

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 84/99

In the matter between:

ENOCK HLATSHWAYO

APPLICANT

AND SWAZILAND GOVERNMENT

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. E. HLOPHE:

FOR APPLICANT

MR. T. NXUMALO/

MR. P. MSIBI:

FOR RESPONDENT

JUDGEMENT

24/7/00

In this matter applicant has brought an application to this court in terms of the Industrial Relations Act 1 of 1996.

The applicant filed his application on 6/5/99. On the day in question respondent through the office of the Attorney General made an application for the postponement of the matter stating that they had not had time to file their replies. The matter was postponed to 20/5/99 to enable them to file such papers.

On 20/5/99 there was no appearance for or on behalf of respondent. The matter was postponed to 4/5/00 for trial. Respondents filed their replies before the date of trial. However, on 4/5/00 they did not appear for trial.

The court, meru motu, stood down the matter for 30 minutes and asked the office of the registrar to phone the Attorney General's office and ask them to come to court for trial. After two hours an officer from the Attorney General by the name of P. Msibi arrived. He applied yet for another postponement - saying he had not made arrangements for witnesses and that he was not ready to proceed.

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The matter was set for 3/7/00 for trial. On this day Mr. Msibi did not come to court. We eventually started the matter at 10.45a.m. after Mr. E. Hlophe for applicant made an application that the matter proceed exparte.

The application was granted by the court. The matter proceeded in terms of Rule 7 (14) of the rules of the Industrial Court, 1984.

In his particulars of claim and evidence the applicant stated that he was employed by the respondent in 1981 as a driver in the Central Statistics Department under the Ministry of Economic Planning and Development and was in the continuous employ of respondent until 21st October 1998 when his services

were terminated. (See Annexure 'A' attached to the application). Applicant's salary was E1,016- per month at the time of his dismissal.

Annexure 'A' reads, in part, "I am directed by the Civil Service Board to inform you with regret that your dismissal from the Civil Service has been approved with effect from the 6th October, 1998 on the grounds of misconduct...."

From the certificate of unresolved dispute filed of record in terms of Section 57 (1) and/or 58 (1), the respondent postponed every conciliation meeting and never turned up. The Labour Commissioner states "I was therefore obliged to issue the certificate after the expiry of the 21 days mandatory conciliation period"

Looking at the respondent's replying papers and Annexures this would in a proper case bring the respondent's reasons for termination under Section 36 (c) of the Employment Act, 1980.

Applicant has satisfied the provisions of Section 42 (1) of the Employment Act. He has proved that at the time his services were terminated he was an employee to whom Section 35 of the Employment Act applied.

Respondent on the other hand has not been able to prove that the reason for termination was one permitted by Section 36 of the Employment Act. No witnesses were led to prove that under circumstances it was reasonable to terminate the services of applicant. This could only be done through "viva voce" evidence -where applicant could be given the right to cross examine witnesses.

The applicant seeks for an order of re-instatement to his employment alternatively, payment of maximum compensation in lieu of re-instatement in terms of Section 15 of the Industrial Relations Act 1996, and payment of pension benefits.

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We believe that this is a clear case for re-instatement. The applicant is still unemployed. He is married with five children. He had spent seven years of continuous employment with respondent. He is now 54 years of age and the prospects for another job are next to nil in spite of his age. He has looked for another job since 1998 without success.

We therefore order that applicant be re-instated in his job and also paid his arrear salaries in full on or before Monday the 21st day of August, 2000. Re-instatement with immediate effect applicant to report for duty on 25/7/2000.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT