

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.73/98

In the matter between:

ZODWA NXUMALO & 22 OTHERS

APPLICANT

and

SWAZI INN

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. M. MAVUSO:

FOR APPLICANT

NO APPEARANCE:

FOR RESPONDENT

JUDGEMENT

12/12/00

In this matter the applicant has brought an application to this court in terms of the Industrial Relations Act 1996.

There is filed with the court an affidavit of service dated 11 August 1998. We were satisfied that the respondent was duly served with a copy of the application because thereafter, through attorneys B.G. Simelane, they filed replying papers.

Thereafter the office of B.G. Simelane withdrew as attorneys of record regarding this matter. Respondent appointed J.S. Magagula and Company -on the 16th day of March 2000.

We gave sufficient indulgence by way of postponement to the respondent to enable it to appear itself or by counsel. There has been no appearance today, 5th December 2000, of the respondent or counsel. In the premises we decided to hear the applicants' application in terms of Rule 7 (14) of the Industrial Court Rules 1980, as amended.

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In their particulars of claim the applicants contended that they were employed by the respondent in his establishment, Swazi Inn, on respective dates as appears on Annexure 'A' of the application.

Applicants' witness No. 1 stated that on 2nd June 1997 respondent's hotel was burnt down by fire, and on 4th June 1997 respondent summarily terminated the applicants services. No grounds were given by the respondent for so doing. No terminal benefits and/or salaries were paid thereafter.

At the time of termination the applicants were earning the amounts as listed on the 4th column of Annexure 'A'.

Applicant's witness no. 2 told the court that after the hotel was burnt down the manager told them to

report to work as he had called Mr. Dlamini, the owner of the company to come and address them regarding their future. They came to the premises of the Swazi Inn but Mr. Dlamini did not come. This exercise continued for some days until the manager told them to go home as Mr. Dlamini had instructed him (manager) to tell them just that.

The matter was reported to the Labour department which unsuccessfully dealt with the matter and a Certificate of unresolved dispute issued.

The applicants have established that they were employed by the respondent that on 4th June 1997 respondent, through their manager told them to go home as there was no more work. That they were not paid their terminal benefits when they were dismissed.

The evidence of the applicants was not challenged. The respondent did not prove through evidence that the applicants were fairly dismissed or that the circumstances of this case were all taken into account before a decision to tell the applicants to go home was made. Respondents have not shown that the reason for termination of the applicants' employment is one permitted under Section 36 of the Employment Act of 1980.

It is our decision that the dismissal of the applicants in this manner was unlawful, unfair and without justification.

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We order that respondent do pay the applicants the following terminal benefits on or before 15th January 2001.

A) Ten months statutory compensation to each employee.

1. Zodwa Nxumalo

i)	Notice pay	E 466-40
ii)	Additional notice pay (20 days)	358-80
iii)	Severance allowance (50 days)	897-00
iv)	Leave pay (7 days)	125-00
v)	Statutory compensation (10 months)	4,664-00
	TOTAL	6,511-20

2. Phindile Dvuba

i)	Notice pay	E 484-00
ii)	Additional notice pay (20 days)	372-40
iii)	Severance allowance (50 days)	931-00
iv)	tatutory compensation (10 months)	4,840-00
	TOTAL	6,672-00

3. Sibongile Msibi

i)	Notice pay	E 484-00
ii)	Additional Notice (20 days)	372-40
iii)	Severance allowance (50 days)	931 -00
iv)	Leave pay (21 days)	391 -02
	Statutory compensation (10 months)	4,840-00
	TOTAL	7,018-42

4. Nelson Mvula

i)	Notice pay	E 460-00
ii)	Additional notice pay (16 days)	283-04
iii)	Severance allowance (40 days)	707-60
iv)	Leave pay (7 days)	123-83
v)	Statutory compensation (10 months)	4,600-00
	TOTAL	6,174-57

5. Josephine Masuku

i)	Notice pay	E 341-26
ii)	Additional notice (12 days)	157-56
iii)	Severance allowance (30 days)	393-90

iv)	Leave pay	45-96
v)	Statutory compensation (10 months)	3,412-60
	TOTAL	4,351-28

6. Jannet Dlamini

i)	Notice pay	E 386-40
ii)	Additional notice (16 days)	237-76
iii)	Severance allowance (40 days)	594-40
iv)	Leave pay	52-01
v)	Statutory compensation (10 months)	3,864-00
	TOTAL	5,134-57

