

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 87/99

In the matter between:

CLOVIS FANA MKHABELA

APPLICANT

and

F & R PANEL BEATERS & SPRAY PAINTERS

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

MR. N. J. HLOPHE:

FOR THE APPLICANT

JUDGEMENT

13. 06. 2000

The Applicant seeks maximum compensation and terminal benefits in that on or about the 12th October 1998 he was unfairly dismissed by the Respondent.

He told the court that he was employed by the Respondent in January 1996 as an Assistant Upholstery Artisan and he was in continuous employment for two years and ten months prior to the dismissal.

The Applicant stated that he was retrenched without any notice nor opportunity to be heard. No reason was advanced by the Respondent other than that there was no work.

Upon retrenchment no terminal benefits were paid to him. He too was not paid October salary.

Though payment in lieu of leave is claimed, no evidence in support of the claim was adduced.

The dismissal was verbal and no letter of retrenchment nor any reference letter was given to the Applicant.

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The Applicant told the court that he has suffered hardships and was unable to support his children as a result of the retrenchment. He further said that the Respondent company is operational to date and therefore it was not justified in the action taken against him.

In terms of Section 36, retrenchment is a potentially fair reason to terminate the services of an employee. However, it is incumbent on the employer to show that such retrenchment was justified and reasonable in all the circumstances of the case according to Section 42 (2) (a) and (b) of the Act.

The Respondent inspite of having been served with the Applicant's Application on the 17th May 1999 made no appearance at all. The matter accordingly proceeded exparte. The Respondent has not discharged its onus in terms of Section 42 of the Employment Act and we accordingly make a finding in favour of the Applicant.

In awarding compensation, we take into consideration the period of service rendered by the Applicant, that he did not contribute to his dismissal, his financial hardships due to the unfair dismissal and award him six months compensation for unfair dismissal. He earned E1,000 a month making the compensation E6,000.

The Respondent shall also pay:

One month's salary in lieu of notice	E1,000.00
Additional Notice	E 363.00
October Wages 1998	E 409.05
Total Payment to Applicant	E7,772.05

There will be no order as to costs. The members agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT