



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 332/18

In the matter between:

HENDRICK S. DLAMINI

Applicant

And

CM CONCRETE (PTY) LTD

Respondent

Neutral citation: Hendrick S. Dlamini v CM Concrete (Pty) Ltd (332/2018) [2019]
SZIC 43 (03 May 2019)

Coram: **S. NSIBANDE JP**

(Sitting with Nominated Members of the Court Mr. N. Manana
and Mr. M. Dlamini)

Heard: 04 April 2019

Delivered: 03 May 2019

RULING

- [1] The Applicant has applied for his claim in the above matter to be referred to arbitration under the auspices of the Conciliation Mediation and Arbitration Commission (CMAC). The Respondent opposes the application.
- [2] The Applicant is claiming payment of terminal benefits and compensation for unfair dismissal in total sum E66868.00.
- [3] The Applicant alleges that he was unlawfully dismissed while on lay off, with the Respondent replacing him with other employees and then not assigning him duties upon his return to work. The Respondent replies that upon the Applicant's return from the lay-off, he was asked to submit to proof of his qualifications for purposes of registering him with the Constitution Industry Council (CIC). Respondent avers that the registration was necessary for compliance with CIC regulations. It further avers that the Applicant upon being asked to provide his qualifications left the Respondent's premises and did not return despite giving the impression that he was going to return with the required qualifications. It denies that the Applicant was dismissed but states that he abandoned his employment.

- [4] Disputes of fact arise for decision regarding what transpired when the Applicant returned from the lay-off and whether he was in fact ever dismissed. The Applicant submits that these disputes are not complex and this matter can be decided at the comparatively less formal forum of CMAC.
- [5] The Respondent submits that the disputes are material and that the matter can better be determined by the more formal structures of the Court. It submits further that the amount claimed is substantial and that in the circumstances it ought not be denied its right of access to the Industrial Court. It submits that it will be prejudiced by an adverse finding of fact and will be without a remedy due to the fact that an appeal lies to the Industrial Court of Appeal only on questions of law.
- [6] The Applicant submits that the Respondent will suffer no prejudice if the matter is referred to CMAC for arbitration particularly since the CMAC was created for the purpose of enabling labour issues to be resolved speedily.
- [7] Having regard to the particular circumstances of this matter, I am reluctant to compel the Respondent to submit to compulsory arbitration against its wishes

where there exists potentially material disputes of fact and where the sum claimed appears to be substantial it.

[8] In the circumstances the application for referral is denied. There is no order as to costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant: Mr E.B. Dlamini

For the Respondent: Mr. H. Gwala