

IN THE INDUSTRIAL COURT OF SWAZILAND

CASE NO. 34/85

In the matter between:

SIMON SIHLONGONYANE

Applicant

VS

BUILDMORE (PTY) LTD

Respondent

CORAM

J. A. HASSANALI

PRESIDENT

S. MOTSA

FOR THE

APPLICANT

P. DODDS

FOR THE

RESPONDENT

MESSRS B. STEPHEN AND A.N. MATSEBULA

ASSESSORS

AWARD

DELIVERED 28-08-86

HASSANALI, J.

In this matter, the applicant is claiming from the Respondent -

- (1) the payment of E1,200 being 5 months compensation for his unfair dismissal.
- (2) the payment of E201.55 being his wages for the month of April, 1985.

Mr. Dodds appearing for the Respondent Company raised as a preliminary objection that the applicant will not be entitled to claim compensation from the Respondent on the ground that no report on his unfair dismissal had been made to the Labour Commissioner as envisaged under Sec.51(1) of the Industrial Relations Act No.4 of 1980. He stated that the certificate of Unresolved Dispute issued by the Labour Commissioner did not correctly reflect the dispute that had been referred to him for investigation. The dispute referred to him was one related to non payment of the Applicant's April wages and not to unfair dismissal. Therefore he said,

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the remark "Unfair dismissal" in the Certificate of Unresolved Dispute was uncalled for. Mr. Motsa appearing for the applicant agreed with Mr. Dodds on this point but said that it was erroneously entered by a junior officer in the Labour Department. Nevertheless he stated that this Court still had the discretion to hear and determine this matter even though no such report had been made to the Labour Commissioner.

Sec. 50(1) of the Industrial Relations Act No.4 of 1980 sets out as to who should report a dispute to the Labour Commissioner. It provides that an employee could do so provided that no organisation is active in the undertaking concerned in the dispute.

In Sec. 51(1) of the aforesaid Act it is stated that a report of a dispute shall be made in writing, signed by the person making the report and shall specify the following matters -

- a) the parties to the dispute
- b) the addresses of t each of the parties.
- c) particulars of all the issues stating precisely their nature and scope

(underlined by me)

d) what steps, if any, have been taken for the settlement of the dispute either in accordance with the provisions of a joint industrial Council constitution, a collective agreement regulated under Part VI, a Works Council or otherwise.

Under Sec. 54 (4) if the Labour Commissioner is satisfied that no useful purpose would be served by continuing to conciliate under Sec. 54 (1), (2) and (3), he may certify that

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that the dispute is an unresolved dispute pursuant to Sec. 50(1).

However under Sec. 58(2) if the dispute remained unresolved, either party to such a dispute may make an application or the Labour Commissioner may refer the matter to the Court for the determination of such dispute.

Therefore after careful consideration of the aforesaid sections, it is evident that the Court can only hear and determine a dispute which remains unresolved after it has been previously referred to the Labour Commissioner for settlement by means of conciliation. The proof of such referral should however be supported by a certificate which should state that the dispute is unresolved and should be signed by the Labour Commissioner.

In this application the only dispute that had been referred to the Labour Commissioner for settlement by conciliation was one relating to non payment of the applicant's wages for April, 1985. The Applicant's unfair dismissal was at no stage raised as a dispute with the Labour Commissioner. The compliance with the provisions of Sec.51(1) in my view is peremptory and as such the dispute re unfair dismissal cannot be referred to this court until the Labour Commissioner has investigated into it and issued a certificate of Unresolved Dispute. It follows therefore that since no such report was made to the Labour Commissioner, the Court does not have the jurisdiction to hear the complaint. Consequently I uphold the objection raised by Mr. Dodds and dismiss the applicant's application on the dispute re unfair dismissal.

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On the question of non payment of wages the applicant maintained that despite his complaints to both Mavuso, the site Clerk at Nhlalanga and to his Head Office in Mbabane, he was not paid. One Shongwe, a witness for the Respondent, said that an envelope was handed over to the applicant by Mavuso, but he did not know as to what it contained. Since Mavuso was not called to give evidence in this respect, I cannot place any reliance on the evidence of Shongwe. Therefore on the evidence presented I have no other alternative but to hold that the applicant was not paid his April wages.

In the circumstances I order the Respondent to pay the applicant a sum of E201.55 being his wages for April, 1985. I enter this as an award of this Court.
My Assessors agree with my decision.

J. A. HASSANALI

PRESIDENT