

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.125/91

In the matter between;-

GEORGE MKHONTA

APPLICANT

and

SWAZI PAPER MILLS LIMITED

RESPONDENT

#### RULING

In this application the Applicant seeks compensation for the termination of his services by the Respondent on the 24th October, 1989.

The Respondent raised a point in Limine namely that the application is defective in that the certificate of unresolved dispute indicates that the dispute was reported on the 13th October 1989 while the application itself indicates that the Applicants services were terminated on the 24th October 1989 after the dispute has been reported.

Mr. Simelane representing the Respondent submitted that the application was defective as the matter was reported before the dispute arose. That the Applicant had not filed an amendment. Consequently the application should be thrown out.

Mr. Motsa submitted on behalf of the Applicant that the point in Limine should be dismissed as it did not refer to any law.

The court then suggested that the Applicant should tender the original report of the dispute that he made to the Labour Commissioner.

2

The original report was filed before court on the 12th November 1991. The report of dispute indicated that the Applicant was dismissed on the 28th October 1989 and the date on which the report was made is shown as 30th October 1989.

Rule 3(2) of the Industrial Court Rules states that the court may not take cognisance of any dispute which has not been reported or dealt with in accordance with Part VII of the Industrial Relations Act. The Applicant says he reported the matter to the Labour Commissioner. The Respondent says Applicant reported dispute before it arose. Certificate of unresolved dispute states that the matter was reported on the 13th October 1989. The Applicants services were terminated on the 24th October 1989. The dispute between the parties arose on the 24th October, 1989.

The original report filed before court shows that the, report of the dispute was made on the 30th October 1989 as opposed to the 13th October, 1989 endorsed on the certificate of unresolved Dispute.

Upon receipt of the report of the dispute the Labour Commissioner conciliated between the parties but his efforts were abortive. The dispute in this matter was reported and dealt with in accordance with Part VII of the Industrial Relations Act. The application as it is now stands is not defective as to warrant being thrown out. It is irregular only in so far as it has a wrong date endorsed representing the date when the dispute was reported. This irregularity is of a clerical nature and does not affect the merits of the case nor does it prejudice the interests of the Respondent.

In the premises this application is stayed pending the acquisition of an amended certificate of unresolved

dispute from the Labour Commissioner by the Applicant.

The Applicant is at liberty to restore the matter once he has secured the amended certificate of unresolved dispute which should reflect the correct

3

date when the dispute was reported by the Applicant to the Labour Commissioner.

MARTIN S. BANDA

INDUSTRIAL COURT PRESIDENT

18/11/91