

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 45/2007

In the matter between:

MTHUNZISIBANDZE

Applicant

and

**SINKHWA SEMASWATI t/a
MISTER BREAD BAKERY**

Respondent

CORAM:

P. R. DUNSEITH:	PRESIDENT
JOSIAH YENDE:	MEMBER
NICHOLAS MANANA:	MEMBER

FOR APPLICANT:	P. MAMBA
FOR RESPONDENT:	K. MOTSA

JUDGEMENT - 01/03/07

1. The Applicant has applied to court on notice of motion for an urgent order that:

- 1.1 he be paid his January 2007 salary in the sum of E1400.00;
- 1.2. his suspension without pay be declared null and void;
- 1.3. the disciplinary charges against him be quashed. The Respondent opposes the application.

2. It is common cause that:

- 2.1. the Applicant is an employee of the Respondent;
- 2.2. on 18 January 2007, he had an accident whilst driving the Respondent's truck;

2.3. he ran away from the scene of the accident and only reported the accident to his employer on 22nd January 2007;

2.4. he was not given his January 2007 salary on 25th January 2007, being the normal payday;

2.5. on 31st January 2003 he was served with notice of his suspension without pay and notice of a disciplinary hearing on 15th February 2007.

3. The Respondent in its answering affidavit states that the Applicant's gross salary is E 1200.00. The Respondent's Human Resources Manager alleges that the Applicant absented himself from work from 19th to 25th January 2007. On the basis of "no work no pay," the Respondent has deducted wages for the days not worked, and tenders the balance of E835-95.

4. The Applicant's representative concedes that the Applicant's monthly salary is E1200.00, not E1400.00 as claimed, and that the Applicant has been paid the tendered amount of E835-95.

5. A dispute of fact arises on the papers whether the Applicant absented himself from work during the period 22nd - 25^m January 2007. The court cannot resolve this dispute on the papers, and the Applicant will have to follow the normal dispute reporting procedures prescribed by Part V111 of the Industrial Relations Act 2000 if he wishes to pursue the balance of his claim for unpaid salary.

6. The Respondent suspended and charged the Applicant after the elapse of 8 days. The Applicant says this was an unreasonable delay. He also complains that the Respondent's Transport Manager tried to coerce him to admit that the accident occurred whilst he was under the influence of liquor. The Applicant wants the court to quash the suspension and the charges against him because he alleges that his rights have been infringed, and he fears that his employer has already decided to dismiss him.

7. The Respondent's Transport Manager denies that he coerced the Applicant to admit to drunken driving. He says he could not serve the Applicant earlier with notice

of suspension and disciplinary hearing because he absconded from work.

8. The Human Resources Manager states that an independent chairman has been appointed for the disciplinary hearing and the Applicant will be given a fair hearing.

9. Once again, there are disputes of fact with regard to the Applicant absconding from work. The Applicant showed himself to be unreliable and irresponsible when he failed to report to his employer for 4 days after the accident. The court is unable to reject the version of the Respondent as being patently false or improbable. In any event, the court does not consider the elapse of a period of 8 days before suspension and institution of disciplinary proceedings to be unreasonable where the Respondent has to investigate the cause of the accident and the extent of its damages.

10. The Respondent has appointed an independent person to chair the disciplinary hearing. There is no reason to believe that the Applicant will not be given a fair hearing, but in any event he has a remedy if the conduct of the hearing is not to his satisfaction. The court has held in numerous cases that it will not lightly interfere with the employers prerogative to discipline employees.

See Bhekiwe Hlophe v SWSC (I.C. Case No. 411/2006 at 6-8) Simon

Mvubu v Ngwane Mills (I.C. Case 189/1999).

11. The suspension of the Applicant is an interim "holding" form of suspension. The respondent is entitled to impose such suspension pending the outcome of the disciplinary proceedings.

12. Section 39 (1) (b) of the Employment Act 1980 permits the suspension to be without pay for a period of 30 days where the Applicant is charged with gross negligence involving drunken driving and failing to report an accident, since such a charge certainly justifies dismissal or disciplinary action. Nevertheless, the Applicant should have been given the opportunity to make representations before he was suspended without pay.

See Nkosingiphile Simelane v Spectrum (Pty) Ltd t/a Master Hardware (I.C, Case No. 681/2006 at page 12 para 30).

13. The Applicant alleges that the Respondent failed to observe natural justice when

he was suspended. The Respondent's Transport Manager does not dispute that the Applicant was given no chance to make representations before he was suspended.

14. The court makes the following order:

- (a) The Respondent is directed to pay the Applicant his remuneration during the period of his suspension pending finalization of the disciplinary proceedings initiated on 15th February 2007.**
- (b) Subject to (a) above, the application is dismissed.**
- (c) Each party to pay its own costs.**

The members agree.

PETER R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT