

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 60/2001

In the matter between:

JULIO MAVUME

APPLICANT

and

JON CON (PTY) LTD

RESPONDENT

CORAM:

NDERI NDUMA

: PRESIDENT

JOSIAH YENDE

: MEMBER

NICHOLAS MANANA

: MEMBER

FOR APPLICANT

: LESLIE MAGONGO

FOR RESPONDENT

:

JUDGEMENT

22/01/03

The Applicant Julio Mavume has brought an application for determination of unresolved dispute pursuant to a full report by the Department of Labour in terms of Section 41 of the Employment Act No. 5 of 1980.

The applicant claims maximum compensation for unfair dismissal and payment of terminal benefits emanating therefrom as follows: notice pay, additional notice, severance allowance, leave pay, underpayments and overtime.

The Application was duly served on the Respondent in terms of an affidavit of service filed with the court on the 4th May 2001, In terms of the affidavit, the application was served by registered post, after the Respondent representative had refused to accept service. I must note that the application ought to have been simply left at the premises of the Respondent and an affidavit deposed to, to that effect rather than resorting to postal service.

The court nevertheless heard the matter exparte. The Applicant testified and told the court that he was employed on the 1st January 1992 as a security guard by the Respondent and was earning E600.00 salary per month at the time he was dismissed on the 3rd November 2000 on allegations that a medical practitioner had recommended his retirement on medical grounds.

If this was the case, the Respondent did not upon dismissal pay the Applicant any terminal benefits stating that it had not dismissed the Applicant and was not obliged to pay any such benefits.

He reported the dispute to the department of Labour and a full report was prepared upon failure to resolve the matter.

The Applicant states that his work contributed to his illhealth and thus though he was retired but not dismissed he ought to have been paid terminal benefits. He did not contribute to the provident fund nor was he pensionable.

The Applicant has failed to prove that he was dismissed at all by the Respondent.

He told the court that between the year 1992 to 2000, a period of 8 years and 10 months, he was never granted leave. In the industry, he was entitled to twelve (12) days leave a year and thus claimed E1,219.68 as payment in lieu of leave.

He further claimed a sum of E1,774.08 in lieu of public holidays that he was made to work and not paid. The court accepts this evidence and grants the claim.

He further claimed underpayment for the entire period of his employment since he was made to work from 5 o'clock in the evening to 7 o'clock in the morning i.e. 14 hours, instead of 12 hours. He claims E2,514.80 in respect of overtime for 1992, E1,807.08 for 1993; E2,551.44 for 1994; E2,658.04 for 1995; E3,204.84 for 1996; E3,077.88 for 1997; E4,0343.79 for 1998; E5,608.32 for 1999 and E4,673.60 for 2002.

Total claim for overtime is E50,625.08.

There is no legal basis for payment of gratuity on retirement on medical grounds unless there is a contractual obligation to that effect.

Given that the claim for leave pay, holiday pay and overtime is unopposed, the court has no basis of rejecting the same.

I find that the Applicant has proved that he is owed E1,219,68 in lieu of leave days not taken and that he worked two hours everyday in excess of permitted hours for eight years and 10 months. The Respondent is thus ordered to pay a sum of E2,993.76 in respect of leave days and holidays.

The Applicant is directed to hand in a computation approved by the office of the Labour Commissioner in respect of overtime in line with the findings of the court within one month from the date of this judgement.

The Members Agree.

NDERI NDUMA  
JUDGE PRESIDENT - INDUSTRIAL COURT