

IN THE INDUSTRIAL COURT OF SWAZILAND

HELP AT MBABANE

CASE NO. 146/98

In the matter between:

JOSEPH NDZINISA

APPLICANT

and

LEKELELA NGWANE BUS SERVICE

RESPONDENT

CORAM:

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

M/S WENDY SIMELANE:

FOR APPLICANT

JUDGEMENT

30. 06. 2000

The Applicant has brought this application seeking compensation for unfair dismissal, Notice and Additional Notice Pay, Underpayment, off day payment and restitution of unauthorised deductions.

There was no appearance for the Respondent on the date of the hearing and an application by the Applicant to proceed EXPARTE was granted. The Applicant testified in support of this application. In brief, the Applicant's case was as follows:

The Applicant stated that he was 32 years of age, unmarried with four children. That he was hired by the Respondent in 1986 as a Bus Conductor. The agreement was verbal. Applicant worked from 4.00a.m. until 8.00p.m. daily, seven times a week. Applicant told the court that he was not afforded any off day and that he worked on Public Holidays.

He earned a basic salary of E102.00 per month. On the 23rd January, 1995 Applicant was sick. He had gone to a medical practitioner who treated him and then gave him a sick leave. He came to work to collect his money as it was pay day. When he was given his salary by the respondent he found that it was less. He then enquired from Respondent as

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to why he had not given him all his money. Respondent answered and said he (respondent) was not obliged to pay him (applicant) days that he had not worked for.

This worried applicant who told Respondent that he was going to find out from the doctor if this was true. Applicant did not take the money. On his return Respondent dismissed him.

According to Applicant, no hearing was conducted before his dismissal. At the time of his dismissal Applicant's salary had increased from E102.00 to E260.00.

Applicant produced a schedule titled "JOSEPH NDZINISA'S UNDERPAYMENTS". He claims E6,896.08 as underpayment. Applicant produced a schedule titled "PUBLIC HOLIDAYS UNPAID WAGES". The

amount he is claiming is E790.08.

He further claims that Respondent owed him 30 days leave valued at E439.50 as he was earning E14.65 per day.

Applicant claims that he was unfairly dismissed and that he was not given a hearing by his employer to defend himself.

The evidence by Applicant remains uncontroverted as there was no appearance by respondent.

Applicant has proved that he was an employee in terms of Section 35 of the Employment Act and that he was dismissed on the 23rd January 1995 summarily without being afforded a hearing having worked for respondent since 1986. Applicant has denied any wrong doing and has substantiated his claims.

The onus is on the Respondent to prove that the dismissal was fair and reasonable.

The Respondent, therefore, has failed to discharge its onus under Section 42 of the Employment Act.

Consequently, we find that Applicant was substantively and procedurally dismissed unfairly.

In determining the amount of compensation to be awarded to Applicant we have considered the following:

- a) Applicant worked for a period of approximately nine years.
- b) Applicant was underpaid throughout this period.
- c) Applicant was not awarded any payment in lieu of off days.
- d) Applicant was not awarded payment in lieu of holidays.

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- e) Respondent's conduct was callous to the extreme and unworthy of any employer in Swaziland.

We have also found that this is not a suitable case where re-instatement may be ordered in view of the circumstances of the case and the time that has elapsed in taking the matter to the court.

We award Applicant eighteen months salary as compensation for unfair dismissal in the sum of E6,855-48 plus the following claims:

NOTICE	E	380.86
ADDITIONAL NOTICE	E	486.80
SEVERANCE ALLOWANCE	E	1,172.00
LEAVE PAY	E	439.50
UNDER PAYMENTS	E	6,896.08
PUBLIC HOLIDAYS UNPAID	E	790.08
TOTAL	E	10,145.32

Total amount due to Applicant is E6,855-48 + E10,145-32 = E17,000.80. This amount shall be paid within 14 days from date hereof.

There will be no order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE - INDUSTRIAL COURT