

IN THE INDUSTRIAL COURT OF SWAZILAND

HOLDEN AT MBABANE.

CASE NO. 3/89

In the matter between:

COSHIWE NDZIMANDZE Applicant

VS

THE WORKERS COMPENSATION MEDICAL BOARD Respondent

C O R A M : J.A. HASSANALI President

MR MOTSA For Applicant

DR. A. MBOTTONI For Respondent

MR V. DLAMINI & MR MATSEBULA Assessors.

AWARD

( Delivered 15th March, 1990)

HASSANALI, P.

In this Application the Applicant is seeking an Order directing the Workmen's Compensation Medical Board, the Respondent to award her disablement compensation.

According to the evidence the Applicant was employed as a general Labourer in 1980 by the Royal Swaziland Sugar Corporation. The Applicant alleged that on 20th July, 1981 she received certain injuries in the course of her employment but this however was strongly denied by the Company. Nonetheless the applicant was examined by a Doctor who later referred her to the Respondent Medical Board.

The question to be decided is whether the application is time barred as contemplated under Sec. 18(2)(b) read with Sec.18(l) of the Workmen's Compensation Act.

Sec. 18(1) reads as follows: -

"A claim for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given, either orally or in writing, to the employer or to any foreman or other official under whose supervision the worker is employed, by or on behalf of the workman as soon as practicable after the happening of the

accident and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, in the case of death, within six months from the time of death"

Section 18(2)(b) provides

"the failure to make a claim for compensation within the period specified in subsection (1) shall not be a bar to the maintenance of such a claim if it is found that the failure was occasioned by mistake or other reasonable cause, but no claim for the recovery of compensation shall be maintainable unless it is made within a period of three years from the date of the accident or the date of death as the case may be,"

There is no evidence that the Applicant reported this accident to her employer, foreman or to any other official under whose supervision the worker was employed. The only evidence the Court has regards applicant's injury is one reported in Annexure B which is dated 4/11/87. Therefore the only conclusion the Court could arrive at is that the report of her injury was only made for the first time on 4/11/87.

Under Sec. 18(2)(b) the Applicant should have reported the accident within a period of 3 years. This she had not done. She only reported in 1987, that is 6 years after the accident. In the circumstances the action is time barred.

The next question is whether the applicant suffered any injury. In the Medical Report (Annexure 'C') submitted in this matter, the doctor who examined her concluded as follows -

"I can find no physical disability and no loss of earning capacity".

Therefore it appears that the Applicant had not suffered any injury in the course of her employment so as to enable her to make this application.

I also refer to Sec.32(2) which states that the decision of the Respondent

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Board is final and binding on the Labour Commissioner and the parties concerned. In this matter the Board has refused the Application for Compensation,

Taking the above into consideration I have no other alternative but to dismiss the Application.

Application is dismissed.

My Assessors agree with my decision,

J.A. HASSANALI,

PRESIDENT.