

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 122/94

In the matter between:

PHILEMON MATSE Applicant

And

UNITRANS SWAZILAND LTD Respondent

RULING

The Respondent in this matter seeks an Order dismissing the Applicant's claim on the ground that the dispute was not reported to the Labour Commissioner within 6 months in terms of Section 50 (3) of the Industrial Relations Act and that therefore it is prescribed and that the Labour Commissioner had no authority to conciliate on the dispute. The Respondent's case is that this matter is not properly before Court.

It is common cause between the parties that the issue in dispute relates to the alleged promotion of the Applicant on the 1st February, 1989 to the position of Acting Driver Supervisor. A promotion which is denied by the Respondent. The Applicant alleges that since the alleged promotion he has been underpaid by the Respondent and now seeks an Order of Court directing the Respondent to pay him from 1st February, 1989 to 31st October, 1993.

The Applicant's submission is that the Respondent should have raised this point in Limine before the Labour Commissioner. This submission by the Applicant is without merit. There is nothing stopping the Respondent from raising this defence at any stage of these proceedings. Certainly there is nothing stopping the Respondent from raising this point before

2

Court. If as Applicant alleges he was promoted on the 1st February, 1989 and underpaid thereafter up to the 31st October, 1993 when he was retrenched then the dispute did not certainly arise on the date he was retrenched it arose on the date he was allegedly promoted.

He should have reported the dispute within 6 months from the date of dispute.

We agree with the Respondent that the Labour Commissioner did not have authority to conciliate in this matter at the time when he did as it had already been prescribed. The matter is therefore improperly before Court and the Court has no jurisdiction to hear it. It is dismissed.

MARTIN SAMSON BANDA

PRESIDENT-INDUSTRIAL COURT