IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO 77\99**

In the matter between:

LUCKY ZWANE **APPLICANT**

and

EURO SECURITY **RESPONDENT**

CORAM

NDERI NDUMA	:	**PRESIDENT**
JOSIAH YENDE	:	**MEMBER**
NICHOLAS MANANA	:	**MEMBER**
FOR APPLICANT	:	**MR B. MAGAGULA**
FOR RESPONDENT	:	**NON APPEARANCE**

JUDGEMENT 11/5/2000

The Applicant claims maximum compensation for unfair dismissal and other terminal benefits emanating therefrom.

The Respondent failed to appear for the hearing in spite having filed a reply to the Application. The trial date had been set on the 28th April 1999 in the presence of both parties.

The trial proceeded exparte in the absence of an explanation to the non appearance of the Respondent or its representative.

The Applicants case is that he was employed by the respondent on 18th August 1998 as a Security guard earning a gross monthly salary of E350.00.

He was in continuous employment with the Respondent until the 10th January 1999 when he was dismissed for unfounded allegations following theft of certain

items at Shoprite Checkers shop, Mbabane where he had been stationed on duty on the mentioned day.

He was implicated in the theft of certain goods from the shop by a lady shop attendant. He was consequently arrested by the Police and charged with the offence of theft but was found not guilty by the Swazi National Court.

Upon acquittal the Applicant reported to work but was dismissed by the Respondent without proper opportunity to defend himself.

The Applicant was paid his salary up to the month of January 1999. He told the court that he was 38 years old and was unable to obtain alternative employment since the dismissal. He said that he sustained his lifehood by providing adhoc candy service at the Mbabane Golf course.

In terms of S41 of the Employment Act the Applicant has an onus of only establishing that he was an employee to whom S35 applied, upon discharge of that onus, it is incumbent on the respondent to show that the Applicant was dismissed for a reason contained in section 36 of the Act and further considering all the circumstances of the case, it was just and reasonable to dismiss the applicant.

The applicant has discharged his onus, but the Respondent having failed to make an appearance at the trial failed in its responsibility.

The Applicant's application has consequently succeeded.

We have considered the age of the Applicant the period of service he had given the respondent, the nature of his job, and the fact that he had not obtained reasonable employment since his dismissal.

In the circumstances we order that the Applicant be paid six months compensation for unfair dismissal in the sum of E2,100. We are satisfied that the Applicant was not owed any terminal benefits nor outstanding salary upon his dismissal. There will be no order as to costs.

The members agree.

NDERI NDUMA
JUDGE PRESIDENT - INDUSTRIAL COURT

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 280/99**

In the matter between:

SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION **APPLICANT**

and

SWAZI WIRE INDUSTRIES (PTY) LTD **RESPONDENT**

CORAM:

NDERI NDUMA	:	**PRESIDENT**
JOSIAH YENDE	:	**MEMBER**
NICHOLAS MANANA	:	**MEMBER**

FOR THE APPLICANT :	**MR. SICELO DLAMINI**
FOR THE RESPONDENT:	**MR. ZONKE MAGAGULA**

J U D G E M E N T - 10. 07. 2000

The Applicant union seeks an order directing the respondent to grant recognition to the Applicant in terms of Section 43 (6) of the Industrial Relations Act No.1 of 1996.

The Applicant in its Founding Affidavit states that it has fulfilled all the legal requirements for the Respondent to recognise it as the sole representative of the workers in the undertaking.

Counsel for the Applicant submitted that in September 1999 more than 51% of the Respondent's employees joined the Applicant and became full subscribed card carrying members.

On the 5th September 1999 the Applicant applied for Recognition in terms of the Act. The Respondent is alleged to have threatened its employees into resigning from the union subsequent thereto. These allegations are contained in a letter directed to the Respondent by the Applicant dated the 7th October, 1999.

The Respondent has since failed to respond to the Applicant's concerns inspite of a reminder dated the 18th October, 1999.

On the contrary the Respondent states in its Answering Affidavit that the union has no proof of its 51% membership in the undertaking and has placed the Applicant to strict proof thereof.

It was submitted for the Respondent that the union was forcing the employees of the Respondent by use of threats to join the union. The delay to recognise the union is meant to resolve the allegations of threats made to employees. Further Respondent denies that it has threatened its unionised employees and prays that the Application be dismissed.

At the time this Application was lodged no verification count had been conducted, however on the 11th April, 2000 the office of the Commissioner of Labour conducted a verification count and a document containing the results thereof was submitted from the bar by counsel for the Applicant.

The Respondent admitted that such exercise did take place but alleged that the process was flawed.

Out of 61 unionisable workers of the Respondent, over 50% + 1 were members of the union.

We do accept the document from the Department of Labour as primafacie evidence of the results of the verification count. We have admitted the document notwithstanding that it was not earlier annexed to the Founding Affidavit.

We do reject the contention by the Respondent that the exercise was flawed in as much as that information was not readily availed to the court but was brought forth after the court questioned the Respondent as to whether or not they confirm that a verification count was conducted by the office of the Labour Commissioner.

We accordingly find that the Applicant has satisfied the requirements of Section 43 (5) of the Act and order the Respondent to grant it recognition forthwith in terms of the law.

There will be no order as to costs.

The members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT