

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 118/91

In the matter between: -

SONNYBOY MTHOKOZISI DLAMINI

APPLICANT

and

SWAZILAND PRINTING AND

PUBLISHING COMPANY LIMITED

RESPONDENT

RULING

This is an application in which the Applicant is seeking an order from the court that the Respondent do the following:-

(1) Payment of the sum of E7612.39 being in respect of sums by which he was underpaid since November 1986.

The Respondent in its answer raised a point in Limine. It is the Respondent's submission that this Honourable Court cannot take cognisance of the Applicants application in so far as it relates to wages claimed to be due in respect of any period prior to 28th July 1990 since in terms of Section 50(3) of the Industrial Relations Act No. 4 of 1980 the dispute cannot validly be reported to the Labour Commissioner if more than six months have elapsed since the issue giving rise to the dispute first arose. The said dispute according to papers filed with the Respondent by the Labour Commissioner was reported to the Labour Department on the 28th January 1991.

Mr. Ostcroft on behalf of the Respondent has submitted that the certificate of unresolved dispute shows that the report was made on 28th January 1991. He has cited Section 50(3) of the Industrial Relations Act and submitted that the dispute cannot be reported after 6 months have elapsed since the issue giving rise to the dispute first arose. He referred to Section 58(2) of the

2

Industrial Relations Act and submitted that the Applicant had not referred this dispute to court for the court to determine the dispute.

Mr. Ostcroft has submitted that the Applicant cannot claim arrear wages arising more than 6 months prior to the report on the 28th January 1991. He has further submitted that the Labour Commissioner could not take cognisance of any claim prior to 28th July 1990. That no certificate of extension of time was issued by the Labour Commissioner. He concludes by submitting that the claim for under payment of E6712.39 since November 1986 cannot be taken cognisance of and that the court is precluded from considering arrear wages arising before 28th July, 1990.

In reply Mr. Ntiwane representing the Applicant has submitted that the Applicant as early as 1986 has been talking to various General Managers of the Respondent. He has cited Section 7 of the Industrial Relations Act and submits that the court has the right to order the Respondent to pay sums due to the Applicant

Without belabouring the issue Section 7(1) commences by stating that without prejudice to the provisions of this Act or any other law. While Section 50(3) of the same Industrial Relations Act states a dispute may not be reported to the Labour Commissioner if more than six months have elapsed since the issue giving rise to the dispute first arose.

Applicant has alleged that since November 1986 the Respondent has under paid him. Applicant is saying since November 1986 he has been underpaid by the Respondent. The issue giving rise to the dispute first arose in November 1986. He has not obtained a certificate extending the time in which he can lodge the dispute.

If as persuaded by the Applicant that the court has the right to order the Respondent to pay sums due to the Applicant by virtue of the provisions

3

of Section 7 of the Industrial Relations Act, the court will be prejudicing the provisions of. Section 50(3) and Section 7(1) says the court shall use this right provided under this Section without prejudice to the provisions of the Act. Section 7 therefore cannot be used as authority for the court to hear a dispute which has been reported out of time.

The court therefore will not take cognisance of the Applicants claim for arrears of wages for the period prior to 28th July, 1990.

MARTIN S. BANDA

INDUSTRIAL COURT PRESIDENT

4/11/91