

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 90/99

In the matter between:

SIPHO DLAMINI

APPLICANT

And

SWAKI INVESTMENT CORPORATION

t/a SWAZILAND MILLING

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. BANDA:

FOR APPLICANT

MISS B. MVUBU:

FOR RESPONDENT

RULING

1/12/00

Applicant has made an application to this court in terms of Rule 3 (1) of the Industrial Court Rules 1984; that a Judgement delivered by this court on 25th May, 2000 be interpreted. The court ordered respondent to pay to applicant his SWAKI Pension Fund benefits in terms of the SWAKI Pension Fund regulations.

Mr. Banda for applicant contends that after three months of employment the employee acquires the status of a permanent employee. According to applicant the company was supposed to list applicant in the list of pensionable employees after he was confirmed as permanent and then contribute to the SWAKI Pension Fund on monthly basis.

Miss Mvubu for respondent stated that they do not contest that applicant was employed by respondent in 1989. They, however, state that though by operation of law he became permanent three months later this does not mean he qualified to be a member of the SWAKI Pension Fund.

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She states that the respondent joined the applicant as a member of Swaziland National Provident Fund and started paying monthly contributions on behalf of the applicant. He contends that the respondent is the one who decides who is eligible to be a member of the SWAKI Pension Fund and who is not.

Respondent states that at the time of employment applicant was paid weekly and according to the regulations at SWAKI, all employees who are weekly paid are not eligible to be members of the SWAKI Pension Fund.

It is not in dispute that at the time of employment applicant was listed as a member contributing to Swaziland National Provident Fund. It is also not in dispute that he was transferred from weekly paid to monthly paid workers. This was the time he became eligible to be a member of the SWAKI Pension Fund.

His eligibility depended upon acquiring a certain status at respondents undertaking. It was not automatic on confirmation after probationary period. It therefore, cannot be said that because applicant was confirmed as permanent after completing three months at respondent employment, he was also enrolled as a member of the SWAKI Pension Fund.

The benefits to be given to applicant will only include the period he served as a member of the SWAKI Pension Fund and not the fourteen years he served as an employee of respondent.

Members concur.

KENNETH P, NKAMBULE

JUDGE (INDUSTRIAL COURT)