



IN THE INDUSTRIAL COURT OF ESWATINI
RULING

Case No. 303/18

In the matter between:

MDUDUZI DLAMINI

Applicant

And

SWAZILAND RAILWAY

Respondent

Neutral citation: Mduduzi Dlamini V Swaziland Railway (303/2018) [2018] *SZIC*
135 (05 December 2018)

Coram: **S. NSIBANDE JP**

(Sitting with Nominated Members of the Court Mr N. Manana and
Mr S. Mamba)

Heard: 19 November 2018

Delivered: 05 December 2018

Summary: *Labour Law – Application for referral of dispute to CMAC for arbitration*

– Discretion of President in terms of Section 85 (2)

Held – Material disputes of fact anticipated, referral to arbitration dismissed.

[1] The Applicant, having filed an application for the determination of an unresolved dispute, has now filed an application for the referral of that application to the Conciliation Mediation and Arbitration Commission, for arbitration. The application is opposed by the Respondent which objects to the dispute being determined by arbitration.

[2] The Applicant bases his application on the following factors –

2.1 that the matter is not complex and is, in fact straight forward, in that there are limited disputes of fact;

2.2 that the sum claimed by the Applicant, E110 454.42 (one Hundred and Ten Thousand Four Hundred and Fifty-four Emalangeneni forty-two cents) is affordable to the Respondent and is therefore not substantial to it; and

2.3 that there will be little or no prejudice suffered by the Respondent if the matter is referred to arbitration; and

2.4 that since the **Industrial Relations Act** provides a mechanism for the speedy resolution of labour disputes, in the face of the backlog of cases in the Industrial Court, this matter is suitable to be referred to arbitration at CMAC.

[3] The Respondent submitted that the following factors militated against the application being referred to arbitration;

3.1 the amount of the claim - it was submitted that the Applicant had vacillated between a claim of E146 000 or so and one of E110 456. That in any even a claim of over E1000 000 was a substantial claim even for an undertaking such as the Respondent;

3.2 that the Applicant had been charged and found guilty of gross negligence and that this fact in itself meant that the matter would be fraught with disputes of fact;

3.3 that the Respondent would suffer prejudice if the matter was removed from the more formal setting of the Industrial Court with its higher standard of adjudication. The Respondent, it was submitted, would be prejudiced by the costs of arbitration it would have to incur if the matter was referred to arbitration.

[4] The Applicant in his initial application seeks payment of terminal benefits and compensation for unfair dismissal arising from his dismissal by the Respondent

on 25th January 2017, which dismissal he considers to have been substantially and procedurally unfair. The circumstances of the dismissal are disputed between the parties. Applicant claims to have been working a double shift when the incident leading to his dismissal occurred. He alleges a third party was involved in the incident or in the events leading to the incident. He also alleges that the workplace rule he was accused of breaking was not consistently applied at the Respondent and that its application against him constituted some form of discrimination.

[5] The Respondent denies that Applicant was unfairly dismissed and raises several issues with the version of the Applicant regarding the circumstances leading to his dismissal. In particular it is denied that the Applicant worked a double shift; the discussion between Applicant and the third party he involved in the circumstances surrounding his dismissal is said to be unknown to the Respondent as one are the purported conversations between him and the Applicants; the discriminate manner in which it is alleged the work place rule was effected was also denied by the Applicant.

[6] Whilst the issue of gross negligence is not one that is novel, it appears to me that there are sufficient; real disputes of facts to render the matter unsuitable for arbitration. The potential prejudice of an adverse finding of fact against the Respondent, from which no appeal no appeal lies couples with the substantive

claim made by Applicant makes an reluctant to close the doors of the Court to a litigant who opposes same.

[7] Having considered the parties submission and their heads of argument, including the authorities cited herein, and having had regard to the particular circumstances of this matter. I find that this matter is best suited to be heard in the more formal setting of a Court of law. In the circumstances the application for referral is dismissed. **There is no order as to costs.**



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant: Mr. E.B. Dlamini

For the Respondent: Ms. J. Dlamini (Robinson Bertram)