of ensuring that employees are entitled to job security in employment. It is desirable that the faults

of an inefficient employee should be pointed out to him and he should be given a chance to improve. It is desirable that an employee should be given two written warnings and on the commission of a further misconduct within six months of the date of an effective third warning the Employer should be entitled to terminate the services of such employee. This is good law. Warnings are intended to produce an improvement in the discharge of duty of an employee. To give a chance to an employee to improve his performance. A warning to the employee should not just point out the unsatisfactory conduct but is expected to highlight the required improvements. The warning should include some time limit so that after a set period it lapses.

In this case the Applicant was given one written warning before the Respondent terminated his employment. Was this warning sufficient and did it satisfy the expectations of Section 36(a) Employment Act. It is the decision of the court that the Applicant was not given an opportunity to improve his performance. The Applicant was not warned in the spirit and expectation of Section 36(a) Employment Act. The Respondent has not satisfied this court that it did give the Applicant the necessary warning. Consequently the termination of the Applicants employment is both unlawful and unfair. The Applicant therefore succeeds on this head.

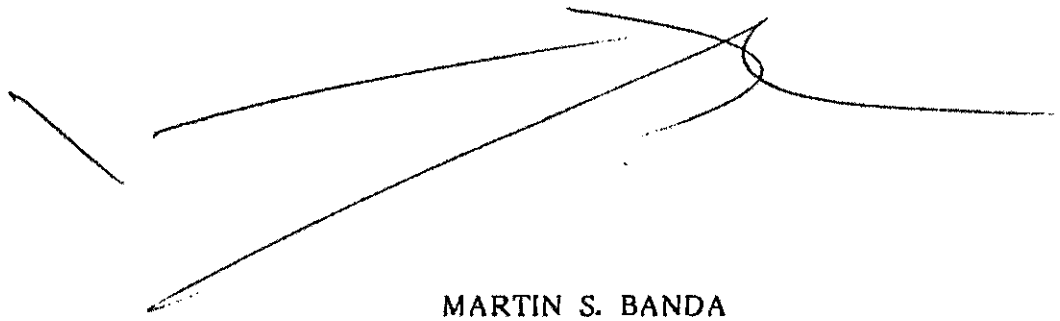
We now come to the question of compensation. The Applicant in item on his Application states and we quote "Payment of the sum of E8400.00 being in respect of basic monthly salary plus commission for 6 months for wrongful and unlawful dismissal".

It is not abundantly clear if this claim is referring to section 13 of the Industrial Relations Act. But taken in its totality and its reference to 6 months for wrongful and unlawful dismissal. We would like to believe

it is a reference to Section 13 and this would appear to be borne out by the submission of Mr. Malinga in that he has submitted that the Applicant has proved that he is entitled to be paid the six months salary as compensation for unfair dismissal.

Section 13 of the Industrial Relations Act has not been strictly satisfied to enable us award the maximum compensation provided under this head. It is the decision of this court that the Applicant be awarded one months compensation arising out of this claim under Section 13 of the Industrial Relations Act. The Applicant has accordingly succeed in his Application.

The assessors have agreed.



MARTIN S. BANDA
INDUSTRIAL COURT PRESIDENT