

IN THE INDUSTRIAL COURT OF SWAZILAND

HELP AT MBABANE

CASE NO. 177/99

In the matter between:

BARNEY DLAMINI

APPLICANT

And

MORMOND MOTORS LTD

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. E. HLOPHE:

FOR APPLICANT

NO APPEARANCE:

FOR RESPONDENT

JUDGEMENT

20/10/00

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, additional notice pay, severance allowance and salary for June 1998.

The applicant made a complaint under Section 41 of the Employment Act 1980 to the Commissioner of Labour who was unable to resolve same. Thereafter the Commissioner of Labour submitted a full report thereon to the court for determination.

Applicant stated that he was employed by respondent on 1st June 1996 as a motor mechanic. He was dismissed on 30th June 1998 for allegedly poor work performance and insubordination. He stated that he was not called to a disciplinary hearing or to any meeting to view his work performance.

Applicant reported the matter to the Labour Commissioner who conciliated upon it without success.

1

Mr. Jele who appeared for respondent withdrew from the matter after cross-examining applicant. The matter was adjourned. On the appointed day there was no appearance for the respondent. The matter proceeded to finality.

From the evidence led it was proved by applicant that he was employed by respondent and that his services were terminated by respondent.

The onus therefore, shifted to respondent to prove that the termination of applicant's services was in terms of Section 36 of the Employment Act and that it was fair within the meaning of Section 42 of the Employment Act.

Respondent was not in court to discharge this onus.

It is therefore, our considered view that applicant was unfairly dismissed; that his dismissal was unjustifiable (i.e, in contravention of Section 36 of the Employment Act).

We now make the following order:

1) Respondent shall on or before 17 November 2000 pay to applicant:

a) Eight months wages as compensation E550 x8 4,400-00

b) Notice pay 550-00

c) Additional notice pay 84-60

d) Severance allowance 211-00

e) Salary for June 1998 550-00

TOTAL 5,795-60

2) There will be no order as to costs. The two Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)