

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 19/05

In the matter between:

MFANUZILE SHABANGU

Applicant

and

ANDERSON ESTATE (PTY) LTD

Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: S. DLAMINI

JUDGEMENT-11/08/06

[1] The Applicant Mfanuzile Shabangu applied to the Industrial Court for determination of his claim against Anderson Estate (Pty) Ltd for payment of terminal benefits, underpayments, wages for 21 days worked, and compensation for unfair dismissal.

[2] A certificate of unresolved dispute annexed to the application certifies that the parties attended a conciliation meeting convened by CMAC under Part V111 of the Industrial Relations Act 2000 (as amended) and the dispute could not be resolved.

[3] The application was apparently served on the Respondent, because on the date notified, the respondent appeared in court through its representative Mr. Waring and

the matter was postponed pending negotiations between the parties.

[4] On 3rd March 2005 the matter was postponed in the absence of the Respondent or its representative to 15th March 2005 for filing a deed of settlement.

[5] On 15th and 22nd March 2005 the matter was postponed again, with the Respondent's representative being present. On the 31st March 2005 there was no appearance for the Respondent, and at the request of the Applicant the court referred the matter to the Registrar for allocation of an ex-parte trial date. The Respondent was ordered to pay the costs of the day.

[6] The matter now comes before the court for ex-parte trial. There was no obligation on the Applicant to serve notice of set down on the Respondent, which has never filed any opposing papers nor the promised deed of settlement, and the matter proceeded in the absence of the Respondent. The Applicant testified under oath, and his evidence stands unchallenged.

[7] The Applicant stated that he was employed by the respondent as a general labourer on 1st December 1999, and he worked continuously for the Respondent until his services were summarily terminated on 21 June 2004. At the date of termination he was earning E598-00 per month. The Respondent is a construction company.

[8] According to the Applicant, his services were summarily terminated on 21 June 2004 and the reason given was that Applicant had not reported for duty on the previous Saturday. The Applicant testified that the normal working days in the building and construction industry are Monday through Friday. He was not obliged to work on Saturdays, but he always did so if the Respondent made a prior arrangement with him. On this particular Saturday, the respondent never asked him to work.

[9] The Applicant states that no disciplinary hearing or opportunity to give his side of the story was afforded to him before he was dismissed. The termination of his services was procedurally and substantively unfair.

[10] The Applicant abandoned his claim for wages for days worked, confirming that he had been paid such wages. He complained however that the respondent had underpaid him since he was first employed, and he claimed the difference between the wages he earned and the minimum wage prescribed for a general labourer in terms of the applicable wage regulation for the Building and Construction Industry

published under section 11 of the Wages Act, 1964.

[11] The Applicant's representative has prepared a schedule setting out the calculation of the underpayments, based on the difference between the Applicant's wages and the applicable minimum wage during the period from March 2002 to June 2004 supported by extracts from the relevant wage regulations.

[12] The Applicant also produced a certificate issued by the Commissioner of Labour whereby the time for reporting the dispute concerning underpayments was extended for thirty-three months to May 2005.

[13] The court is satisfied that the Applicant, at the time his services were terminated, was an employee to whom section 35 of the Employment Act 1980 (as amended) applied.

[14] The Respondent had no lawful right to terminate the Applicant's services for being absent from work for one day, let alone on a Saturday which was not a normal working day. In the absence of any justification for the dismissal, and any disciplinary hearing, the termination of the Applicant's services was substantively and procedurally unfair- see section 42 of the Employment Act 1980 (as amended).

[15] The Applicant is 32 years of age, with a school going child to support. As an unqualified labourer, he is not competitive on the job market. Having lost the job which he held for a period of four and a half years, he has been unable to find new employment. The conduct of the employer in summarily dismissing him without fair reason or due process appears to have been highhanded and uncaring.

[16] The court awards the Applicant ten months wages as compensation, based on the minimum legal wage at the date of dismissal. The Applicant is also entitled to be paid his pro-rata leave pay, notice and additional notice, severance allowance and underpayments

[17] The award of the court is as follows:

Notice pay	E	804.60
Additional notice	E	438.87
Severance Allowance	E	1097.18

Annual leave (6 days)	E	219.46
Underpayments	E	5698.20
Compensation for unfair dismissal	E	8046.00
TOTAL AWARD		<u>E16,304-31</u>

Judgement is entered for the applicant in the sum of E16.304-31. The Respondent is ordered to pay the costs.

The members agree

PETER DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT