



IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE

Case No. 297/2017

In the matter between:

LAWRENCE P. MANANA

Applicant

and

CRIME STOP SECURITY SERVICES

Respondent

Neutral citation: Lawrence P. Manana vs Crime Stop Security Services
[297/2017] [2018] SZIC 60 (2018)

Coram: Nsibande J.P.
(Sitting with N.R. Manana and M.P. Dlamini
Nominated Members of the Court)

Date Heard: 18 June 2018

Date Delivered: 28 June 2018

RULING

- [1] The Applicant, has applied to the President of the Industrial Court for an order that his matter, pending before the Court, be referred to arbitration under the auspices of the Conciliation Mediation and Arbitration Commission (CMAC), as provided for by Sections 8 (8) and 85 (2) of the Industrial Relations Act 2000 (as amended).
- [2] The Applicant states in his papers that this matter is one that could be easily resolved through arbitration; that he claims only E55 152 and therefore a referral to arbitration will not prejudice the Respondent; and “that the Commission was established to assist the Court reduce the backlog of cases by providing a speedy resolution mechanism conflicts in labour relations...”
- [3] At the hearing of the matter, the Applicant’s representative reiterated the submissions made in the founding affidavit, in advancing his claim. There was no appearance by the Respondent, having been called three times. The Applicant had filed two (2) applications of the same nature, previously but subsequently withdrew them, and served a new application on the Respondent’s representatives. Despite service of this application by the Deputy Sheriff. There was no appearance for the Respondent which filed neither an intention to oppose nor opposing papers.

- [4] Despite the non-appearance of the Respondent, the President is still expected to exercise his discretion judiciously, in deciding whether the matter ought to be referred to arbitration or dealt with by the Industrial Court.
- [5] The Applicant claims to have been automatically unfairly dismissed for demanding payment in terms of the appropriate wages gazette and therefore claims 24 months salary/wages as compensation for the automatically unfair dismissal. He also claims for underpayments as occasioned by the non-compliance with the right/relevant gazette. He also claims overtime for work done on holidays, as well as payment in lieu of leave days not taken,
- [6] It seems to me that the facts of this matter are fairly straight forward and will not present a complication wherever the matter is heard. In any event it has been said that arbitrators at CMAC now all held LLB degrees and that some have the experience of acting as judges of this Court. (The attitude of the Industrial Court to Labour Arbitration Referrals – Nathi Gumede 4/7/2012).
- [7] In my view the matter lands itself to determination by the more flexible and simple process of arbitration.
- [8] I am aware that the amount of E55 152 claimed by the Applicant may be said to be substantial, however there having been no appearance for the Respondent it is difficult to say either way. I am also of the view that any prejudice the Respondent may stand to suffer by the referral of the matter to arbitration at CMAC may be

counter balanced by an order that the matter be heard by an experienced arbitrator.

[9] In the circumstances the following order is made:

9.1 The dispute is referred to arbitration by the Commission.

9.2 The Executive Director of the Commission is hereby directed to appoint as arbitrator an attorney of 5 years experience.

There is no order as to costs.

The members agree.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr. S. Dlamini

For Respondent: Mr. B. Mkoko