



made and forms the basis of the claim for under payments.

It was argued for the Applicant that the issue giving rise to the claim for underpayments is not the fact of his promotion to the position of supervisor, but that every end of the month when the payment fell due and was not made constituted a separate cause of action. Following this argument Mr. Dunseith submitted that all the underpayments falling due within six months of the date the Applicant made his report of the dispute to the Commissioner are not time barred in terms of Section 57 (3).

3

In applying the definition of Lord Esher to this case, for the Applicant to establish a case for underpayments all that he needs to show is that:

- (a) He was promoted to the position of a supervisor in 1990.
- (b) That in terms of the law he was entitled to a 25% raise above the salary of the highest paid employee under his direct supervision.
- (c) That when the first salary after the promotion fell due, the Respondent did not pay the 25% statutory entitlement.

The dispute arose when after the promotion he did not receive the 25% statutory raise the month immediately following his promotion. It is not clear on which particular month of 1990 the Applicant was promoted, but as was submitted by Mr. Sibandze assuming that this happened on the month of December 1990, then the dispute itself arose on the month of January 1991 when the first salary after the said promotion fell due. Subsequent non payments, up to the time of his dismissal constitute a concatenation of that dispute and in our view each act of non payment does not comprise a separate "issue giving rise to the dispute" in terms of Section 57 (3) of the Act

The decision of the President of the Industrial Court Mr. Martin Banda (as he then was) in Case No. 122/94 PHILEMON MATSE v UNITRANS SWAZILAND LIMITED which is on all fours with this case supports our finding in this matter.

Accordingly, the Respondent's point in Limine is upheld with no order as to costs.

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