

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 98/2006

In the matter between:

BONGINKOSI MASUKU

APPLICANT

and

SWAZI PALLETS (PTY) LTD

RESPONDENT

CORAM:

S. NSIBANDE

ACTING JUDGE

M. MTETWA

MEMBER

D. MSIBI
NO APPEARANCE

FOR APPLICANT
FOR RESPONDENT

JUDGEMENT - 22nd APRIL 2009

1. This is an application for determination of a dispute certified by the Conciliation Mediation and Arbitration Commission as unresolved on 21st July 2004.
2. The Respondent was not before Court nor was it represented. The Court being satisfied that the Respondent had been served with the application before it, ordered that the trial proceed.
3. The Applicant testified that he was employed by the Respondent as a general labourer on 8th February 2001. He stated that he worked in the production department where planks were made. Sometimes he would be expected to go to the forest to assist with the harvesting and collection of logs. He earned E 600,00 per month.
4. The Applicant testified that on 26th February 2004, he sought permission to leave the workplace so as to attend to the discharge from the Raleigh Fitkin Memorial Hospital of his girlfriend who had given birth to their child. He testified that Mr. Lucky Shongwe gave him permission to leave the workplace and further advanced him E100.00 to assist him pay the hospital fees. Lucky Shongwe, Applicant said, was in charge of the Respondent and was the oemon to whom he reported,
5. He testified that he returned to work on 27th February 2004 on which day there was to be a meeting of shop stewards at the workplace. When he was about to enter the meeting, Mr. Shongwe called him and advised him he could not attend the meeting nor return to work unless and until he had produced proof that he had been to hospital the previous day. He gave Mr. Shongwe the receipt from hospital and his new born son's card to convince Mr, Shongwe that he had been to the hospital to fetch his new born son and see to the discharge of his girlfriend. The Court was told that Mr. Shongwe refused to accept these documents and told the Applicant to bring a sick

sheet relating to himself despite that he had explained the purpose of his visit to the hospital the day before. Despite his further explanations Mr. Shongwe advised him to leave work and return only when he had the sick sheet that was required. When he received his pay at the end of February 2004, he had not been paid for 26th February 2004.

2. The Applicant states that he continued to attend work and actually worked for the month of March. His March salary was not paid. When he approached Mr. Shongwe to ascertain why, he was told that he had previously been advised not to return to work without a sick sheet, and since he had not done so, he would not be paid. Applicant states that he then stopped going to work as he believed he was being dismissed by the Respondent.
3. The Applicant's evidence is that he was employed on 8th February 2001. The Court finds therefore that he was an employee to whom section 35 of the Employment Act applied. The Respondent bears the onus of proving that there were fair reasons for his dismissal. No reason permitted in terms of section 36 of the Employment Act has been shown for the termination of the Applicant's services.
4. In the absence of any evidence from the Respondent which established fair reasons for the disposal of the Applicant, the dismissal of the Applicant was substantively and procedurally unfair. We find that the act of demanding a sick sheet from Applicant when the employer was aware that one could not be obtained and where the employer was aware of the reasons for the Applicant's absence from work on the fateful day as well as the failure to pay the Applicant for the month of March 2004 amount to a dismissal. Such dismissal was not for a reason set out in section 36 of the Employment Act nor was there any procedure followed to establish whether or not the Applicant was guilty of misconduct and to establish whether or not in the circumstances of the case, it was reasonable to dismiss the Applicant.
5. The Applicant gave evidence that the Respondent was involved in the manufacturing of logs and that he ought to have been paid his wages in terms of the Regulation of Wages (Manufacturing and Processing Industry)

Order 2004. He should have been paid E 869.88 but was paid E 600.00 per month instead. The Applicant was underpaid by E 269.88 per month.

10. The Applicant's further testimony was that his dismissal caused him considerable hardship. His girlfriend had just given birth to his child when he was dismissed and his employment terminated abruptly. Although he has found alternative employment, he was unemployed for at least 12 months after his dismissal. He no longer seeks reinstatement as a result of the fact that he is now employed elsewhere.

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11. Judgement is entered against Respondent for the payment to the Applicant of the following amount:

Notice Pay	-	E	869.88
Additional Notice	-	E	316.32
Severance Pay	-	E	790.80
Underpayments (for 18 months)	-	E	4 857.84
Eight months wages as compensation for Unfair dismissal	-	E	<u>6 959.04</u>
			E 13 793.88

12. The Respondent is to pay the Applicants costs.

The members agree.

S. NSIBANDE

ACTING JUDGE OF THE INDUSTRIAL COURT