

IN THE CONCILIATION, MEDIATION AND ARBITRATION COMMISSION

HELD AT MANZINI **REF NO: SWMZ 11/09**

In the matter between:

MDUDUZI MNISI APPLICANT

AND

NATIONAL CHICKS
SWAZILAND (PTY) LTD RESPONDENT

CORAM

ARBITRATOR: VELAPHI DLAMINI

FOR APPLICANT: M. NDZINISA
FOR RESPONDENT: F. M. SNYMAN R. MACKIE

NATURE OF DISPUTE UNFAIR DISMISSAL

DATE(S) OF ARBITRATION 25TH MARCH 2009

ARBITRATION AWARD

1. DETAILS OF HEARING AND REPRESENTATION

1.1 On the 25th March 2009 the arbitration of this matter was held at the Conciliation, Mediation and Arbitration Commission's offices (CMAC or Commission) situated at 4th Floor, SNAT Cooperatives Building in Manzini.

1.2 The Applicant is Mduduzi Mnisi an adult Swazi male of P. O. Box 5457 Manzini. He was represented at the hearing by Mr Mandla Ndzinisa.

1.3 The Respondent is National Chicks, Swaziland (Pty) Ltd (hereinafter referred called the company or Respondent) a limited company, which has the capacity to sue and can be sued in its own name. The company's postal address is P. O. Box 1124, Matsapha.

1.4 Messrs F. M. Synman and R Mackie represented the company during the arbitration proceedings.

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2. BACKGROUND

2.1 The Applicant reported a dispute for "unfair dismissal" which was received by the Commission on the 13th January 2009.

2.2 In terms of the Report of Dispute, the Applicant was employed by the Respondent on the 21st January 2008 as a delivery driver and earned wages of E3 225.67 per month. The dispute first arose on the 15th May 2008, when the Applicant was dismissed by the Respondent after a disciplinary hearing was held wherein Mnisi was accused of misusing company property and breaching bio security.

2.3 The Applicant continues to state in his summary of the facts at paragraph 5.3 of the Report of Dispute that he was wrongly found guilty because the charges against him were unfounded and not proven at the hearing. He further submitted that the sanction was also too harsh. It was his statement further that as an accused employee, he was denied the right to a fair hearing because the Chairperson of the disciplinary hearing was

biased. Further Mnisi alleged that he was not afforded sufficient time to prepare or be represented at the disciplinary hearing.

2.4 The dispute was conciliated by the Commission and a Certificate of Unresolved Dispute No: 100/09 was issued by CMAC. On the 17th February 2009, both parties agreed to refer the dispute to arbitration. And I was appointed to determine the dispute by means of arbitration.

3. ISSUES IN DISPUTE

3.1 The Applicant submitted that Respondent dismissed him unfairly both substantively and procedurally on the 15th May 2008. He was in the premises claiming Reinstatement or alternatively, notice pay and twelve months compensation for unfair dismissal.

3.2 The company opposed Mnisi's claims by arguing that the dismissal was fair in all material respects, as such, he was not entitled to any payment as claimed.

4. ANALYSIS OF EVIDENCE

4.1 During the arbitration proceedings, the parties indicated that they wished to once again explore the possibility of mutually settling the dispute. The arbitrator then engaged the parties in a process of "conciliation within the arbitration".

4.2 Both parties suggested various settlement options and finally a full and final settlement agreement was agreed.

5. CONCLUSION

5.1 A Memorandum of Agreement dated the 25th March 2009 (a copy attached) was then entered into by the parties, which meant that the dispute had been successfully resolved by mutual consent. The terms of the agreement were:-

(a) That the Respondent shall pay the Applicant the sum of E13 082.13 as a full and final settlement of the dispute.

(b) The aforesaid amount shall be paid into the bank account of the Applicant and the Respondent shall file with the Commission proof of such payment.

(c) The payment shall be made by the Respondent on or before the 3rd April 2009.

6. AWARD

Taking into account the Memorandum of Agreement and in terms of the details of the Report of Dispute, I hereby make the following award;

6.1 That the Respondent is ordered to pay the Applicant the sum of E13 082.13.

6.2 That this payment is in full and final settlement of the dispute.

6.3 That the Respondent is directed to pay the aforesaid amount on or before the 3rd April 2009 into the bank account of the Applicant.

6.4 That the Respondent is ordered to file proof of such payment to the Commission on or before the 29th May 2009.

DATED AT MANZINI ON THIS 13TH DAY OF MAY 2009

VELAPHI DLAMINI CMAC COMMISSIONER