IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 233/2000

In the matter between:

ANTHONY GAMEDZE APPLICANT

and

STEEL WIRE INTERNATIONAL (PTY) LTD RESPONDENT

CORAM:

NDERI NDUMA : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : N. PILISO

JUDGEMENT

05/06/03

The Applicant seeks re-instatement and in the alternative maximum compensation in terms of Section 15 of the Industrial Relations Act 1996.

The cause of action as outlined in the Particulars of Claim is as follows:

That the Applicant was employed by the Respondent on the 5th March 1999 as an Assistant mechanic. He was earning a salary of E409.60 (Four Hundred and Nine Emalangeni & Sixty cents) per month.

That he was on the 31st January 2000 unlawfully dismissed from the employment on allegations that his position had become redundant due to economic difficulties.

The letter of dismissal dated the 12th January 2000 notified the Applicant of the intended retrenchment.

By a letter dated 13th January 2000 the Applicant through Swaziland Manufacturing and Allied Workers Union (SMAWU) challenged the intended retrenchment on grounds that it was unprocedural since no consultation was done with the Applicant prior to the taking of the decision to retrench him.

In his testimony the Applicant told the court that his work was that of an assistant mechanic and was involved in repair of motor vehicles. That there was one mechanic and he was his assistant. He was informed by one Mr. Ben that there was no more work for him but that he could continue to work as a spray painter. He opted for the alternative job but when he reported, he was told there was no vacancy at the spray painting department. The spray painting business was different, it was not owned by the Respondent. The Respondent merely recommended him for a job.

He was the only employee retrenched. Upon retrenchment he was paid for days worked and two weeks notice pay. He explained further that the Respondent had about twenty two (22) vehicles which he serviced from time to time and one mechanic could not cope with the volume of mechanical work. He believed his position was not redundant. He reported the dispute to the Labour Commissioner but the

same was not resolved

The Respondent was served with the application and filed a reply thereof through Attorney Sifiso P. Dlamini c/o Federation of Employers.

Mr. Sifiso Dlamini attended court when the application was referred to the Registrar for setting of a trial date. A pre trial conference was conducted by both parties and a minute prepared on the 2nd March 2001.

The matter was therefore set for trial and enrolled for the 27th March 2003.

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Mr. Sifiso Dlamini did not attend trial and an application to proceed with the matter exparte was heard and granted.

The Respondent bears the onus in terms of Section 42 (2) (a) to show that the dismissal of an employee was permitted by Section 36 of the Act.

A further onus in terms of Section 42 (2) (b) is for the Respondent to show that considering all the circumstances of the case, it was fair and reasonable to terminate the services of the Applicant.

By failing to attend the trial, the Respondent has failed to discharge the aforesaid onus with the result that the application of the Applicant is granted as the dismissal was substantively and procedurally unfair.

The Applicant is married with two children who depend on him. He has not found another job yet and has suffered loss and damages as a result of the unlawful dismissal.

The court considering the circumstances of the case and the requirements stipulated under Section 15 of the 1996 Industrial Relations Act award the Applicant ten months salary as compensation for unfair dismissal in the sum of E4,096.00 (Four Thousand and Ninety Six Emalangeni).

The Respondent will pay costs of the Application. The Members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT