

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 162/99

In the matter between:

MNCEDI ALEX DLUDLU

APPLICANT

and

SWAZI TIMBER PRODUCTS (PTY) LTD

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MISS K. DLAMINI

FOR THE RESPONDENT:

MR. S. SIBANDZE

RULING

01/09/2000

The Applicant seeks maximum compensation for unfair dismissal, statutory terminal benefits and other various relief emanating from the alleged unfair dismissal.

The Respondent has raised legal objection to the application as follows :

1. The Applicant had no power or authority to report a dispute to the Labour Commissioner in terms of Section 57 of the Industrial Relations Act 1996 in that there is an industry union active in the respondent's undertaking.
2. The dispute has accordingly not been properly conciliated upon in terms of Part V111 of the Act and this Honourable court may not take cognisance of such dispute.
3. The claims for leave pay may not be taken cognisance of by this honourable court following that the matter was settled as between the parties when applicant accepted payment in full and final settlement of his salary and leave due to him in July, 1998.

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4. The claim for 7 days worked in January 1998 was reported out of time in that more than six (6) months had elapsed since the issue giving rise to this dispute first arose and the Minister has not extended the time for reporting of this dispute. This claim is therefore improperly before the court and this honourable court may not take cognisance of same.

The Respondent conceded that the fourth point in limine was raised in error and thus the claim for the 7 days worked in January 1998 is properly before the court.

The Applicant received a cheque for E9,749,76 in full and final settlement of his salary and leave. A forwarding letter of that cheque to the Applicant is annexed to the Application and same is dated 23rd

July, 1998.

The Applicant has not replicated to the respondent's reply wherein it is alleged that the issue of leave was settled as between the parties. This being so the point in limine must succeed and the claim for E2,250.00 leave pay falls away.

As concerns the first point in limine, the matter was reported in terms of Section 57 (1) of the 1996 Act. It is common cause that applicant was a Production Manager and non unionisable. Even though this legal objection has been superceded by Section 76 (1) of the Industrial Relations Act 2000, we note that in terms of the law members of management cannot join a union but ordinarily become members of a staff association where there is one active in the undertaking.

There is no evidence before us that there was a staff association at the Respondent's undertaking. A union recognised in terms of the Act, though intended to represent the interests of its members and non members in an undertaking, its jurisdiction does not extend to management.

For the purposes of reporting a dispute in case of a member of management, a union is not an active organisation in terms of Section 57 of the 1996 Act. Accordingly, the applicant was entitled to individually report the dispute to the Labour Commissioner. See the case of Swaziland Hotels and Catering Union v Spa Holdings Industrial Case No. 1/1990.

The point in limine is dismissed. I make no order as to costs.

The matter will proceed to trial on all the issues raised in the particulars of claim other than leave pay.

NDERI NDUMA

JUDGE PRESIDENT INDUSTRIAL COURT