

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT  
MBABANE

---

Case No. 19/91

In the Matter between:

SIMON NDZINISA

Applicant

AND

MONDI FORESTS A DIVISION OF  
PEAK TIMBERS LTD

Respondent

QUORAM:

Martin S. Banda	:	President
Vusie Dlamini	:	Assessor
Josiah Yende	:	Assessor
Mr Israel Mthethwa	:	For Applicant
Mr Mazibuko	:	For Respondent

---

JUDGEMENT

---

The Applicant in this matter is claiming compensation for the unlawful termination of his employment by the Respondent. The Applicants claim is made up as follows:

(a) One (1) months notice Pay	E265-00
(b) Addition Notice 4 days x 2 x E13.25	E106-00
(c) Severance Pay : 10 days x 2 x E13.25	E265-00
(d) 6 months compensation for unfair dismissal	E1550-00
<b>Total Claim</b>	<b>E2186-00</b>

The Respondent in its reply denies that the termination of the Applicants employment was unlawful and avers that the termination of the Applicants employment was fair

The history of this case is as follows:

In November 1986 the Applicant was employed by the Respondent as a pruner, receiving a salary of E265 per month for 5 working days per week. The Applicant went on leave in June 1990 and whilst on leave heard of a vacancy for cutters at Section C2 of the same Company. He went there and was advised to request for a transfer. Before the Applicant completed his leave he went to ask for a transfer to Mr Shiba his foreman who promised to see Mr Mbokazi. When the Applicant came again on the last day of his leave he went to see his foreman Mr Shiba about the transfer who said Applicant must go to work and he could get a reply later. Coming back from work in the afternoon Applicant was informed that Mr Mbokazi had refused the transfer request.

The following morning the Applicant went to Mr Shiba's office to request for permission to see Mbokazi this was refused by the Foreman (Shiba) who said this could cause all workers in the Company not to have confidence in him as all would start by passing him to go to Mr Mbokazi.

Mr Shiba told the Applicant to leave his office then boarded the truck to work and Applicant left for the Compound. The following day Applicant went to Mr Shiba's office and before he could talk was told to go to Mr Mbokazi. Applicant went outside.

The following Monday Applicant went to Mr Shiba's office and was told there was nothing that could be done for him and asked to come back to get his pay. Applicant was paid a sum of E24-00 for the days worked. He reported the matter to the Labour Commissioner. The Services of the Applicant were terminated by the Respondent in June 1990.

The Respondent averred that the Applicant absconded from duty on 7th June 1990 and papers terminating his employment were signed on the 21st June, 1990. The Respondent further averred that the termination of the Applicants Services was justified as he had refused to work for more than 3 days.

The Applicant testified in Court in support of his claim. He stated that he was employed by Mondi Forests in 1986. He was planting, weeding and pruning trees. He worked 5 days a week. He was paid monthly. He earned E265-00. He requested that he be transferred to another Block at Mondi. He requested the transfer from his foreman Mr Shiba. Mr Shiba told the Applicant he was going to discuss it with his Seniors and the Applicant should check with him the following day.

When the Applicant checked with Mr Shiba the following day he was told that he cannot be transferred.

The Applicant told Mr Shiba that he wanted to go to the Seniors themselves. Mr Shiba refused him the chance of seeing his seniors saying the other workers would lose confidence in him and every time would request to see the Seniors.

The Applicant then asked Mr Shiba to go and put the same request to his Seniors. Mr Shiba told the Applicant he was looking down on him as he had already told him what the Seniors had said. Mr Shiba advised the Applicant to do what he felt like doing.

Mr Shiba left the Applicant in his office. When the Applicant tried to go back to work Mr Shiba told him not to work but do what he felt like doing. The Applicant then went to the compound and returned the following day to continue with his work. When he asked Mr Shiba if he could continue with his work he was told he could not as they would end up fighting and that he should do what he felt like doing.

Mr. Shiba left the Applicant in his office. The Applicant went back to the compound and came back the following morning and was told there was nothing that could be done for him. He should go and get his pay. When he went to get his pay he was told his name was struck off the register because he had disappeared for two weeks. He was paid E24-00. He was not told what the E24-00 was for. He then went to Piggs Peak Labour office.

Since he lost his employment he has not been employed anywhere. He has tried to get employment. He has no source of income. He has a wife and 3 children. One is schooling.

He asks that the court orders the Company to pay him notice, severance allowance and long service.

Under cross examination the Applicant testified that when the foreman told him to do as he pleased he meant he should go and see Mbokazi. When the Applicant came back from leave he worked for two days. On the third day he was told to go back to the compound. He went to Rockland 3 days after he was told to stop working. This is the day when he was told Mr Shiba has said he had disappeared from working. He worked for two days. The three days he did not work because he was returned from work.

In reply to questions put by the court the Applicant stated that he was

4

not told of any laid down procedure for transfer. He testified that you only go to the Foreman of the Block and ask if there is a vacancy then he tells you. When the Applicant asked to go on leave he had already heard about the vacant position at C2 and he was told to go and ask for a transfer.

The Foreman said he has a vacant post but before he could receive the Applicant, the Applicant should get permission from the Section under which he was working.

The Applicant said Mr Shiba was in charge of him at work. Mbokazi is Senior to Shiba. What made the Applicant to persist is because he did not see the reason for refusing to get a transfer. He was never given a letter terminating his services.

The Respondent did not lead any evidence. The Respondent did not submit. The only evidence before court was that of the Applicant.

The Applicants testimony is the only evidence before court. It has not been challenged. In its reply the Respondent averred that the Applicant had absconded from work from 7th June, 1990 up to 21st July, 1990, when the termination papers were signed. These averments are not supported by evidence.

The Applicant has shown by testimony that he was an employee of the Respondent. The Applicant has shown that he was employed in 1986 by the Respondent. His job was planting, weeding and pruning trees. He worked 5 days a week. He was paid E265 monthly. The Applicant has shown that his employment was terminated by the Respondent. The Respondent on the other hand has averred that the termination of the Applicants employment was fair and has called no evidence.

Section 42 (2) of the Employment Act 1980 states that the termination of an employees Services shall not be considered fair unless the employer proves the fact. The employer has alleged that the Applicant absconded from work from the 7th June 1990 up to 21st June, 1990 pursuant to Section 36 (f) of the Employment Act 1980. The employer has not lead evidence to prove that the Applicant had truly absented himself from work. The Applicant disputes that he was absent from work. We are therefore satisfied that the Applicant has successfully discharged the burden of proof. The Applicant has proved that he was an employee of the Respondent at the time his employment was terminated. The Applicant

has proved that he received a sum of E265 per month. It is the decision of the court that the Respondent unfairly terminated the employment of the Applicant. It is ordered that the Respondent pay the Applicant the following sums of money:

(i) One (1) month notice pay E265-00

(ii) Addition notice 4 days  
x 2 x E13-25 E106-00

(iii) Severance pay 10 days  
x 2 x E13-25 E265-00

On the question of compensation for unfair dismissal the Applicant testified that since he lost his employment he has not been employed anywhere. He has tried to get employment. He has no source of income. He has a wife and 3 children. One is schooling. The Applicant is 25 years old. The court is satisfied that the Applicant has discharged the burden placed on him by Section 13 (3) of the Industrial Relations Act. It is ordered that the Respondent do pay the Applicant 3 months salary representing compensation.

The assessors have concurred.

MARTIN S. BANDA  
INDUSTRIAL COURT PRESIDENT

143.00  
143.10