

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 168/2003

In the matter between:

NHLANHILA MOSES NDLOVU

APPLICANT

and

MZALA'S CARRIERS

RESPONDENT

CORAM:

NDERI NDUMA: PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: DA SILVA

J U D G E M E N T -13 JUNE 2005

This is an application for determination of unresolved dispute between Nhlanhla Moses Ndlovu, the Applicant and Mzala's Carriers, the Respondent.

The Applicant was employed by the Respondent on the 12th April 2000. He was in continuous employment until the 1st September 2001.

The Applicant alleges that he was unlawfully and unfairly dismissed from work.

At the time of the alleged dismissal he earned a monthly salary of Emalangeni Seven Hundred (E700.00). His work was one of a welder in the maintenance department.

In his particulars of claim filed on the 11th June 2003 and in his oral testimony, the Applicant told the court that he was dismissed for failure to repay a loan of E150.00 (One Hundred and Fifty) timeously advanced to him by the Respondent in July 2001 and payable in August 2001.

He requested the Respondent to extend the repayment of the loan to the end of September 2001. The Respondent would hear nothing of it, and summarily dismissed the Applicant.

The Applicant told the court that the loan advancement was a separate contract between them and failure to pay timeously did not constitute a reason permitted by Section 36 of the Employment Act to dismiss the Applicant.

The Applicant was aggrieved by the dismissal. He reported a dispute to the Commissioner of Labour in terms of Section 76 (1) and 2 of the Industrial Relations Act No. 1 of 2000.

The dispute was forwarded to the Conciliation Mediation and Arbitration Commission (CMAC) for conciliation. The same was not resolved and a certificate of unresolved dispute was issued.

The Respondent was duly served with the application before court. The application was on the 18th August 2003, dismissed for non attendance by both parties.

An application for reinstatement was filed on the 25 June 2003, and was served on the Respondent on the 17th June 2004.

The Respondent did not appear before court nor file any opposing papers.

The matter was set down for hearing exparte on the 17th May 2005.

The Respondent in terms of Section 42 (2) (a) and (b) bears the onus of proving that the dismissal of the Applicant was for a reason permitted by Section 36 of the Employment Act. The Respondent must further show that the dismissal was fair and just in all the circumstances of the case.

By its default, the Respondent has failed to discharge its onus and the application succeeds on the issue of liability.

As regards the claims, the applicant seeks maximum compensation for unfair dismissal. He had worked for slightly more than a year for the Respondent. He has suffered financial loss and joblessness as a result of the unfair dismissal.

The court awards him Nine (9) months salary as compensation for the dismissal in the sum of E700.00 x 9 = E6,300.00 (Six Thousand Nine Hundred Emalangen).

In addition the Respondent is to pay one month's salary in lieu of notice in the sum of E700.00 (Seven Hundred Emalangen).

Total payment due to the Applicant is therefore E7,000.00 (Seven Thousand Emalangen).

NDERI NDUMA

JUDGE PRESIDENT- INDUSTRIAL COURT