7.	Leta Dlamini	
i)	Notice pay	E 631-40
ii)	Additional Notice (16 days)	388-64
iii)	Severance allowance (40 days)	971-60
iv)	Leave pay	85-02
v)	Statutory compensation (10 months)	6,314-00
8.	Thembi Shabangu	
i)	Notice pay	E 457-60
ii)	Additional Notice (4 days)	70-40
iii)	Severance pay (10 days)	176-00
iv)	Leave pay	26-40
v)	Statutory compensation (10 months)	4,576-00
	TOTAL	5,306-40
9.	Nonhlanhla Mtsetfwa	
i)	Notice pay	E 457-60
ii)	Additional notice (8 days)	140-80
iii)	Severance pay (20 days)	352-00
iv)	Leave pay (1.75 days)	30-80
v)	Statutory compensation (10 months)	4,576-00
	TOTAL	5,557-20
10.	Augustin Da Silva	
i)	Notice pay	E345-00
ii)	Additional notice (12 days)	159-24
iii)	Severance pay (30 days)	398-10
iv)	Leave pay	69-67
v)	Statutory compensation (10 months)	3,450-00
	TOTAL	E4,422-01

11.	Sicelo Maphosa	
i)	Notice pay	700-00
ii)	Additional notice pay (20 days)	538-40
iii)	Severance pay (50 days)	1,346-00
iv)	Leave pay (10 days)	282-66
v)	Statutory compensation (10 months)	7,000-00
12.	Dumisani Sukati	
i)	Notice pay	E 631-40
ii)	Additional Notice pay (20 days)	485-80
iii)	Severance pay (50 days)	1,240-50
iv)	Leave pay	42-51
	Sub Total	2,400-21
v)	Statutory compensation	E6,314-00
	TOTAL	E8,714-21
13.	Louis Shabangu	
i)	Notice pay	E 460-00
ii)	Additional Notice (8 days)	141-52
iii)	Severance pay (20 days)	353-80
iv)	Leave pay	61-92
v)	Statutory compensation (10 months)	4,600-00
	TOTAL	5,617-24
14.	Jabulane Tsabedze	
i)	Notice pay	E 575-00
ii)	Additional notice (20 days)	442-40
iii)	Severance pay (50 days)	1,106-00
iv)	Leave pay (7 days)	154-84
v)	Statutory compensation (10 months)	5,750-00
	TOTAL	8,028-24
14.	Sipho Mamba	

i)	Notice pay	E 413-16
ii)	Additional notice pay	318-20
iii)	Severance pay (50 days)	795-50
iii)	Leave pay	83-50
iv)	Statutory compensation	4,131-60
	TOTAL	5,741-96
16.	Themba Vilakati	
i)	Notice pay	631-40
ii)	Additional Notice (20 days)	485-80
iii)	Severance pay (50 days)	1,214-50
iv)	Leave pay	85-02
v)	Statutory compensation (10 months)	6,314-00
	TOTAL	9,530-72
17.	Timothy Sithole	
i)	Notice pay	E 632-50
ii)	Additional notice (12 days)	291-96
iii)	Severance pay (30 days)	729-90
iv)	Leave pay	127-73
v)	Statutory compensation (10 months)	6,325-00
	TOTAL	8,107-09
18.	Alpheus Gmnbi	
i)	Notice pay	E 380-00
ii)	Additional notice (8 days)	116-96
iii)	Severance pay (20 days)	292-40
iv)	Leave pay	25-59
v)	Statutory compensation (10 months)	3.800-00
	TOTAL	4,614-95

19.	Sindi Tsabedze	
i)	Notice pay	E 631-40
ii)	Additional notice (20 days)	485-80
iii)	Severance pay	1,214-50
iv)	Leave pay (7 days)	170-03
v)	Statutory compensation	6,314-00
	TOTAL	7,815-73
20.	Derrick Bhembe	
i)	Notice pay	E 413-60
ii)	Additional notice (20 days)	318-50
iii)	Severance pay (50 days)	795-50
iv)	Leave pay	55-69
	Sub Total	1,583-29
v)	Statutory compensation	4,136-00
		5,719-29
21.	Minah Nkambule	
i)	Notice pay	E 386-40
ii)	Additional Notice (20 days)	297-20
iii)	Severance pay (50 days)	743-00
iv)	Leave pay	26-01
v)	Statutory compensation	3,864-00
		5,316-61
22)	Lindiwe Dlamini	
i)	Notice pay	E 484-20
ii)	Additional notice (20 days)	372-40
iii)	Severance pay (50 days)	931 -00
iv)	Leave pay	-
v)	Statutory compensation	4,842-00

	TOTAL	6,629-62
22.	Patricia Dlodlu	
i)	Notice pay	E3 45-00
ii)	Additional notice (12 days)	159-24
iii)	Severance pay (30 days)	398-10
iv)	Leave pay	-
v)	Statutory compensation	3,450-00
	TOTAL	4,352-34

B) There will be no order as to costs. Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT