

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 289/2000**

In the matter between:

**HENRY VELAPHI NHLENGETHWA**

**Applicant**

and

**SWAZILAND UNITED BAKERIES (PTY) LTD**

**Respondent**

**CORAM:**

**P. R. DUNSEITH:            PRESIDENT**

**JOSIAH YENDE:            MEMBER**

**NICHOLAS MANANA:        MEMBER**

**FOR APPLICANT:            L MAGONGO**

**FOR RESPONDENT:         N. J. HLOPHE**

**J U D G E M E N T - 3/10/07**

1. The Applicant has applied to the court for determination of an unresolved dispute.

2. It is common cause that the Applicant was employed by Balmoral Bakery in 1966. Balmoral was taken over by the Respondent some five years later, and the Applicant's employment contract was transferred to the Respondent. The Applicant was thereafter in the continuous service of the Respondent until 30<sup>th</sup> September 1997.

3. The Applicant alleges that on 30<sup>th</sup> September 1997 his services were terminated by the Respondent. He avers that the Respondent falsely claimed that he had applied for "voluntary retrenchment", yet he was retrenched without his consent. In the circumstances he says his dismissal was unlawful, unfair and unreasonable. As a consequence he claims compensation for early retirement, and maximum compensation for unfair dismissal. He also alleges that his terminal benefits were wrongly calculated using an incorrect wage rate, and he claims the underpaid benefits. Finally, he claims overtime for a period of seventy four months prior to termination of his services.

4. The Applicant testified that he was first engaged as a cleaner. He was later trained and worked as a baker, and he was paid overtime when he worked outside normal working hours. In about 1986 he was promoted to be a foreman. His salary was increased. It was a condition of his promotion that he would no longer be eligible for overtime. He accepted the promotion, and thereafter he was no longer paid overtime.

5. On the Applicant's own evidence he forfeited any claim to overtime when he was promoted into management. His claim for seventy four months overtime has no merit whatsoever.

6. The Applicant testified that on about 14 August 1997 the Respondent's Personnel Manageress Thandi Dlamini came to the Mbabane branch where he worked. She gave him a document to sign. She said he was signing for his pension. He was not aware at the time that he was signing a request for voluntary retrenchment. He is illiterate so he could not read the document. Thandi Dlamini covered the writing with her hand. She never explained the contents of the letter. There was already a signature on the document. He signed his name next to the signature.

7. Under cross-examination, the Applicant elaborated on his evidence in chief. He said Thandi Dlamini forced him to sign. She threatened that if he didn't sign he would be pushed out of the gate without any benefits.

8. The letter was exhibited in evidence. It is addressed to the General Manager, S.U.B. and states:

*"Re: Voluntary Retrenchment*

*I herewith submit my voluntary retrenchment request which should be included in the list of those who have decided on the same lines."*

The letter is signed "Henry". The Applicant denies this is his signature. Besides the signature the Applicant wrote his name Henry Nhlengethwa. A different hand has written below the signature "Employee No. 74." It is common cause that this is the Applicant's employment number.

9. It was put to the Applicant in cross examination that he signed the letter before one Dumisa Dlamini, the Mbabane Personnel Manager, who wrote "Employee No. 74". The Applicant denied this and insisted it was Thandi Dlamini who forced him to sign.

10. The Applicant was shown a second letter dated 25<sup>th</sup> August 1997 addressed to him by the Respondent's General Manager. The letter informs him that his request for voluntary retrenchment has been accepted and his employment will terminate on 30<sup>th</sup> September 1997. This letter bears a signature at its foot purporting to be that of the Applicant. The first part of the signature "Henry" is similar to the signature on the letter requesting voluntary retrenchment. The Applicant denied all knowledge of this letter and denied the signature at its foot. He also denied signing for receipt of another letter detailing his terminal benefits package.

11. The Applicant admitted receipt of Respondent's cheque for E73.800-40 in respect of his terminal benefits, and a Liberty Life cheque for E15, 717-83 in respect of his pension benefits. He denied however that the signatures acknowledging receipt of these cheques were his. These signatures are the same as the signature "Henry" on the request for voluntary retrenchment.

12. The Respondent called Dumisa Richard Dlamini as a witness. He was the Respondent's Personnel Manager at the Mbabane branch. He accepted a voluntary retrenchment package in 1997, so he has not been in the Respondent's employ for ten years. He may be regarded as an independent witness.

13. Dlamini explained that there was a restructuring process in 1997 which

necessitated the retrenchment of staff. It was decided to offer a voluntary exit package to all employees to minimize the number of those who would be compulsorily retrenched. Senior management met with the staff to explain the need for restructuring. The Applicant was present. At a subsequent report-back meeting with staff, management explained the voluntary retrenchment proposal. It was explained that no one would be compelled to accept a voluntary exit, but there would be an ex gratia exit package for those who elected to go. The Applicant was present at this meeting.

