

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 69/2000

In the matter between:

MANGALISO MASILELA

APPLICANT

And

V. I. P. PROTECTION SERVICES

(PTY) LTD

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. MUZI MAHLALELA:

FOR APPLICANT

MR. SYDNEY JELE:

FOR RESPONDENT

JUDGEMENT

29/9/00

In his application for the determination of an unresolved dispute the applicant claims compensation for unfair and unlawful termination of his services by the respondent, notice pay, leave pay, overtime pay and salary arrears for June.

The respondent denies that the termination was unlawful or unfair. According to respondent the dismissal of the applicant was fair as he (applicant) deserted his employment after refusing to follow a lawful instruction from his supervisor.

This would in a proper case bring respondent's reason for terminating the services of the applicant under Section 36 (F) of the Employment Act No. 5 of 1980.

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In his evidence in chief the applicant told the court that he was employed by respondent as a security guard. On the 24th day of June, 1999 he reported for duty as usual and that he was to guard the automatic teller machine at the Hub Spar in Manzini. As he was about to go to his post he was called by his supervisor who instructed him to go and guard the automatic teller machine at the Mall in Manzini.

Applicant told the court that he pleaded with his supervisor not to transfer him to the Mall as there was no guard house there and he (applicant) had a flu. The supervisor refused and told him that if he did not want to go to the Mall there was no work for him and he could go home.

According to applicant the supervisor went to deliver the rest of the staff to their respective work stations. On his return, applicant enquired whether he had decided where to post him. In response the supervisor said there was no more work for applicant and that he should go back home. Applicant decided to go away. On the 25th June 1999 applicant went and reported the issue to the personnel manager who

promised to call the supervisor so that the matter could be discussed. Applicant waited for the whole day but he was not called by the personnel manager. He decided to go home.

Before he went away he told the personnel manager that since he was not getting any help from him he was going to report the matter to the Labour Office.

According to Solomon Masina (respondent's witness no.1), on the day in question he gave instruction to applicant to go and guard the automatic teller machine at the Mall (Manzini). Applicant refused to go to work as instructed.

From the testimony of applicant and that of respondent's witnesses, we are satisfied that no hearing was conducted by the respondent.

Respondent stated that they could not conduct any hearing because they could not find applicant. According to RW3, the personnel manager, he sent RW1 to look for applicant but he could not be found.

This, however, is not supported by evidence. Respondent had applicant's postal address. There is no indication that a letter was written to applicant

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calling him for a hearing. RW3 in his own words stated that they did not write to applicant in this regard.

According to the certificate of unresolved dispute filed of record respondent's defence throughout is that applicant deserted respondent's employment. Respondent did not mention any steps they took to try and discipline applicant for refusing to take instructions.

It is therefore our conclusion that the guilt of the applicant was not established at all by the respondent. Accordingly the respondent had no valid reason in terms of Section 36 of the employment act.

There is no evidence that applicant was given notice of termination of his services. Having considered the certificate of unresolved dispute and the evidence before us, we are of the view that the respondents were unreasonable in terminating the services of the applicant.

From the foregoing, it is our considered view that the services of the applicant were not fairly terminated within the meaning of Section 42 (2) of the Employment Act.

In his application the applicant has prayed that the court grant the following:

- a) Maximum compensation
- b) Payment in lieu of annual leave
- c) Arrear wages for June
- d) Notice pay; and
- e) Overtime pay.

These items were also issues in dispute as mentioned in the certificate of unresolved dispute. Applicant has testified that he was not paid wages for June. He also told the court that he had not taken his annual leave at the time his services were terminated.

Having taken into account the above considerations we make the following order:

The respondent shall pay to the applicant on or before the 9th of October 2000-

1.	Ten (10) months' wages being compensation for unfair dismissal	=	E 5,520.00
2.	One months' wages in lieu of notice to terminate applicant's services	=	552.00
	Leave pay	=	552.00
	Salary for June, 1999	=	552.00
	TOTAL		E 7,176.00

No order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)