

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 183/98

In the matter between:

MUSAWENKHOSI DLAMINI

APPLICANT

and

COMPUTRONICS (PTY) LTD

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. MAHLALELA

FOR THE RESPONDENT:

MR. P. R. DUNSEITH

JUDGEMENT

23/11/2000

The Applicant claims maximum compensation for unfair dismissal and 15 days payment in lieu of annual leave.

It is common cause that the Applicant was an employee to whom Section 35 of the Employment Act applied having been employed as a computer technician on the 1st November, 1997 and was in continuous employment until his services were terminated by the Respondent on the 31st March, 1998.

There is a dispute as to the cause of the aforesaid termination, the Applicant on one hand claiming that he was victimised after his employer discovered that he had applied for a job elsewhere and on the other hand, the Respondent claims that the Applicant's position had become redundant hence he was lawfully retrenched.

In terms of the letter of appointment, the Applicant was earning E2,000 per month. It was also not disputed that the Applicant's monthly target working hours was twenty six (26) and was paid E50 for every working hour over and above the company target. For example, during the month ended on 31st March 1998 the Applicant worked 36.25 hours and was paid E512.50 as commission for 10.25hrs exceeding the target.

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The Applicant told the court that up to the time of his dismissal, he was fully occupied and exceeded the 26hrs target.

The month ended 31st March 1998 was his last working month prior to the termination.

The Applicant explained that he was called to the office of the Managing Director Mr, Julian Von Hirschberg on 31st March, 1998. Mr Julian asked him about a position he had applied for at Mhlume Sugar Company. Prior to the meeting the Applicant had asked for a salary rise which request had been

declined by Mr. Julian.

At that meeting, Mr. Julian informed him that he no longer trusted him and that his services were terminated on one month's notice.

In the afternoon the same day, Mr. Julian served the Applicant with a letter of termination and informed him that he was to be paid one month's salary in lieu of notice and thus he was to leave immediately. Mr. Julian paid him one month's salary, severance pay and commission earned and asked the Applicant to leave. The Applicant reported a dispute with the Labour Commissioner the following day. The dispute was not resolved when the parties met on the 4th April, 1998.

In that meeting at the Labour office, the Applicant told the court, was the first time he heard from the Respondent that he had been retrenched.

The Applicant referred the court to the letter of termination which was annexure 'B' to the Application. The letter gives no indication whatsoever that the Applicant's position had become redundant nor did Mr. Julian indicate that the Applicant was being terminated for reasons of redundancy or for any reason at all.

The Applicant's job was to repair and upgrade personal computers. This was the life line of the company other than selling and installing new computers and line systems.

The Applicant like other employees used job cards and logged every job done. Up to the time of his dismissal, he had not been told that he had failed to meet his monthly target of 26 hours and in fact he had exceeded those hours every month. On the average he brought in E5,000 for the company per month and at times the income exceeded E10,000. According to him, throughout his employ he was able to maintain his upkeep and in fact out of the three (3) technicians at the company, most of the months, he did the highest billable hours since he specialised in computer hardware and the others specialised in software.

He told the court that upon his retrenchment the Respondent employed two other technicians namely Themba Nxumalo and Bongani Mavuso.

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He said he was still unemployed but did odd jobs from time to time fixing personal computers on adhoc basis.

He had suffered loss of income, hardship as a result of the sudden dismissal which he deems unfair and unjustified in all the circumstances of the case. He told the court that at the time he was dismissed he was owed 15 days leave and sought payment in lieu thereof.

The Respondent called Julian Von Hirschberg as DW1. He told the court that he employed the Applicant as a technician in mid 1997. He had applied for the job. He described the duties of the Applicant as upgrading personal computers, software loading, diagnosis of personal computer problems, and repair. He had eight full time employees then. Some months after the employment of the Applicant, he also recruited one Mduduzi Sibandze as a technician. He had similar skills as the Applicant and had more experience in networking than the Applicant.

Mr. Mduduzi Sibandze was specifically employed after the Respondent was awarded a contract to supply Deeds registry with document imaging computer system. This was a networking job for which Mduduzi was engaged.

The company also tendered for one year maintenance of the system upon installation. The support programme was deferred due to shortage of funds yet Mduduzi spent eighty percent (80%) of his time there. For twenty percent (20%) of his time he was in the workshop with the Applicant.

When the project was completed and handed over in March 1998, then the company experienced a

sudden reduction in volume of work. By then, the support tender had not been approved but the Respondent required to have an in-house ability to maintain the system at the Deeds Registry when the situation arose.

For the aforesaid reason, there was no justification in keeping two (2) technicians at the workshop as the work load could not sustain both.

Based on the skills and experience of Mduduzi Sibandze he chose to retrench the Applicant and retain Mduduzi.

The question that arose is why he did not give this explanation in the letter of termination of the Applicant let alone mention the reason for his termination.

The other issue is whether the question of selection and performance was ever discussed at all with the Applicant since there is no reference at all to a meeting where this was discussed in the letter of termination nor in any other document.

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It is common cause that the Applicant was employed before Mduduzi Sibandze. That the two were technicians but specialising in different aspects of computers. That Mduduzi was employed for a specific project whereas the Applicant was not.

As at the end of March 1998 the Applicant continued to exceed the company target of 26 man hours.

Given the aforesaid factors, we find that the reasons given by Mr. Julian for his termination are questionable and incapable of belief. The explanation the Applicant gave as to why his service was terminated is more plausible in the circumstances of the case. The fact that no documentation at all, including the letter of termination gave redundancy as the reason for termination discredits the version told by the Respondent in favour of that told by the Applicant.

In terms of Section 42 (2)(a) of the Employment Act it is incumbent on the Respondent to prove on a balance of probabilities that it dismissed the Applicant for a reason provided under Section 36 of the Act. The Respondent has failed to discharge this onus.

The Respondent has further failed to show that it was fair and reasonable to dismiss the Applicant taking all the circumstances of the case into consideration.

Considering that the Applicant had only worked for the Respondent for about one year. That he did not in any way contribute to his dismissal. That he has suffered hardship as a result of his non employment and that the termination was a set back to his career as a computer technician being a young man in the field, we award him six (6) months salary compensation for unfair dismissal in the sum of E12.000. (Twelve Thousand Emalangeni).

In the light of the evidence presented concerning leave pay, we award the Applicant three days pay in lieu of leave.

There will be no order as to costs.

The Members Agree.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT