IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE	CASE NO. 59/2000
In the matter between:	
DUMISANE SIHLONGONYANE	APPLICANT
And	
V. I. P. PROTECTION	RESPONDENT
CORAM	
KENNETH NKAMBULE:	JUDGE
DAN MANGO:	MEMBER
GILBERT NDZINISA:	MEMBER
MR. MAGONGO:	FOR APPLICANT

JUDGEMENT

13/10/00

In this matter the applicant has brought an application in terms of the Industrial Relations Act 1996. There is filed with the court an affidavit of service dated 23rd March 2000. We were satisfied that the respondents were duly served with a copy of the application. The respondent has not filed any replying answer as required by the Industrial Court Rules, 1984. The hearing proceeded in terms of Rule 7(14) (b) of Industrial Court Rules.

In his particulars of claim and evidence before court applicant contended that he was employed by the respondent on the 20th October 1997 as a security guard and was in continuous employ of respondent until his dismissal on 21st May 1999. The dismissal was communicated to applicant verbally.

At the time of dismissal applicant was earning a salary of E670- per month.

What sparked off the misunderstanding was a contract form which was presented by the manager of respondent, a Mr. Gule. The workers, including the applicant after being presented with the forms to sign,

requested that the forms be explained to them. The manager refused and issued some threats to the workers.

The workers then resolved to discuss the matter later on. Before this was done the owner of the company got to know the discontentment and duly held a meeting with the workers. The outcome of the meeting was the transfer of applicant to Big Bend.

According to applicant, he was not told where he was supposed to work in Big Bend. He was not given transport to get there and he was not provided with accommodation there.

When applicant enquired as to how he was supposed to work under such conditions he was threatened with dismissal. Applicant stated that he could not proceed to Big Bend because he had no money to go there.

From the testimony of applicant, we are satisfied that there was no hearing conducted by respondent before a decision to terminate applicant's services was made. It is our conclusion that the guilt of applicant was not established at all by respondent. Accordingly, respondent had no valid reason in terms of Section 36 of the Employment Act to terminate the services of the applicant.

There is no evidence that the applicant was given notice of termination of his services. From the above, it is our decision 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 he be granted the following:

1. Reinstatement; alternatively

2. Maximum compensation

3. Notice pay

4. Leave pay

5. Overtime Payment

6. Deductions from salary

The applicant prayed for re-instatement. This court believes that this is an appropriate case for re-instatement. From the evidence before court it is clear that the applicant did not contribute in any way to this harsh decision by respondent. Applicant has been unemployed ever since he left respondent's employ. He has three children to maintain.

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

1. Respondent to re-instate applicant with immediate effect.

2. Payment of a sum of E 10,720-00 being E670- x 16 months

3. Payment of a sum of 1,340-00 in lieu of leave for year 2000 and 1999

4. Overtime payment 101-52

5. Deduction from salary 414-18

TOTAL E12,575-70

This payment is in respect of Section 15 (2) (a) of the Industrial Relations Act.

This amount shall be paid on or before the 16th October 2000. Applicant to resume work on the 16th October 2000.

No order as to costs.

Members concur

KENNETH P. NKAMBULE