



IN THE INDUSTRIAL COURT OF ESWATINI

JUDGMENT

Case No. 290/18

In the matter between:

MDUDUZI SHABANGU

Applicant

And

SWAZILAND LUMBER SECURITY SERVICES

(PTY) LTD

Respondent

Neutral citation: Mduduzi Shabangu v Swaziland Lumber Security Services
(290/18) [2018] SZIC 120 (04 February 2019)

Coram: **S. NSIBANDE JP**
(Sitting with N.R. Manana and M.P. Dlamini Nominated
Members of the Court)

Date Heard: 06 November 2018

Date Delivered: 04 February 2019

JUDGMENT

[1] Following the termination of his services on the 17th December 2017, the Applicant approached the Court for the determination of an unresolved dispute arising from the termination of his services. He alleges that the termination of his services was unfair in that he was not allowed to state his side in the disciplinary hearing and further that he was not called to his appeal hearing thus being denied his right to appeal. He claims a total amount of E47,922.98 being terminal benefits, compensation for unfair dismissal and annual leave.

[2] The Respondent opposed the application and in its reply denied that it dismissed the Applicant unfairly and pleaded that the termination was fair and that it followed a disciplinary enquiry wherein Applicant was found guilty of poor time keeping and reckless misuse of company property. It denied that the Applicant was refused his right to appeal and averred that, in fact, the Applicant took an active part in the appeal process including the hearing.

[3] The Applicant has now applied for that the unresolved dispute between him and the Respondent be referred to the Conciliation, Mediation and

Arbitration Commission (CMAC) for arbitration. The Respondent objects to the dispute being resolved by arbitration and has opposed the application.

[4] The Applicant advanced the following reasons for the application for referral:

4.1 that the matter is straight forward;

4.2 that the amount claimed is not substantial; and Respondent stands to suffer no prejudice if the matter is referred to arbitration;

4.3 that CMAC was established to provide a speedy mechanism for the resolution of matter in part to assist with the issue of the backlog of cases at the Industrial Court.

[5] The Respondent argues in the contrary that;

5.1 the matter is complex in nature; and

5.2 the amount claimed is substantial for the type of business the Respondent operates.

[6] I have considered the parties' submissions together with their heads of argument, and the pleadings in the application for determination of an unresolved dispute and the referral application. I consider that there may

be some factual issues that arise regarding the allegation of reckless misuse of company property and poor time keeping and regarding the Applicant's degree of participation in the disciplinary hearing and the appeal. It is my view though that the issues of fact that may arise in this matter are not particularly complex and that they are capable of resolution without disadvantaging either party. I do not believe the Respondent will be disadvantaged by the less formal procedure of arbitration particularly if the arbitrator appointed is an experienced legal practitioner.

[7] Taking into account all the foregoing, I come to the conclusion that the current dispute is amenable to determination by arbitration. **I therefore make the following order:**

- (a) The dispute is referred to arbitration under the auspices of CMAC**
- (b) The Executive Director of CMAC is directed to appoint an arbitrator who is an attorney with at least 7 years post admission experience as arbitrator in this matter.**
- (c) Each party to pay its own costs.**



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr. E. B. Dlamini (Labour Law Consultant)

For Respondent: Mr. M. E Simelane (Mbuso E. Simelane & Associates)