

IN THE INDUSTRIAL COURT OF SWAZILAND**HELD AT MBABANE****CASE NO. 520/2006**

In the matter between:

DINABANTU NDWANDWE**Applicant**

and

VUKA SIDWASHINI FARMERS ASSOCIATION**Respondent****CORAM:****P. R. DUNSEITH : PRESIDENT****JOSIAH YENDE : MEMBER****NICHOLAS MANANA : MEMBER****FOR APPLICANT : S. DLAMINI****FOR RESPONDENT : S. HLOPHE**

J U D G E M E N T – 20/10/06

1. The Applicant reported a dispute to CMAC alleging that the Respondent had unfairly terminated his services and claiming payment of terminal benefits and maximum compensation for unfair dismissal.
2. The Respondent attended conciliation and denied that it had terminated the Applicant's services, alleging that the Applicant had

absented himself from work of his own volition.

3. Under the supervision of a CMAC Commissioner, the parties settled their dispute. The settlement was recorded in a written Memorandum of Agreement signed by the parties on the 11th June 2003. The terms of the settlement are recorded in the agreement as follows:

“ THE AFOREMENTIONED PARTIES HAVE NOW SETTLED THEIR DISPUTE (S) IN THE FOLLOWING MANNER:

The Respondent outlined that Applicant was never dismissed therefore, they agree reinstating him to his normal duties as a full and final settlement of the dispute. Applicant accepted the reinstatement as full and final settlement of the dispute.”

4. The Applicant was duly reinstated to his normal duties as a security guard on 7th June 2003.
5. The Applicant now applies for an order directing the Respondent to pay him the wages which he says accrued to him during the seven month period whilst he was absent from work. The amount claimed is E4,200.00.
6. The Applicant's representative submits that the reference in the settlement agreement to the reinstatement of the Applicant should be interpreted in accordance with the definition of “reinstatement” as contained in Section 2 of the Industrial Relations Act 2000 (as amended).

7. According to that definition, reinstatement means *“an action or situation whereby an employee’s services or employment are treated as if the services or employment have never been terminated, including the payment of wages, salary and any remuneration payable by virtue of the services or employment”*.
8. The Respondent’s simple answer to the Applicant’s claim is that it agreed to reinstate the Applicant to his normal duties, but it never agreed to pay his wages for the period that he withheld his services and absented himself from work.
9. The crisp question for decision by the court is whether the settlement agreement, in its ordinary grammatical meaning, imposes an obligation on the Respondent to pay the wages of the Applicant for the period that he was absent from work.
10. The ordinary dictionary meaning of “reinstatement” is *to replace in a former position*.

Concise Oxford Dictionary (9th Ed).

11. The definition of “reinstatement” as contained in the Industrial Relations Act 2000 (as amended) must be seen in the context in which the term is used in the body of the Act, and in particular in Section 16 of the Act. This context is that of an unfair dismissal, for which the remedy of reinstatement is provided. The Industrial Court is empowered to order specific performance of an employment contract by way of reinstatement. The object of such an order is to attempt to restore the employee to the same position in which he

would have been, if he had not been unfairly dismissed. Such an order envisages the payment of wages in respect of the period from the date of dismissal to the date of reinstatement, hence the reference to such payment being included in the definition of reinstatement contained in the Act.

12. It is explicit in the terms of the settlement agreement that the Respondent agreed to reinstate the Applicant on the express understanding that he was never dismissed.
13. On the basis of that understanding, there is no reason to give the agreement to reinstate the extended meaning conferred by the definition in the Industrial Relations Act 2000 (as amended).
14. On that understanding also, there is no basis in law or equity to hold the Respondent liable to pay wages to the Applicant for the period when he was absent from work.
15. Interpreting the settlement agreement according to its ordinary grammatical meaning, the court understands the agreement to convey no more than an undertaking by the Respondent to allow the Applicant to return to his normal duties.
16. One further factor gave added weight to this view of the court:
 - 16.1 The Applicant was reinstated in June 2003, but payment of arrear wages was first demanded in July 2006.
 - 16.1 If the parties were not ad idem on the effect of their settlement agreement, the Applicant was expected to raise his complaint

at a much earlier date. The delay implies that the present claim is an afterthought.

17. For the above reasons, the application is dismissed.

There will be no order as to costs.

The members agree.

PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT