IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE No. 4/96

In the mattter between:

PETER MASEKO Applicant

and

SWAZILAND CEMENT PRODUCTS LTD Respondent

R U L I N G

The Respondent in this matter seeks an order dismissing the Applicant's application on the grounds that it is not properly before the Court as there was no compliance with Part V111 of the Industrial Relations Act.

It is common cause that the Applicant was employed by the Respondent on the 29th January, 1993.

He was dismissed on the 30th September, 1994. He then lodged his dispute with the Labour Commissioner on the 17th October, 1994. It is not in dispute that after receiving the report of dispute the Labour Commissioner did not effect conciliation between the parties. On the 29th March, 1995 the Labour Commissioner invited the parties to attend before him for conciliation. The reason given for failure to effect conciliation within 21 days was that the Applicant left the country immediately after lodging his dispute. There is no suggestion that the parties had given the Labour Commissioner their written consent allowing the efforts' of conciliation to be conducted after the mandatory period. It appears that the Respondent was not amenable to the proposition that it attend such conciliation.

Consequently the Labour Commissioner issued a Certificate of Unresolved Dispute.

It is the Respondent's case that having failed to effect a conciliation with 21 days and in the absence of the parties giving their written permission to the Labour Commissioner to conduct conciliation after the expiration of the period provided by the legislation. The Labour Commissioner did not have a mandate to conduct the proposed conciliation and that he needed to have solicited a fresh report of dispute to be lodged by the Applicant. He further needed to obtain the written permission of the Minister authorising the receipt of a report of dispute after the expiration of 6 months. This was not done. The Respondent's case is that this Court does not as a consequence have jurisdiction to hear this matter as it is not properly before it and cannot take cognisance of it.

The Applicant has not resisted this point in law infact he concedes that there was such failure to comply with the law by the Labour Commissioner. As we said earlier on the Labour Commissioner did not attempt to effect conciliation within 21 days after receiving the report of dispute. He did not obtain the written permission of the parties mandating him to conduct conciliation after the expiration of 21 days. The steps that were taken by the Labour Commissioner consequent to his letter dated 29th March, 1995 in which he invited the parties to attend conciliation are of no consequence as they were in breach of the law and part V111 of the Industrial Relations Act dealing with the approach to be taken by the Labour Commissioner after receiving a report of dispute. The Certificate of Unresolved Dispute which was later issued by the Labour Commissioner on the 2nd June, 1995 is itself of no consequence and a nullity.

In view of the fact that this matter was dealt with in breach of the provisions of Part V111 of the Industrial Relations Act. The matter is improperly before us.

We have no jurisdiction to hear it nor can we take cognisance of it. The point raised in Limine is therefore successful and the Applicant's application is dismissed.

MARTIN SAMSON BANDA

PRESIDENT - INDUSTRIAL COURT