

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 651/2006

In the matter between: **VUSI**

GAMEDZE

Applicant

and

MANANGA COLLEGE

Respondent

CORAM:

P. R. DUNSEITH JOSIAH YENDE

PRESIDENT

NICHOLAS MANANA

MEMBER

MEMBER

MUSA SIBANDZE ZWELI JELE

**FOR APPLICANT FOR
RESPONDENT**

JUDGEMENT - 17/03/09

The parties have agreed to settle this matter by the Respondent paying the Applicant his statutory severance allowance and an ex gratia compensation amount equivalent to four (4) months remuneration as at the date of termination of services.

The parties are unable to agree on the Applicant's monthly rate of remuneration to be applied in calculating the severance allowance and

ex gratia compensation, and they have referred this issue to the court for determination.

The parties agree that the definition of 'wages' as contained in the Employment Act 1980 applies when determining the rate to be used in calculating the severance allowance, and that the definition of 'remuneration' as contained in the Industrial Relations Act, 2000 (as amended) applies when determining the rate to be used in calculating the ex gratia compensation.

It is common cause that the Applicant derived the following monthly salary benefits from his employment:

Gross salary	E11 351-28
Water	E 500-00
Gardener's wages	E 450-00
Medical Aid Contribution	E 1143-60
Sibaya Provident Fund Contribution	E 2272-42

The parties agree that these amounts should be included in calculating the monthly rate of remuneration.

The Applicant's employment contract provided that suitable accommodation would be made available to him free of rent. The Applicant was taxed on this benefit, based on an assessed value of E1,315-80 per month. He also received free electricity for which he was taxed on assessed value of E180-00 per month. Mr. Jele for the Respondent argues that these benefits cannot be included as part of the Applicant's wages or remuneration because they were not paid out to him.

6. In terms of the definition in the Employment Act, wages means

"remuneration or earnings including allowances, however designated or calculated, capable of being expressed in terms of money or fixed by mutual agreement or by law which are payable by an employer to an employee for work done or to be done under a contract of employment or for services rendered or to be rendered under such contract."

7. In their ordinary dictionary meaning "remuneration" means a reward or payment for services rendered, "payment" means reward or recompense, and "pay" means to give what is due for services rendered, work done, goods received, debts incurred etc.

- see **The Concise Oxford Dictionary**.

The dictionary definition does not require that the reward or recompense for service rendered must be paid in money nor in our view does the statutory definition of wages so require, provided that the reward or recompense is capable of being expressed in money terms. In our view the housing and electricity benefits were part of the agreed reward or recompense due to the Applicant in return for the services he rendered. As such they were part of his remuneration. These benefits were expressed in terms of money for purposes of taxation, and in our view they fall squarely under the statutory definition of wages.

8. The definition of remuneration in the Industrial Relations Act is more explicit than the afore-mentioned definition of wages:

"remuneration means wages or salary and any additional payments payable in cash or in kind directly or indirectly by the employer in connection with the employment of an employee" (emphasis added)

9. The housing and electricity benefits are clearly included in terms of this definition also.

10. The Applicant was also entitled, in terms of his contract of employment, to receive a discount on his children's tuition fees amounting to 90% of the day scholar fees payable to the Respondent college or Mananga Primary School. The Applicant's two children were attending the College and the Primary School respectively when his services were terminated and he was enjoying this benefit as part of his remuneration. For the same reasons as those given in respect of the housing and electricity benefits, it is our view that the 90% tuition fees discount formed part of the wages and the remuneration of the Applicant.

11. It is common cause that the value of the tuition fees discount to the Applicant was E2175-00 per month in respect of the College fees, and E1275-00 per month in respect of the Primary School fees.

12. Finally, we do not consider that the Respondent's statutory contribution to the Swaziland National Provident Fund qualifies as wages or remuneration. This amount was paid under the statutory compulsion of social legislation, not as a reward or recompense for work done or services rendered.

13. In the result, the court finds that the Applicant's monthly wages for purpose of calculating his severance allowance, and his monthly remuneration for purposes of calculating his ex gratia compensation, is the amount of E20663-10.

The members agree

P.R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT

