

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE:

CASE NO: 59/1988

In the matter between:

MATHEW KHUMALO

Applicant

Vs.

1. IRON ENGINEERING (PTY) LTD

2. BOWRING AND MINET (SWD) (PTY) LTD

Respondent

CORAM:

J.A. HASSANALI

President

APPLICANT

In

Person

MR SHILUBANE

1st & 2nd

Respondent

MR V DLAMINI & MR MATSEBULA

Assessors.

ORDER

HASSANALI, P

In this Application, the Applicant is claiming a sum of E3888/= from the Respondent Company as compensation under the Workman's Compensation Act No. 7 of 1983, for the injury he says he sustained in September 1982 while working for the Respondent.

I wish to state at this stage that when this matter came up for trial on 23/1/90, Mr. Mtetwa, the Applicant's Representative indicated that he was withdrawing from the case, and on behalf of the applicant applied for a postponement of this case in order to enable the applicant to engage another Representative. The postponement was granted but when hearing resumed, the applicant though unrepresented elected to proceed to trial.

According to the Applicant he was employed by the Respondent Company between the years 1981 and 1982. On a day in September, 1982 while engaged in work, an iron bar fell off a truck, injuring his leg, and he reported the incident to the Foreman. He did not take any treatment until November 1982, when he was treated at the R. F. M. Hospital by one Dr. Khumalo.

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He denied that he told Dr. Khumalo that he got injured in 1973. In cross-examination he admitted that he worked continuously during the months of September, October and November 1982.

The first question the Court has to decide is whether the Applicant sustained any injury at any time during the month of September 1982. He maintained that he did sustain a serious injury which he said he reported to one Almeida, but Almeida was not called to give evidence to support him on this. However Jose Caetano, the foreman in evidence denied it. He (Applicant) also stated that he was hospitalised for about 5 months which evidence is incorrect since he admitted to working without any break during the months of September, October and November 1982 (Exs. A, B & C). Therefore he could not have received any injury during this period. There is evidence however that when the Applicant joined the Company he had a limp which it appears he sustained in 1973. The applicant did not appear to be an honest witness. He was evasive and many a time contradicted himself on material points. Therefore I do not wish to place any credence on his evidence. In the circumstances I find that the applicant has failed to

establish that he had sustained any injury in September 1982 in the course of his employment.

I now turn to the next question as to whether the applicant could maintain this action as contemplated under Sec. 5(2)(a) and 18(2)(b) of the Workman's Compensation Act.

Sec.5(2)(a) reads as follows -

"Notwithstanding sub section (1) the employer shall not be liable to pay compensation under this Act -

in respect of any injury, except an injury causing death, which does not incapacitate the Workman for at least three days from earning full wages at the work at which he was employed."

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There is no evidence at all that the applicant was incapacitated for at least 3 days from earning full wages as envisaged under the above section. On the contrary there is evidence that he had been working without being absent for a single day at any time during the aforementioned months. Therefore in my view the applicant has failed to satisfy the requirements contemplated under the said subsection.

Sec 18(2)(b) provides -

Notwithstanding anything contained in this section - "the failure to make a claim for compensation within the period specified in subsection (1) shall not be a bar to the Maintenance of such a claim if it is found that the failure was occasioned by mistake or other reasonable cause, but no claim for the recovery of compensation shall be maintainable unless it is made within a period of three years from the date of death as the case may be."

The applicant alleged that when he was injured in September 1982, he made the foreman aware of it, but he did not call him to give evidence. On the other hand, the foreman whom the Respondent called to give evidence denied that the applicant made such a report to him. However according to the evidence it appears that the Respondent was only informed in 1987, 5 years after the alleged incident.

In the circumstances the applicant's application is time barred.

Therefore taking both the facts and the law into consideration, I come to the conclusion that the applicant has failed to establish that he had sustained an injury arising out and in the course of his employment.

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In the circumstances I dismiss his application.

Application dismissed.

My Assessors agree with my decision.

J.A. HASSANALI.

PRESIDENT