

IN THE INDUSTRIAL COURT OF SWAZILAND

Held at Mbabane

Case No. 161/90

In the matter between: -

AUGUSTO SOUSA DE LIMA

APPLICANT

and

CHECKERS STORES(PTY)LTD

RESPONDENT

JUDGEMENT

This is an Application by the Applicant in which he seeks relief against the Respondent for the termination of his services. He has claimed terminal benefits as follows:-

(1)	1 month wage in lieu of notice	E 2000.00
(2)	4 days x 2 years additional notice	727.27
(3)	10 days x 2 years severance allowance	1818.18
(4)	39 days in Lieu of Leave	3354.45
(5)	3 days worked in November 1989	272.72
(6)	6 months compensation	12,000.00

The Respondent did not contest this matter. No reply was filed. It therefore proceeded ex parte after proof of service of the Application.

The Applicant testified that he was employed on the 10th August 1986. He said that he was employed for 3 years and 4 months up to the 4th November 1989. His salary was E2000.00 monthly. On the 2nd November 1989 a Wednesday he was told that on Friday the 4th he would be dismissed. He was paid for the month of October. He was not paid any terminal benefits.

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Applicant reported the matter to the Labour Commissioner. He and a Labour Officer went to Mr. Mohammed. Mr. Anva Mohammed is the owner of Checkers Stores (Pty) Ltd. Mr. Mohammed agreed to pay the Applicant what the Labour officer wanted him to pay. He waited for the payment for some time but Mr, Mohammed didn't pay. Commissioner of Labour then advised the Applicant to institute court proceedings. Applicant testified that he would like the Respondent to pay him the following terminal benefits.

- (a) One month salary in lieu of notice
- (b) Additional notice of 4 days x 2 years
- (c) Severance allowance of 10 days x 2 years
- (d) 4 days worked in November 1989
- (e) 39 days in lieu of leave
- (f) 6 months compensation.

This court is satisfied with the evidence before it. The Applicant has discharged his burden of proof. The court accordingly orders that the Applicant be paid the following terminal benefits.

(1)	1 month wage in lieu of notice	E 2000.00
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(2)	4 days x 2 years additional notice	727.27
(3)	10 days x 2 years severacne allowance	1333.33
(4)	19.days in lieu of leave	2600.00
(5)	4 days worked in November 1989	266.66

We now have to resolve the claim pertaining to 6 months compensation by the Applicant. The Applicants age is 70 years at the time of dismissal he was about 68 years old. The termination of the employment resulted in the Applicant loosing a monthly salary of E2000.00. He is now employed. We do not know when he was employed. We do not know his current salary.

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The circumstances surrounding his dismissal were not unpleasant or humiliating.

We were inclined to grant the maximum compensation available under this head but for the fact that the Applicant has obtain equivalent employment though as stated earlier we do not know when he secured the employment.

It is ordered that the Applicant be paid a sum of E6000.00 representing 3 months as compensation under this head of claim.

The Applicant is accordingly awarded judgement in his favour.

MARTIN S. BANDA

INDUSTRIAL COURT PRESIDENT

25/7/91