

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 128/2006

In the matter between:

SOLOMON SIBANYONI

Applicant

and

USUTHU STRIKE FORCE

Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

ANDRIAS NKAMBULE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : SELBY DLAMINI

FOR RESPONDENT : NO APPEARANCE

J U D G E M E N T - 4/12/2008

1. After the application in this matter was served upon the Respondent, notice of intention to oppose was filed by the Respondent's attorneys. Nevertheless, the attorneys made no appearance at court on the return date, nor did they appear on the postponed date. No Reply was filed on behalf of the Respondent. On 5th May 2006 the court referred the matter to the Registrar for allocating a date for ex parte trial. A date was finally allocated and

the trial proceeded ex parte in the absence of the Respondent on the 1st December 2008.

2. The Applicant testified that he was employed by the Respondent in June 2002. The Respondent is a contractor which renders security and fire protection services to SAPPI – Usuthu, a large forestry company with its head office at Bhunya in Swaziland. The Applicant was employed as Firetower Watchman. This job required the Applicant to keep a vigilant lookout for fires or any security or fire hazard from his station at the top of a watchtower, and to report any danger or abnormality to his employer.
3. According to the Applicant, he was dismissed by the Respondent on 5 October 2004, without any reason being given. He stopped working and returned to his home. On the 14th April 2005 he was called back to work and reinstated. The Respondent agreed to pay the Applicant's arrear wages for the period from 5 October 2004 to the date of his reinstatement.
4. The Applicant says that when he returned to work, the Respondent re-deployed him to be a Fireman. This job involved patrolling the forest and putting out fires. The Applicant refused to accept his re-deployment. After discussion with his employer, he was told that if he persisted in refusing to take up his new position, he should resign from his employment.
5. The Applicant duly wrote a letter of resignation on the 20th April 2005 and his employment with the Respondent thereby came to an

end. On 9th May 2005 the Respondent paid the Applicant's arrear wages up to 19th April 2005.

6. The Applicant submits that he was compelled to resign by the unreasonable ultimatum of the Respondent that he should either work as a Fireman or leave the Respondent's employ. He submits that he was constructively dismissed and his services should be deemed to have been unfairly terminated within the meaning provided for in section 37 of the Employment Act 1980.
7. The Applicant claims payment of notice pay, additional notice pay, severance allowance and maximum compensation for unfair dismissal. He was earning E1209-75 per month when he left the Respondent's employ.
8. The Applicant's evidence stands unchallenged and uncontradicted. Prima facie it was unreasonable and unfair to redeploy him from the sedentary job of watchman to that of fireman. A fireman is required to render arduous physical labour under conditions of danger whilst fighting fires. In our view, the Applicant's redeployment involved a radical change in his job description.
9. Moreover he was not suitable to be redeployed as a fireman. He was 54 years old at the time, and he does not appear of robust build or health. He had never been trained as a fireman.
10. In our view the Applicant was entitled to refuse the change in his job description, and he could not reasonably be expected to continue in his employment after the Respondent's manager gave him the

ultimatum to either accept his redeployment or resign.

11. The court finds that the Applicant is deemed to have been unfairly dismissed by the Respondent as provided in section 37 of the Employment Act.

12. The Applicant is entitled to payment of his statutory terminal benefits. With regard to compensation, he has been unable to find alternative employment. He has a number of dependants and it can be accepted that he and his family suffered hardship when his income was abruptly terminated. At the same time, we must take into account that he only worked for the Respondent for a period of two completed years. The court considers that 6 months wages is reasonable compensation in all the circumstances.

13. Judgement is entered against the Respondent for payment to the Applicant as follows:

Notice		E 1209.75
Additional Notice	E	186.12
Severance allowance	E	465-29
6 months compensation	E	7258.50
TOTAL		<u>E9119-66</u>

The members agree.

PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT

