

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 93.2000

In the matter between:

JOSIAH MAHLAWULA

APPLICANT

And

SWAZILAND SECURITY GUARDS

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. S. BHEMBE:

FOR APPLICANT

MR. B. ZWANE:

FOR RESPONDENT

JUDGEMENT

8/12/00

The applicant in this matter seeks an order directing the respondent to pay him maximum compensation for unfair dismissal, terminal benefits in the form of notice pay, additional notice, and severance allowance.

The applicant was employed by the respondent as a security guard in 1984 -at a monthly salary of E90- which, through increments accumulated and by the time of his dismissal he was earning E400- per month.

It is common cause that the applicant fell sick in July 1998. He reported his sickness to respondent on 24th August, 1998. He came with a doctor's certificate stating that he was not fit to work. The applicant was admitted in Mbabane Government Hospital where he underwent three operations on diverse occasions.

According to respondent witness No. 1, applicant did not return for work and on 1st November 1998 they deregistered him (three months later). This

1

witness stated that they deregistered him because they thought he had deserted.

Applicant's attorney submitted letters from Dr. O.M. Dlamini from Government Hospital in Mbabane certifying that applicant was admitted in the Mbabane Government Hospital. That he underwent three operations on his eyes. On discharge he was given more than four months sick leave due to the pain in his eyes. He was given further treatment and finally became better towards the end of 1999. He was then asked to return to work after the severe pain had stopped.

From this report it is clear that applicant at all relevant times i.e. from August 1998 up until towards the end of 1999 was under treatment and his condition was such that he could not be at work partly because

he was admitted at Government hospital and because after the operation he experienced pain which prompted the doctor to give him sick leave until the treatment was completed.

Respondent on the other hand say applicant was dismissed from work because he absconded. We are not told what steps respondent took after applicant did not return to work taking into consideration the fact that applicant reported that he was going to hospital.

Applicant reported that he was going to Mbabane Government Hospital. He produced a letter from the doctor and as such respondent was aware of the whereabouts of applicant. However, respondent did not bother to find out how applicant was progressing at the hospital. It was respondent's duty to look at the condition of applicant and seek the doctor's opinion regarding discharging the applicant on medical grounds. Respondent opted for a cheaper option to wait for three months and then dismiss the applicant.

This is unfair labour practice which cannot be condoned by this court. Employers should not opt for cheaper ways of getting rid of employees.

From the foregoing it is clear that respondent was aware of applicant's sickness. It cannot turn around and say he absconded. For this reason alone respondent has failed to justify applicant's dismissal in terms of Section 36 of the Employment Act. Consequently we find that the applicant was substantively and procedurally dismissed unfairly.

2

In determining the amount of compensation to award to applicant we have considered the following -

1. That applicant was employed by respondent since 1984 (15 years).
2. That applicant worked for 12 hours per shift.
3. That applicant fell sick while employed by respondent and he is almost blind.
4. That applicant was paid E400 per month. He is therefore, awarded ten months compensation for

unfair dismissal	E 4,000-
Notice pay	400-
Additional notice	300-
Severance allowance	120-
TOTAL	E 4,820-

This amount shall be paid on or before 15th January 2001.

No order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)

3