

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 68/98

In the matter between:

SIPHO TEMBE

APPLICANT

And

PARSONS TRANSPORT (PTY) LTD

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. MKHWANAZI:

FOR APPLICANT

NO APPEARANCE:

FOR RESPONDENT

JUDGEMENT

24/11/00

In this matter the applicant has brought an application to this court in terms of the Industrial Relations Act No. 1 of 1996.

There is filed with the court an affidavit of service dated the 10th day of September, 1998. We were satisfied that the respondent had been duly served with a copy of the application. The respondent has not filed any replying answer as required by the Industrial Court Rules (1984). The hearing proceeded in terms of Rule 7 (14) (b).

In his particulars of claim and evidence before this court the applicant contended that he was employed by the respondent on 8th June 1996. That he worked for six days in a week from 6.00a.m. to 6.00p.m. He was employed as a truck driver. He transported coal from Republic of South Africa to Swaziland.

Around March 1997 he was involved in an accident at Piet- Retief. He was admitted at Piet - Retief Hospital and discharged after six days. He was given

1

seven days sick leave. On return after the seven days sick leave respondent terminated his services. He went home. After three weeks his employer came to his (applicant) residence and ordered him to come back to work.

After some months applicant was ordered to leave the truck ferrying coal from RSA and use a truck which ferried logs from the forest to Richards Bay. The doctor had specifically told applicant to do light work. The truck he was ordered to drive had to travel in a gravel road to the forest and respondent knew that.

According to applicant he was forced to leave the job as he could not drive this particular truck due to his injury. Applicant had sustained dislocation of the shoulder blade and according to him he could not drive efficiently on the gravel road. Applicant stated that there were light jobs he could do such as driving light

delivery vans.

After leaving applicant reported the matter to the Labour Commissioner. Respondent did not attend the conciliation meeting. The Labour Commissioner issued a Certificate of Unresolved Dispute.

According to applicant's papers filed in court it is not clear whether respondent terminated applicant's services. The applicant made no effort to give clear evidence on this very crucial point - and left it in doubt and suspense. Applicant says respondent re-deployed him to use a truck which ferried logs and which was supposed to fetch the logs from the forest. That the road he used was gravel road. He did not tell us that he expressed the doctor's sentiments and directive regarding his health condition to his employer. He did not tell us whether he gave his employer the medical report stating the extent of his injuries and that he was supposed to do light work.

We do realise and appreciate that respondent did not lead any evidence. The applicant's testimony was therefore, unchallenged. The applicant still has to show that;

- a) His services were terminated; and
- b) That when his services were terminated he was in the employ of respondent.

2

From his testimony applicant has shown that he was in the employment of respondent. He has tried to show the court that his services were terminated due to the respondent conduct.

As we have stated above applicant did not tell us whether he discussed the issue of his re-deployment with respondent.

From the foregoing, it is our decision that applicant has failed to prove that his services were terminated.

In his application and testimony, applicant stated that at the time he left respondent employment he had not taken his annual leave. He stated that he was entitled to 15 days leave per annum.

This item was one of the issues in dispute as mentioned in the Certificate of Unresolved Dispute. Having taken into account the above consideration we make the following order:

- 1) The respondent shall pay to applicant on or before 5th December E2,239-20 in lieu of leave.
- 2) No order as to costs. Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)

3