IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 225/99**

In the matter between:

MANDLA GININDZA **APPLICANT**

And

BROAD-TECH SYSTEMS (PTY) LTD
t/a TELEVISION DOCTORS **RESPONDENT**

CORAM

KENNETH NKAMBULE	:	**JUDGE**
DAN MANGO	:	**MEMBER**
GILBERT NDZINISA	:	**MEMBER**
MR. E. HLOPHE	:	**FOR APPLICANT**
NO APPEARANCE	:	**FOR RESPONDENT**

J U D G E M E N T 14/8/00

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

There is filed with the court a return of service dated 11th October, 1999. We were satisfied that the respondent were duly served with a copy of the application because he filed his reply on the 17th day of November, 1999 – in terms of the Industrial Court rules, 1984.

The matter was initially set for 15th May, 2000. Respondent's attorney failed to attend. It was postponed to 31 July, 2000. Again respondent through Johannes Nkambule and Associates failed to attend.

The hearing proceeded in terms of Rule 7 (14) (b) of the Industrial Court Rules after Mr. E. Hlophe for applicant successfully made an application in terms of this rule.

In his particulars of claim and evidence before this court, the applicant contended that he was employed by the respondent on 10th February 1996 and was continuously employed by respondent until 2nd February, 1999.

On 2nd February, 1999 the respondent terminated the services of the applicant for no apparent reasons. According to applicant his salary at the time of the termination of his employment was E1,000-00 per month.

According to the papers before court on 2nd February, 1999 the respondent summarily terminated the services of the applicant. From the certificate of unresolved dispute filed of record, the respondent failed to come for conciliation and the matter remained unresolved having regard to the expiry of the period set as a statutory limit within which the Labour Commissioner may conciliate.

In his evidence in chief the applicant told the court that he was not called upon by respondent to respond to the charges as fully put to him as reasons for terminating his services in Annexure 'A' of the application, neither was any hearing conducted at which he could answer to the charges and cross examine witnesses.

He said he was only served with a letter entitled:

"RE: DISCONTINUE OF YOUR SERVICES"

dated 9th January 1999. In that letter he was informed that his services were terminated by respondent.

From the foregoing we are satisfied that no hearing was conducted by respondent. It is therefore our conclusion that the guilt of applicant was not established before termination of services. Accordingly respondent had no valid reason in terms of Section 36 of the Employment Act to terminate the services of the applicant.

There is no indication that the applicant was given the notice of termination of his services. And having considered the contents of Annexure 'A' and the certificate of unresolved dispute and the evidence before us, we are of the view that the respondent was unreasonable in terminating the services of applicant.

From the foregoing, it is our decision that the services of the applicant were not fairly terminated within the meaning of Section 42 (2) of the Employment Act.

In his application the applicant has prayed that the court grant the following:

a) Maximum compensation
b) Notice pay and additional notice
c) Leave pay
d) Severance allowance

There is no evidence presented to this court to the extent that the applicant had any accrued leave during the period of employment and not taken by the time his services were terminated.

Having taken to account the above considerations we make the following order:

The respondent shall pay to applicant on or before the 30th day of August, 2000 –

1)	One month's wages in lieu of notice	1,000-00
2)	Additional notice pay	153-84
3)	Severance allowance	384-60
4)	Statutory compensation for unfair dismissal (six months)	6,000.00
	TOTAL	7,538-00

No order as to costs.

Members concur.

KENNETH P. NKAMBULE
JUDGE (INDUSTRIAL COURT

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 112/99**

In the matter between:

NIGEL THOMAS KIRK APPLICANT

and

INTEROUTE INTERNATIONAL (PTY) LTD RESPONDENT

CORAM:

NDERI NDUMA	:	**PRESIDENT**
JOSIAH YENDE	:	**MEMBER**
NICHOLAS MANANA	:	**MEMBER**
FOR THE APPLICANT	:	**T. R. MASEKO**
FOR THE RESPONDENT	:	**P. DUNSEITH**

R U L I N G - 18. 04. 2000

Upon consideration of the evidence of Mrs Thoko Dlamini and that of the Applicant together with the exhibits produced thereof. And after evaluating submissions by counsel for both parties we have arrived at the following conclusions :

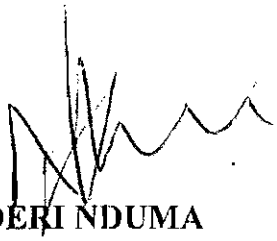
(1) There was no agreement in full and final settlement of all the claims by the Applicant arising from his dismissal from the Respondent's employment. The Applicant was only paid one month's salary for the days he had worked up to the date of his dismissal.

(2) The Applicant did not report to the Commissioner of Labour a dispute concerning the alleged unfair dismissal by the Respondent. Only the claim for one month's salary had been reported to the Commissioner of Labour.

Accordingly the Applicant's application is not properly before us since the provisions of Part V111 of the Industrial Relations Act have not been complied with.

We refer the dispute to the Commissioner of Labour who should conciliate upon the same within twenty one days from the date of this ruling.

The members agree.



NDERI NDUMA
JUDGE PRESIDENT - INDUSTRIAL COURT