

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 67/2001

In the matter between:

NICHOLAS SOKO

APPLICANT

and

METRO CASH & CARY

RESPONDENT

CORAM

KENNETH P. NKAMBULE

: JUDGE

DAN MANGO

: MEMBER

GILBERT NDZINISA

: MEMBER

FOR APPLICANT

: MR. J. MAVUSO

FOR RESPONDENT

: MR. M. SIBANDZE

JUDGEMENT

30/5/03

The applicant seeks an order directing the respondent to pay him a sum of E84,000- being arrear pension benefit which has accrued to him by virtue of his retirement on medical grounds in 1994. Further that respondent be ordered to comply with the provisions of its retirement fund.

According to papers filed by the applicant he was employed by the respondent on 18th October 1980 and was in the continuous employ of the respondent up until the 27th June 1994, when on medical grounds he was forced to retire.

At the time of retirement the applicant was paid a total sum of E6,294-20 which was said to be his withdrawal pension benefit. During the period of his employment at respondent's undertaking the applicant had become a member of the METRO RETIREMENT FUND which was operated by the respondent, for the benefit of the pensionable staff.

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The rules governing the Fund are annexed as Annex 'A' of the application. From the rules it would seem that the respondent who is the employer deducts a certain percentage from the salary of each member and deposit it to an account titled "RETIREMENT SAVINGS ACCOUNT" marked in the name of each employee. At the same time the company makes a deposit into the account of the same amount that the employee has deposited.

The company also pays all the costs of administering the fund as well as providing death and disability benefits for its employees. All this money is then invested by the fund so as to earn much interest as possible for the employee. The rate of interest that the amount earns is linked to the performance of the fund. This is referred to as full interest and is determined each year by an independent expert.

The money that is invested in the fund goes towards providing the employee with a regular monthly income when the employee retires, payable for the rest of the employee's life. It also helps provide for the

employee and his family if he has to stop working because of serious illness, permanent disability or if he should die.

According to this document this is a fund created by the employer, in this case the respondent. The money is deducted from the applicant's salary by the respondent and placed in a certain account where the applicant has no access.

The respondent has raised a point in limine that the applicant made the pension contribution to METRO RETIREMENT FUND and not to the respondent. That the Metro Retirement Fund is a trust with full legal personality.

In submission respondent states that it is to this legal entity that the applicant's contributions were made in respect of his pension and no relief in respect of applicant's pension lies against the respondent.

From Annex 'A' it is clear that the fund is administered by a certain company and that company is not stated in Annex 'A'. what is stated in this document is that the employer also pays all costs for administering the fund as well as providing death and disability benefits for employees.

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It is therefore clear that on the strength of this arrangement the respondent cannot turn around today and say they will not provide for disability benefits for this employee as it is their duty in terms of Annex 'A' to do so.

If there is an entity where they have invested the applicant's money it is the duty of the respondent to see to it that they claim the money from that entity because it is them (respondent) who have invested this money on behalf of their employees.

They are the ones to engage in talks with the investment company as agents of the applicant.

One would pose a question and say, if the respondent had nothing to do with applicant's pension benefits why did they bother to pay what they termed "WITHDRAWAL PENSION BENEFIT"? It is clear that they did so because they are involved in the administration of the Fund.

For the foregoing the point in limine must fail. No order as to costs. Members agree.

KENNETH P. NKAMBULE

JUDGE - INDUSTRIAL COURT.

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