

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 134/2001

In the matter between:

MICHAEL BONGNAI MASHWAMA

APPLICANT

and

SWAZILAND ELECTRICITY BOARD

RESPONDENT

CORAM:

NKOSINATHI NKONYANE : ACTING JUDGE
DAN MANGO : MEMBER
GILBERT NDZINISA : MEMBER

FOR APPLICANT : L. MAMBA
OF L. R. MAMBA & ASSOCIATES

FOR RESPONDENT : M. SIBANDZE
OF CURRIE & SIBANDZE

ATTORNEYS

RULING ON INTERPRETATION OF JUDGEMENT

16 MARCH 2006

[1] The Applicant approached the court in terms of Rule 3 (1) of this Court's Rules. The application is for the court to give an

interpretation of its judgement that it delivered on the 30th January 2006.

- [2] The Applicant had instituted proceedings in this court wherein it claimed that it was unlawfully and unfairly dismissed by the Respondent. The Applicant therefore wanted the court to order that the Respondent pays him the following amounts:

(a)	Compensation for unfair dismissal	-	
	E371,040.90		
(b)	Notice pay	-	E 30,920.00
©	Additional notice	-	E 95,570.90
(d)	Severance pay	-	E238,927.00

- [3] At the end of the trial, in its judgement the court dismissed the application and held that the Applicant was not dismissed but he resigned.

- [4] On page 12 of the judgement the court held that the Applicant was entitled to his terminal benefits following his resignation.

- [5] It is that part of the court's judgement that the Applicant seeks to be interpreted.

- [6] It was argued on behalf of the Applicant that by terminal benefits was meant the terminal benefits as stated in the Applicant's application. On behalf of the Respondent it was argued that by 'terminal benefits' was meant the usual benefits accruing to an employee who resigns from employment. It was further argued on behalf of the Respondent that there was no undertaking that was made by the Respondent that it was going to pay the Applicant his terminal benefits when he elected to resign.

[7] The Respondent's attorney referred the court to the case of Frank Butler v Crookes Plantations (Pty) Ltd Industrial Court Case 57/2004 and argued that in that case the Respondent specifically undertook to pay the Applicant if he resigned. He said since in the present case there was no such undertaking, court could not have intended to mean that the present Applicant be paid his terminal benefits as they appeared in the Applicant's application.

[8] There was indeed no evidence of specific undertaking by the Respondent to pay the Applicant his terminal benefits. The payment of terminal benefits is however a requirement of the law and not an employer's choice.

[9] In the present case the Applicant resigned at the instance of the employer. The resignation of the Applicant was not resignation in the ordinary sense. The Respondent after having considered the findings of the disciplinary tribunal wrote to the Applicant a letter dated 8 March 2002 where it stated that:

"1. You are afforded up until the close of business Friday the 15th March 2002 to make an election on whether you are to resign your employment, failing which SEB shall in accordance with the recommendation terminate your services."

[10] The Respondent was at liberty to dismiss the Applicant following the findings of the disciplinary tribunal. The

Respondent however decided to exercise its discretion and gave the Applicant an election to tender his resignation or be dismissed. The Applicant elected to resign.

[11] It is clear therefore that when the Applicant resigned it was at the instance of the employer.

[12] The reasons why the Respondent asked the Applicant to resign were clear from the evidence and in the judgement. The Applicant had worked for the Respondent for eighteen years with a clean record. The chairman of the disciplinary tribunal pointed out in his conclusions after the Applicant had mitigated that some measure of protection of the Applicant's future career had to be considered. It was therefore felt that it would be better for the Applicant to leave the Respondent on the basis of a resignation rather than a dismissal.

[13] There was no other way therefore that the court could have understood the evidence before it other than that the Applicant was asked to resign in order to protect his reputation and to retain his terminal benefits.

[14] Had the Respondent simply dismissed the Applicant the question of terminal benefits would not arise. This is more so because it was also the court's finding that the Respondent on the evidence before it, was entitled to dismiss the Applicant in terms of Section 36 (L) of the Employment Act.

[15] In conclusion, the court will adopt an even more simpler language. The Respondent having all the right to dismiss the Applicant in terms of Section 36 of the Employment Act as per the disciplinary tribunal's findings, it decided not to do that.

Instead, it asked him to consider resignation first before it could dismiss him. The Applicant chose the lesser evil and he resigned.

[16] Having resigned at the instance of the Respondent, he is therefore entitled to be paid his terminal benefits as they appear in the application namely:

a)	Notice pay	-	E30, 920.00
b)	Additional notice pay	-	E95, 570.90
c)	Severance pay	-	E238,927.00

There is no order for costs made.

The members agree.

NKOSINATHI NKONYANE A-J

INDUSTRIAL COURT