

IN THE INDUSTRIAL "COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 88/89

In the matter between:

NOMSA KHUMALO Applicant

VS.

S.I.D.C. LIMITED Respondent

C O R A M J.A.

HASSANALI President

MR MOTSA For Applicant

MRS HLANDZE For Respondent

MR. V. DLAMINI & MR MATSEBULA Assessors.

AWARD

(Delivered 15th March, 1990)

HASSANALI, P.

In this case the Applicant is claiming a sum of E3600/= as 6 months compensation from the Respondent on the ground that her services had been unfairly terminated.

Mrs Hlandze representing the Respondent raised the following preliminary objection and required Court to hear and determine this before going into the merits of the Case –

that the Commissioner of Labour did not act justly as required under Sec.50(3) of the Industrial Relations Act when he Arbitrarily extended the period of time during which a dispute may be so reported.

Mr. R. Bhembe, Commissioner of Labour in his evidence stated that he directed the applicant and Mr Potter, the General Manager, to be present at an Inquiry. The applicant was present but no one turned up on behalf of the Respondent. Nonetheless he enquired into the matter and recommended to the Minister, the extension of time as required under Sec.50(3) aforesaid. With the Minister's written approval the period of time was extended and the said Certificate was issued.

I accept the evidence of the Labour Commissioner and hold that he acted justly when he recommended to the Minister the extension of time as required under Sec.

50(3) and therefore overrule the preliminary objection.

I now turn to the facts in this case.

The Applicant was employed by the Respondent as an Accounts Clerk on 1/10/87 and was placed on probation for a period of 3 months (Ex.'A'). Since the Respondent was not satisfied with her work performance, the period of probation was further extended for another 3 months ending on 31/3/88 (Ex.'B')- However by letter dated 6/4/88 (Ex.'D') the Respondent terminated the services of the applicant on the ground that her work performance was still unsatisfactory.

I quote below Sec. 32 which deals with the probationary period -Section 32

- (1) During any period of probationary employment as stipulated either in the form to be given to an employee under section 22, or in a collective agreement governing his terms and conditions of employment, either party may terminate the contract of employment between them without notice.
- (2) No probationary period shall, except in the case of employees engaged on supervisory, technical or confidential work, extend beyond three months.
- (3) In the case of employees engaged on supervisory technical or confidential work, the probation period shall be fixed, in writing, between the employer and the employee at the time of engagement.

Mr Motsa appearing for the Applicant argued that since the Applicant performed work of a non confidential nature, her probationary period should not have been extended beyond 3 months. Her 6 months period, therefore was contrary to law. He also argued that at the end of the 3rd month ending on 31/12/87, the Applicant should have either been made permanent or if her work was unsatisfactory her probationary period should have been terminated. Since her probation was not terminated, he said that she automatically becomes

2

permanent. In the circumstances her employment could only have been terminated under Sec.36(A) of the Employment Act after a written warning. As this had not been done, her termination was unfair.

Mrs Hlandze on the other hand maintained that since the applicant performed work of a confidential nature the Respondent acted under Sec.32(3) by extending her probationary period for 3 months. In support of this she called one Miss Howe, a Supervisor who stated that the applicant handled work of a Confidential Nature. Mrs Hlandze also referred Court to Clause L of Applicant's letter of Appointment dated 1st September 1987 (Ex.' A') which clearly spelled out the nature of work the applicant had to carry out.

Therefore taking into consideration the evidence of Mrs Howe and the Clause L of Ex.' A', the fact remains that the applicant did perform work of a confidential nature.

As such the relevant law that should have been applied would be the one under Sec. 32(3) and according to it, the period of probation should have been fixed at the time of her engagement. Her letter of appointment in Clause C clearly stipulates that her

probationary period was 3 months. Therefore the subsequent extension of her probationary period, in my view would be contrary to law. In the circumstances since her probationary period was not terminated at the end of the 3rd month ending on 31/12/87 she automatically became permanent and therefore the law that would then apply to her would be under Sec. 36(a) of the Employment Act.

The question is whether the applicant was given any written warning as contemplated under the aforesaid section. Miss Howe stated that no such warning was ever given to applicant, though she was warned verbally. This does not comply with the requirements of Sec. 36(a). In the circumstances I hold that her termination had been unfair.

4

I will now deal with the question of Compensation. The applicant had been unemployed for only one month. She was also paid by the Respondent, 3 months salary in lieu of Notice at the time of her termination. Therefore taking them into consideration, I am of the view that one month's salary as compensation would be just and equitable under the circumstances.

Consequently I order the Respondent to pay applicant a sum of E600/= as compensation.

This decision is entered as an Award of this Court. My Assessors agree with my decision.

J.A. HASSANALI

PRESIDENT