14. On 5<sup>th</sup> August 1997 the General Manager wrote a circular letter to all SUB Mbabane employees stating that the voluntary retrenchment or early retirement package would include statutory benefits plus an additional contribution of eight days wages for each year of continuous service. The Applicant denied knowledge of this letter, but it is hard to believe that a foreman could be ignorant of so important a communication to employees at his workplace.

Dlamini testified that he prepared a register of all those employees who applied for voluntary exit. He said that the Applicant was one of the first to apply. He gave the Applicant advice about investing his package. He forwarded the list of Applicants to Thandi Dlamini at Matsapha Head office. She prepared a standard letter of request for voluntary retrenchment. Dlamini was responsible for having these letters signed.

Dlamini said that the Applicant signed the letter in front of him and wrote his name beside the signature "Henry". He read the letter to the Applicant before he signed. The Applicant knew what he was signing, and he was not forced to sign. Thandi Dlamini was not present. "Employee No. 74" was written by him below the Applicant's signature.

Dlamini also identified the Applicant's signature on the letter accepting his request for voluntary retrenchment, on the benefits package, and on copies of the terminal benefits and pension cheques. He said he knew the Applicant's signature well because he had been giving the Applicant handwriting lessons. Dlamini's evidence was not shaken under cross-examination.

Thandi Dlamini also testified for the Respondent. She denied that she forced the Applicant to sign the letter requesting voluntary retrenchment. She said she was not present. The signing of the letter was handled by Dumisa Dlamini, who wrote "Employee No. 74" on the letter.

Thandi said she was involved in delivering the benefits package to employees who accepted voluntary exit. The Applicant signed the document detailing the package in front of her, and she signed as a witness. He also signed for the terminal benefits and pension cheques in front of her.

Thandi Dlamini's evidence was not shaken in cross-examination.

The restructuring of the Respondent resulted in the closure of the Mbabane bakery. If the Applicant had not accepted a voluntary exit, it is quite likely that he would have been retrenched. By taking the voluntary package, he received an additional 240 days wages. There is nothing inherently improbable in the Respondent's case that the Applicant accepted a voluntary exit package and took early retirement. In fact, this was a reasonable decision to make for his own advantage.

We accept on the evidence that the Applicant was given adequate notice and information regarding the package, and he applied for the package freely and voluntarily with full knowledge of the consequences.

We reject the Applicant's evidence that he was tricked or coerced by Thandi Dlamini into signing the request for voluntary retrenchment. His evidence in this regard, and the manner of telling, had all the hallmarks of fabrication, and is directly contradicted by two credible witnesses.

25. We likewise reject his denial of his own signature. The same person signed the request for voluntary retrenchment as signed for receipt of the benefits package document and the cheques for terminal benefits and pension: the signature "Henry" is the same on all the documents. The Applicant acknowledges receipt of the cheques. There is no reason why the Respondent would manufacture a false signature as proof that the Applicant received the cheques. We also accept the evidence of Dumisa Dlamini and Thandi Dlamini that the Applicant signed all the documents.

26. The evidence is overwhelming that the Applicant requested a voluntary retrenchment and was notified that his request had been accepted. He thereafter accepted payment of his voluntary exit package without demur, and left the Applicant's employ of his own free will.

27. We find that the Applicant volunteered for retirement from the Respondent's

employ. His services were terminated by mutual consent. He was not dismissed, and his claim for compensation for unfair dismissal cannot be sustained.

28. The Applicant must have been aware that by taking early retirement with a voluntary exit package his employment would terminate before he reached retirement age. As compensation for his early retirement he accepted an ex gratia payment of 240 days wages. His present claim for "compensation for early retirement" likewise cannot be sustained.

29. On the issue of underpayment of terminal benefits, the Applicant accepted in his evidence that he earned E670.60 per week. This amount translates to E2904.99 per month, or E111-82 per day. The terminal benefits were correctly calculated using this daily rate. Mr. Magongo for the Applicant submitted that the Applicant earned E3,109.98 per month. No evidence was led to support this submission, which the Applicant himself contradicted in his testimony.

30. The Applicant's claims are not only without merit, but in our view they are vexatious. The Applicant accepted the benefits of the voluntary exit package, then came to court to try and obtain further benefits by deceit. We take a dim view of litigants who try and hoodwink the court with patently false evidence. Furthermore, the trial was greatly prolonged by the inept representation of the Applicant by a labour consultant who, despite prior warning of the court, has failed to , familiarize himself with basic rules of evidence and procedure. Loathe as the court is to penalize an elderly unemployed Applicant with an order of costs, this is a matter in which the Respondent should not have to bear its own costs of defending vexatious proceedings.

31. The application is dismissed with costs.

**PETER R. DUNSEITH  
PRESIDENT OF THE INDUSTRIAL COURT**