

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.157/99

In the matter between:

DELORES HEATHER SNYMAN                      APPLICANT

AND THE WEB RESTAURANT                      RESPONDENT

CORAM

NDERI NDUMA:                                      PRESIDENT

NICHOLAS MANANA:                              MEMBER

JOSIAH YENDE:                                    MEMBER

For Applicant:                                      Mr. M. Madau

JUDGEMENT

26/1/2000

The Applicant seeks maximum compensation for unfair dismissal and one month notice pay.

The Application was heard exparte, the Respondent having failed to make an appearance inspite of proof of service of the Application by the Applicant.

The circumstances surrounding the dismissal of the Applicant as related by the Applicant are callous to the extreme.

The Applicant told the court that after concerted persuasion by the Respondent to leave her employment with Mr. Price retail shop where she worked as an Assistant Manager, she joined the Respondent as a Chef, as from the 15th January 1999.

The engagement was verbally done.

The Manager of the Respondent offered to pay her a salary of E3,000 per month.

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She gave two (2) weeks notice to Mr. Price, retail shop and resigned to take up her new employment.

She further told the court that the Respondent had promised to review the E3,000 salary offered later on. She was given a discretion to choose from the existing staff who she wished to retrain. She decided to keep all of them since the hotel became busy soon after she had assumed her duties.

On the 4th February 1999, the Director of the Respondent Mr. Patrick, asked the Applicant to release the morning shift staff for a meeting to be held on the 5th February, 1999.

At the meeting, the staff members were given forms to re-apply for employment with the Respondent. This came as a shock to the Applicant since she had not been notified of the purpose of the meeting.

Most of her staff were all dismissed summarily in that meeting. Mr. Patrick called her to his office and informed her that she would be paid Emalangeneni six hundred (E600) per month henceforth, She received the news with shock and before she was given a chance to object she was asked to go home and told that she would be notified when to come back and collect her salary for the month of February 1999.

The Applicant had barely worked for a month prior to this date. She had not been notified of any wrong doing nor had she been called to a disciplinary hearing.

As it came to pass, the Applicant was never paid her February salary and was in fact barred from ever going to the Respondent restaurant.

She considers the conduct of the Respondent most inconsiderate especially because the Respondent had persistently persuaded her to leave her employment with Mr. Price retail shop promising her better terms and conditions of employment.

She has not obtained alternative employment since the date she was dismissed by the respondent in spite of her efforts to apply for work.

She is a single mother of three (3) children and is aged thirty nine (39) years. The Applicant has no other source of income and was literally traumatised by the unfair and most unreasonable conduct of the Respondent.

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She reported the dispute to the Labour Commissioner's office but the dispute was not resolved and a certificate of unresolved dispute was issued by the Commissioner of Labour.

She had received Emalangeneni three thousand (3,000) for the January salary in spite of the fact that she had started to work for the Respondent on the 15th January 1999. She told the court that this was done in consideration of the work she had done for the restaurant before she had officially assumed her duties. She had compiled the restaurant's menu in December 1998 and did the Christmas buffet for the restaurant.

Herself and all her twelve (12) members of staff were dismissed on the same date. No notice of retrenchment in terms of Section 40 of the Employment Act had been issued by the Respondent prior to the dismissal.

The Applicant has in terms of Section 42 (1) proved that she was an employee to whom Section 35 applied.

It was incumbent upon the Respondent to show that the termination of the Applicant was one permitted by Section 36 of the Act and that taking into account all the circumstances of the case, it was reasonable to terminate the service of the Applicant.

As we said earlier no appearance for the Respondent was made during the hearing of the case and therefore the Respondent has failed to discharge its onus in terms of the Employment Act No. 5 of 1980,

The application will accordingly succeed.

We have considered the actual and future financial loss suffered and/or likely to be suffered by the Applicant as a result of the unfair termination of her employment, her age, prospects of the Applicant obtaining other equivalent employment, and overall the most crude manner surrounding her termination. Accordingly the Respondent is ordered to pay her ten (10) months salary as compensation for the unfair dismissal in spite of the short period she had of continuous employment with the Respondent in the sum of E30,000. The Respondent is further to pay E3,000 as notice pay to the Applicant.

There will be no order as to costs.

The members agree.

MATHEWS NDUMA

JUDGE PRESIDENT