

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO: 166/94

In the matter between:

IDA SHABALALA Applicant

And

THE NEW GEORGE HOTEL Respondent

CORAM:

M. S. BANDA : PRESIDENT

J. M. YENDE : MEMBER

A. SIBIYA : MEMBER

BENEDICT TSABEDZE : FOR THE APPLICANT

JUDGEMENT

The Applicant in this Application seeks an order for the payment of Six Months Wages Compensation, Notice Pay of One Month, Additional Notice, Severance Allowance and Leave Pay of Days worked. This is an ex parte trial. The Applicant having proved service of the proceedings upon the Respondent by filing an Affidavit of Service sworn to by one HENRY BARTARIA dated the 15th December, 1994.

support of her claim the Applicant testified before Court that she was employed by the Respondent on a date she has now forgotten in February. 1974 xxx cleaner. At the time of her dismissal she was earning the sum of 1220,00 xxxxx. Since employment the Applicant has worked continuously for the Respondent. Her hours of work commenced at 8.30 a.m. At the beginning of xxx she reported at 9.00 a.m. for duty. She stated her reason for coming late. she said that the transport she was using was delayed by the inspection Operators of the Swaziland Government Motor Examiner. When the Applicant

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arrived at work she was told to go back home without being asked to explain her reasons for reporting late. This was her first time to arrive late at work. She had not been given any warning pertaining to coming late to work. The following day as requested the Applicant reported for duty and was called by her employer into his office and ordered "to hand over the uniform that she used and told to go home and come back the following day to collect her terminal benefits. The Applicant did surrender the uniform but did not take her terminal benefits due to dissatisfaction.

The Applicant understood the request to collect her terminal benefits as dismissal. The Applicant went to the Labour Office to report the Dipsute of unfair Dismissal. The Labour Commissioner conducted conciliation talks between the Applicant and the Respondent. The dispute was therefore certified as unresolved and a Certificate of Unresolved Dispute was issued.

While in the employment of the Respondent the Applicant was told that she was entitled to 14 days leave per annum. In 1991 the Applicant had 7 leave days accrued. In 1992 she never went on leave. In 1993 she did not go to leave. Her total accumulated leave days is 35. At the time of her dismissal the Applicant had worked for 19 days. She was not paid for days worked on the date of her dismissal. She was not paid one month's notice in the sum of E220.00 She was not paid Additional Notice calculated as follows :

18 yrs x 4 days ÷ 26 days x E220.00 = E609.23 She was not paid Severance Allowance 18 years x 10 days ÷ 26 days x E220.00 = E1523.07 Leave Pay = 35 days ÷ 26 days x E220.00 = E 296.15 19 days worked x E8.46 per day = E 160.74

The Applicant now seeks an Order directing the Respondent to pay these terminal benefits. The Applicant is 52 yeras of age. She has 7 children, 4 of then are at school and 3 are not. She has attempted to secure an alternative job but has failed

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As we stated earlier this is an uncontested case. The Respondent has not challenged the evidence of the Applicant. The Respondent has not testified before Court. On the basis of the evidence before us we are satisfied that the Applicant has been in the continuous employment of the Respondent since 1974 to the date of dismissal early in 1994. The Respondent has not discharged the burden of proof placed on it by the Law.

We are satisfied that the dismissal of the Applicant on the evidence before us was both unreasonable and unfair. We order that the Respondent do pay to the Applicant the following terminal benefits :

1. ONE MONTH'S NOTICE PAY - E 220.00
2. ADDITIONAL NOTICE - E 609,23
3. SEVERANCE ALLOWANCE - E1523.07
4. 35 LEAVE DAYS DUE - E 2.96.15
5. 19 DAYS WORKED - E 160.74

We are also satisfied that the Applicant has satisfied the provisions of Section 13 of the Industrial Relations Act relating to compensation. We therefore order that she be paid 6 months wages by way of compensation in the sum of E1320.00

The Members have concurred.

MARTIN SAMSON BANDA

PRESIDENT - INDUSTRIAL COURT