

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 224/99

the matter between:

R PATRICK M. HLATSHWAYO

APPLICANT

and

ATTORNEY GENERAL

1ST RESPONDENT

DIRECTOR OF VETERINARY SERVICES

2ND RESPONDENT

CORAM:

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

FOR THE APPLICANT:

PETER DUNSEITH

FOR THE RESPONDENT:

MISS NKWANYANA

RULING

08. 02. 2000

The applicant brought this application seeking the following orders :

- a) Directing and ordering the respondent to re-instate the applicant to his position as Veterinary Investigation Officer in charge of Manzini Central Veterinary Laboratory with all powers, benefits and privileges attached to such position.
- b) Directing and ordering the respondent to process the applicant's outstanding and future claims for travelling and subsistence allowance in the normal way.
- c) Directing and ordering the 1st Respondent to process the Applicant's applications for annual leave in the normal way and in particular:
  - i) directing and ordering respondent to authorise the applicant to take his current annual leave on a date to be notified by the applicant; and
  - ii) directing and ordering 1st respondent to pay to the applicant his accrued annual leave pay for the years 1995, 1996, 1997 and 1998.

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d) Setting aside the disciplinary charges contained in the Notice dated 17th December, 1999 (annexure "E").

e) Interdicting the 2nd Respondent from victimising, harassing and undermining the applicant in the performance of his duties as Veterinary Investigation Officer.

It is common cause and it has not been disputed that the applicant is a holder of a Diploma in Medical Laboratory Technology obtained in 1983 in Malawi, He is also a holder of a Veterinary Science Degree obtained in Australia in 1990. Over and above his double qualification he further undertook short laboratory courses in Zimbabwe and Kenya equipping himself with skill in Laboratory administration and management.

On his return from college applicant was appointed to localise the post of Veterinary Investigations Officers, a post which had been held by an expatriate since the establishment of the laboratory from the early seventies.

Applicant held the post until the 23rd of November 1995 when he was transferred to Siteki to an inferior post both in status and professionally. Applicant resisted the transfer as being contrary to Section 26 of the Employment Act.

He further challenged the transfer via the Commissioner of Labour who made a written decision in his (Applicant's) favour. The opinion of the Labour Commissioner was communicated to Respondents via a Memorandum marked "D". Respondents ignored the Memorandum and instead framed and communicated charges of misconduct against the applicant two weeks later - see annexure "E" of the Application.

Respondents are challenging the applications on the basis that the decision of the Labour Commissioner was wrong. The problem with this argument is that it lacks merit because the respondents failed to challenge the Labour Commissioner's decision through review (See Section 26 (3) and (4) of the Employment Act).

The effect of the Labour Commissioner's opinion is that the transfer became unlawful. As the transfer became unlawful applicant was not obliged to listen to the dictates or commands of the 1st respondent regarding the transfer.

The decision by the Labour Commissioner stands as long as it remains unchallenged through a review by the respondents. This court is of the view that applicant has made a case and is entitled to the relief as set on prayers a, b, c, d and e of the application.

KENNETH NKAMBULE

JUDGE OF THE INDUSTRIAL COURT