

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 232/99

In the matter between:

PETER HITLER MUNROE

APPLICANT

and

SWAZILAND RAILWAYS

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MISS DLAMNI

FOR THE RESPONDENT:

MR. Z. JELE

RULING

01/09/2000

The Applicant states in his Application that on or about the 4th December, 1991 the Respondent regraded his job to that of commercial clerk on grade B2 whereas prior, the Applicant occupied a position of chief clerk on grade 7.

The Applicant was dissatisfied with the grading and appealed against it in terms of the Respondent's internal appeal procedures. The Applicant's appeal was partly successful in that in May 1993 the Applicant was regraded from B2 to C2.

The Applicant was still dissatisfied with the outcome of his appeal and eventually reported a dispute to the Labour Commissioner in March 1998 after a period of six years.

The Respondent has raised objection in limine to the application as follows:

2. The issue giving rise to the dispute first arose in December 1991 and subsequently in May 1993 wherein the variation in terms and conditions of employment of the Applicant took place.

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3. The Applicant sought and was granted extension of time from six months to ninety-two months by the Minister of Enterprise and Employment being the period within which the dispute ought to have been reported to the Labour Commissioner".

The Applicant failed to comply with the provisions of Section 26 of the Employment Act of 1980 and the subsequent granting of the extension of time did not negate the requirements of Section 26, the respondent submitted.

Accordingly the Respondent sought the Applicant's claim to be dismissed on grounds that he had failed to comply with the statutory provisions relating to disputes on variation of terms and conditions of

employment.

It is common cause that the terms and conditions of service of the Applicant were contained in a contract of employment and not in a Form 22 referred to in Section 26 of the Act.

Section 25 of the Employment Act reads as follows:

"The any proceedings arising out of the provisions of this Act a copy of the form in the second schedule signed by both the employer and the employee should be accepted as prima facie evidence of the matters contained therein at the time it was signed, but nothing in this Act shall deem the Form to be a written contract of employment".

The legislature has clearly made a distinction between a contract of employment and Section 22 statutory Form.

Section 26 (2) procedure is only applicable to less favourable changes made by an employer of the terms and conditions of an employee contained in a Form 22 but not in a contract.

When such changes are made the employee is obliged to request the employer in writing to submit a copy of the Form given to him under Section 22 together with the notification of the changes to the conditions of terms and conditions of employment thereof to the Commissioner of Labour.

In the present case the Applicant was not obliged to follow the procedure provided under Section 26 since this section is not applicable to the circumstances of the case.

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Granted that there has been substantial delay in bringing this matter to court, but provided that the claim is not time barred by any law in Swaziland, the legal objection cannot be upheld. I make no orders as to costs.

The matter will proceed to trial on the merits.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT