IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 3/93

In the matter between:

FAITH DLAMINI APPLICANT

AND

OSCAR WATCH OPTICIANS RESPONDENT

CORAM:

MARTIN BANDA: PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA: MEMBER

ANDREAS LUKHELE: FOR THE APPLICANT

JUDGEMENT

The Applicant seeks compensation for her unfair dismissal by the Respondent from her employment.

The Applicant proved through an Affidavit dated the 19th February, 1993 that she did serve the Respondent with the Notice to appear at Court as well as the Application for Unresolved Dispute. An order was made on the 22nd February, 1993 that the matter proceed ex parte to trial.

On the 16th August, 1995 the Applicant lead evidence on oath She stated that she is 32 years old and was employed by the Respondent on the 15th October, 1987 as a cleaner. She reported for duty at 7 a.m. and cleaned the surgery and the reception

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of the Respondent. At about 12 noon she moved to the Doctor's place of residence to clean there and knocked off at 17 hours. She worked continuously for the Respondent until the 5th July, 1990 when she was dismissed. She was orally employed. She was dismissed by NADI of the Respondent. He was the superior of the Applicant. DOCTOR NADI dismissed the Applicant orally. She was dismissed for being absent. The Applicant said she had not been absent. No inquiry was held before dismissal.

She was not paid her terminal benefits. The Applicant was earning a sum of E150.00 per month. She is asking the Court to order the Respondent to pay her one month's notice in the sum of E16.80.

Severance Allowance of E45.60. 30 days Leave pay of E150.00 and 6 months wages compensation in the sum of E900.00. The Applicant is not employed. She has 5 children who are all attending school. She has no formal training. She went up to standard 5 in school.

This was an undefended case. The evidence of the Applicant was not challenged. The Respondent did not through evidence prove that the Applicant was reasonably dismissed or that the circumstances

of this case were all taken into account before deciding to dismiss her. The Respondent has also not proved that the reason for the termination of the Applicant's employment is one permitted by Section 36 of the Employment Act of 1980. The Applicant has shown that she was an employee of the Respondent at the time that her employment was terminated.

It is our decision that the Respondent has failed to prove that the termination of the Applicant's employment was just, lawful or reasonable or that it was one permissible by Section 36 of the Employment Act of 1980. It is our decision that the dismissal of the Applicant by the Respondent was unlawful and without justification and was unreasonable. We order that the Respondent do pay the Applicant the followings terminal benefits:

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- 1. 1 Month's Notice Pay E150.00
- 2. Additional Notice E 16.80
- 3. Severance Alllowance E 45.60
- 4. 30 Days Leave Pay E150.00

We are satisfied that the Applicant has discharged the provisions of Section 13 (3) of the Industrial Relations Act of 1980. We order that the Respondent do pay the Applicant 6 months wages by way of compensation in the sum of E900.00.

The Members have concurred.

MARTIN SAMSON BANDA

PRESIDENT - INDUSTRIAL COURT