

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 26/99

In the matter between:

MICAH MASILELA APPLICANT

And

FERODO (PTY) LIMITED RESPONDENT

CORAM:

NDEM NDUMA : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR THE APPLICANT : MR. M. MABILA

FOR THE RESPONDENT : MR. Z. JELE

RULING

(10. 06. 99)

The Respondent has raised objections in limine to the Applicant's application brought in terms of Section 57 and 58 of the Industrial relations Act.

The objections are couched in the following terms :

"1.1 The Applicant reported a dispute on the 4th of March 1998 and a conciliation meeting attended by the Applicant and the Respondent represented by its Human Resource Manager was held on the 16th March 1998.

1.2 At the conciliation meeting the matter was resolved in that the Applicant withdrew the dispute.

1.3 The Applicant has never reported another dispute to the Labour Department.

1.4 Accordingly therefore Respondent states that the matter is improperly before the court in that no conciliation has been held on the dispute now before court".

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To support its objection, the Respondent called a Labour Officer Mr. SANDILE CEKO to testify concerning what transpired at the Labour Commissioner's office regarding this dispute.

MR. CEKO stated that he was the Officer who dealt with the dispute, that it was reported on 4th March 1998 and a conciliation meeting was convened on the 16th March 1998 wherein the Applicant in person and the Industrial Relations Manager of the Respondent MR. NAPTHAL GUMBI and a supervisor of the Applicant were present.

According to the witness, at the end of this conciliation meeting the Applicant elected to withdraw the dispute on MR. CEKO's advise after realising that the same was misconceived, No agreement in writing was made in accordance with the Industrial Relations Act, to seal this agreement by the parties.

It is for this reason that the Applicant alleges that no such agreement existed and he is entitled to

bring this matter before this court for resolution.

MR. CEKO further testified that after the withdrawal of the dispute a MR. MSIBI from Swaziland Transport and Allied Workers Union telephoned him to say that he had advised the Applicant that the explanation given to him by the Respondent was unsatisfactory and thus he ought not to have withdrawn the matter in the first place. MR. CEKO however informed MR. MSIBI that he had no capacity to represent the Applicant in a dispute that he had reported personally and had chosen to withdraw.

On the 20th March 1998 the Applicant filed a fresh report of dispute. The Labour Commissioner's office did not acknowledge the receipt of the report in writing nor did they summon the Respondent to appear for a conciliation meeting in respect thereof.

MR, CEKO on the contrary told this court that; on receipt of the second report of dispute by the Applicant he called MR. GUMBI the Industrial Relations Manager at the Respondent's undertaking who had represented the company in the conciliation meeting of the 16th March 1998. He told the court that they both came to the conclusion that since nothing had changed a further conciliation meeting could serve no purpose and MR. GUMBI gave him the go ahead to issue a certificate of unresolved dispute.

Did the Commissioner of Labour through one of its Officers MR. CEKO, act within his powers by issuing a certificate of unresolved dispute without convening a further conciliation meeting in the circumstances of this case ?

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In terms of Section 61 (1) of the Act, the Commissioner of Labour shall "as soon as possible after a dispute has been reported or deemed to have been reported to him take such steps as he may consider advisable" to secure a resolution of the dispute within twenty one days after the receipt of the report.

For emphasis the steps to be taken by the Commissioner or his representative should be such steps as he "may consider advisable". According to MR, CEKO he conversed with MR, GUMBI (representative of the Respondent), telephonically and they both came to the conclusion that a further conciliation meeting would serve no purpose. The Applicant was then issued with a certificate of unresolved dispute to approach this court for relief sought in his application.

In the circumstances of this case we are satisfied that MR. CEKO acted reasonably and his actions were in accordance with the authority given to the Commissioner of Labour in terms of Section 61 (1) of the Act.

The objection in limine is accordingly dismissed.

NDERI NDUMA PRESIDENT

INDUSTRIAL COURT