

IN THE INDUSTRIAL COURT OF APPEAL OF SWAZILAND

SWAZI OXYGEN

Appellant

Vs

DLAMINI JABULANE

Respondent

Appeal No. 30/2001

Coram	SAPIRE, JP MATSEBULA, JA MAPHALALA, JA
For Appellant	Mr. Z. Jele
For Respondent	Mr. M. Mkhwanazi

JUDGMENT

(01/07/2002)

The appellant in this matter was an employer of the respondent. The respondent was dismissed on the grounds of gross negligence. Such negligence, it is admitted, resulted in a loss to the appellant of some E66 000.00. When the matter came before the Industrial Court, that court found that this was not a ground for dismissal under Section 36(1) of the Employment Act and had made an award to the respondent of some E26 449.92. No order as to costs was made.

While in law that order may have been justified the parties were agreed that the evidence established a counter claim which the Appellant had against the Respondent for damages in respect of the loss occasioned by Respondent's negligence in a far greater amount than the award.

This court has the power to, as does the court a quo to make an equitable order in the circumstances. The court below should have taken into account in making its award that whatever it awarded should be set off at least against the loss which was

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occasioned to the appellant by the respondent's negligence. While therefore we do not set aside the award we order that in equity it be set off against and reduced to the extent of the loss incurred by the appellant. This in effect extinguishes the Appellant's liability in terms of the award. It is without prejudice of course to any other claim which the appellant may seek to pursue.

SAPIRE, JP

I AGREE

MATSEBULA JA

I AGREE

MAPHALALA, JA