

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 67/2000

In the matter between:

MBONGISENI DUBE

APPLICANT

and

TRANS-NATIONAL (PTY) LTD

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. S.C. DLAMINI:

FOR APPLICANT

MR. NXUMALO:

FOR RESPONDENT

JUDGEMENT

10/11/00

The applicant has brought this application seeking compensation for unfair dismissal, notice pay, additional notice pay, severance allowance, payment in lieu of leave and payment of salary for October, 1999.

The applicant stated that he was employed by the respondent as a truck conductor. Respondent sold the truck in which applicant worked. According to applicant he was then transferred to work as a bus conductor. However, due to injuries he sustained when the truck was involved in an accident in the Republic of South Africa he could not take up this job. He explained this to his employer and even suggested that they transfer a certain employee who was working in one of the trucks as a conductor to go and work as the bus conductor so that he (applicant) could work in the truck. This suggestion was not implemented by respondent.

Applicant was forced to resign, but he refused. On 22nd November, 1999 applicant's services were terminated by respondent without notice.

1

Respondent stated that the applicant was not dismissed from his job, but he was offered an alternative job after his truck was sold. According to respondent's witness No. 1 applicant refused to work as a bus conductor without any reason.

On cross examination RW1 conceded that the applicant told him that he could not work as a conductor in the bus because of the injuries he sustained while on duty in an accident in the Republic of South Africa where applicant was involved and sustained some injuries.

According to the evidence which has been led it is clear that applicant was dismissed without being afforded an opportunity of a hearing. It is also common cause that he sustained injuries whilst on duty. He informed respondent that he could not work as a bus conductor because of the injuries he sustained

whilst on duty.

Respondent had earlier told the court that applicant refused to work as a bus conductor without giving reasons. It is inconceivable that somebody who continued to offer his services even after the truck he was using had been sold, could refuse to work or to be transferred without giving his employer any reason.

I find the applicant's story to be true because respondent confirms that he (applicant) was at some point involved in an accident whilst on duty. We are not told whether respondent had taken any steps to see if applicant had fully recovered. A prudent employer would send applicant for medical examination so that he becomes aware of his health.

From the foregoing it is clear that before termination the applicant had not received any written warning. He did not receive any notice of the termination of his services. No reasons were given for the termination of his services.

The applicant has established that he was employed by the respondent at the time of the termination of his services.

Respondent has failed to discharge the onus of proof placed on it. He has failed to show that the reason for termination of the applicant's services was one permitted by Section 26 of the Employment Act. The respondent has failed to show that he took all the circumstances of the applicant into

2

account and decided that it was reasonable to terminate the services of the applicant.

It is our decision that the termination of applicant's services were both procedurally and substantively unfair.

We order that respondent pay applicant his terminal benefits namely.

1.	Notice pay	-	650-40
2.	Add notice pay	-	419-58
3.	Leave pay	-	293-58
4.	Severance pay	-	1048-50
5.	Statutory compensation ten months:		
	(650-40 x 10)	-	6504-00
	TOTAL	-	8,916.06

The amount to be paid on or before 30th November, 2000

No order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)

