

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 142/2007

In the matter between:

MATHEWS MALINGA

Applicant

and

SWAZI WIRE INDUSTRIES LIMITED

Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : S. ZWANE

FOR RESPONDENT : D. S. NGCAMPHALALA

RULING ON POINT IN LIMINE– 30/05/2007

1. The Applicant has applied to court for determination of an unresolved dispute. He alleges that the Respondent unfairly dismissed him, and he claims payment of terminal benefits and compensation for unfair dismissal.
2. The Respondent has raised as a point in limine that the dispute is not properly before court because it was time-barred when it was

reported to CMAC in terms of Part V111 of the Industrial Relations Act 2000 (as amended). No extension of time has been granted, and the Respondent submits that the application should be dismissed.

3. The Applicant has annexed to his application a certificate of unresolved dispute issued to CMAC on the 13th October 2006. The certificate is prima facie proof that a dispute of unfair dismissal was duly reported and conciliated upon, but remains unresolved.
4. Mr. Ngcamphalala for the Respondent correctly submits that the court is not precluded by the certificate from investigating whether the reporting of the dispute was regular and within the time limit prescribed by the Act – see **William Manana v Royal Swaziland Sugar Corporation (IC Case No. 160/2006)**.
5. Moreover, the certificate itself records that the Respondent raised the issue of time bar during conciliation, so the question of waiver does not arise.
6. In his particulars of claim, the Applicant alleges that he was suspended after he was criminally charged with theft or fraud, and he was “*kept away from work without pay until the case against him was brought to finality.*” The court takes this allegation to mean that the Applicant was suspended from work pending finalization of the criminal charges against him.
7. The Applicant goes on to allege that on 1st March 2006 he was acquitted of the criminal charges, but thereafter the Respondent

“failed and/or neglected and/or refused to re-employ the Applicant and as a result the Applicant concluded that the Respondent has wrongfully and/or unfairly dismissed him.”

8. The Applicant appears to be somewhat ineptly pleading that the Respondent's failure or refusal to restore him to his employment after his acquittal amounts to an unfair dismissal - whether actual or constructive is not stated.

On this basis, the issues giving rise to the dispute arose on or after the 1st March 2006, the date of his acquittal.

9. The report of dispute is dated 31st August 2006, and a Commissioner was appointed to conciliate on 14th September 2006, so we may conclude that the dispute was reported between these two dates.
10. Section 76 (2) of the Act requires a dispute to be reported within 18 months of the issue giving rise to the dispute arising. Taking the facts as pleaded in the Applicant's particulars of claim, the dispute was timeously reported before the elapse of 18 months.
11. In the premises, the point in limine is dismissed, with no order as to costs. The application is referred to the Registrar for allocation of trial dates.

The members agree.

PETER R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT