

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 98/94

In the matter between:

THABSILE XOLISWA NGCAMPHALALA Applicant

And

JET STORES LIMITED Respondent

CORAM:

MARTIN BANDA : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

THEMBA SIMELANE : FOR THE APPLICANT

JUDGEMENT

The Applicant seeks compensation for her unfair dismissal, notice pay additional notice, severance allowance, two years leave payment, salary and under payment.

The Certificate of unresolved dispute attached to the Applicant's application discloses that the following were the issues in dispute between the Applicant and the Respondent :

- (a) Unfair dismissal
- (b) Notice pay
- (c) Additional Notice
- (d) Severance Pay
- (e) Leave

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It will be noticed that the items titled salary and under payment did not form part of the issues that were reported or conciliated upon by the Labour Commissioner. We therefore have no jurisdiction to hear them The claim for salary in the sum of E717.35 under item (e) of the Applicant's prayer and the claim for under payments in the sum of E9.439.92 under item (f) are accordingly dismissed.

The Applicant proved by an Affidavit of service dated 10th August, 1994 that this Application was served upon the Respondent. An application was made that this matter should proceed to trial as an ex-parte matter. The application was granted.

In support of her case the Applicant testified that she was employed by the Respondent on the 17th February, 1992 as a Cashier of the Respondent's Mbabane branch. She earned E72.00 per week. On the 17th January, 1994 MR. GININDZA the Manager asked the Applicant to cash up at quarter to twelve. When the Applicant finished cashing up the Manager MR. GININDZA called her into his Office. With the Manager was the Floor Manager and Floor Supervisor. MR. GININDZA told the Applicant to go home. She was told she would be called on a later date. MR GININDZA has never called the Applicant up to this day. No reason was given why the Applicant had to go home on that day. The Applicant was never called to a disciplinary inquiry.

When the Respondent did not call the Applicant to resume work or face disciplinary action she

approached MR GININDZA who told her he did not have time for her. She asked if she could look for another job and she was told it was up to her. The Applicant was not paid anything. She reported the dispute to the Labour Commissioner who later issued a Certificate of Unresolved Dispute.

Ever since her dismissal the Applicant has not secured any employment. she now prays for an Order compelling the Respondent to pay her terminal benefits. It will be noticed that on page 2 of the Applicant's Application under paragraph 6 she outlines the relief sought as :

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- (a) Notice Pay E 288.00
- (b) Additional Notice E 191.28
- (c) Severance Allowance E 478.20
- (d) 2 years leave payment E1147.65

Her own testimony is that she earned E72.00 per week. She was employed on the 17th February, 1992 and dismissed on the 17th January, 1994. Excluding the period 17th February, 1992 to 17th February, 1993 which qualifies as a period of 24 days notice which has been claimed by the Applicant for the sum of E288.00 having been in the Respondent's continuous employment for 12 months. At the time of her dismissal the Applicant had not completed the second year of continuous employment. She does not qualify for additional notice. The claim for additional notice is dismissed. The Applicant has claimed E478.20 as severance allowance. The first year of the Applicant's service to the Respondent is disregarded in calculating the qualification for severance allowance. The claim commences in the second year. The Applicant did not complete the second year of service and thus does not qualify for this head of claim. The claim for severance allowance is dismissed.

The claim for two years leave payment of E1147.65 is not supported by any evidence by the Applicant. We are merely told that she is claiming the payment of the sum of E1147.65 as two years leave. This is grossly insufficient and does not satisfy the basic or elementary standard of proof required. We are unable to grant the order sought for two years leave payment and accordingly deny it.

The Applicant testified that she is 24 years old and has two children. One is 6 years old, the other is 2½ years old. The elder child is attending school in Grade 1. The Applicant has tried to secure alternative employment without success. On the totality of evidence relating to the claim for compensation for unfair dismissal, we order that the Respondent do pay the Applicant 2 months wages by way of compensation in the sum of E576.00.

The Members have concurred.

MARTIN SAMSON BANDA

PRESIDENT - INDUSTRIAL COURT