

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 168/2001

In the matter between:

ZANDI MSHENGU

APPLICANT

and

TIO ZEE RESTAURANT & MOTEL (PTY) LTD

RESPONDENT

CORAM:

NDERI NDUMA

: PRESIDENT

JOSIAH YENDE

: MEMBER

NICHOLAS MANANA

: MEMBER

FOR APPLICANT

: D. MSIBI

FOR RESPONDENT

: W. MKHATSHWA

JUDGEMENT

31/07/03

This is an application for determination of unresolved dispute pursuant to Section 65 (1) of the industrial Relations Act No. 1 of 1996. The Applicant seeks maximum compensation for unfair dismissal, payment of notice pay, salary earned in respect of the months of January and February 2000. Further claims include payment in lieu of leave and public holiday to wit Easter Monday of the 5th April 1999.

The Applicant was employed as a cashier for the Respondent on the 15th April 1999 and was in continuous employment until the 30th May 2000 when she was dismissed on allegations of misbehaviour enumerated in annexure "ZM1" to the application. She earned E450.00 salary per month at the time of termination.

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She recalled that on the 30th May 2000 her employer Mr. Gomes called her to a table and alleged that she had come to work under the influence of alcohol the previous day. He took out an envelope from a novel he had in his possession and handed it to her and informed her that she had been dismissed.

The letter "ZM1" was in the said envelope. She sought clarification from him in vain and hence reported a dispute with the Labour office at Manzini. A conciliation meeting was held at the employer's premises but the matter was not resolved. A certificate of unresolved dispute was issued.

The Applicant prior to the dismissal had asked Mr. Gomes to pay her arrear salary for the months of January and February in the sum of E906.40. She was however dismissed before the issue was resolved.

The Applicant denies that she had gone to work under the influence and was not given opportunity to defend herself prior to the dismissal.

Upon termination she was paid for 15 days worked and 10 days in lieu of leave. She claims E52.29 for unpaid leave days. She also claims salary for January and February 2000 in the sum of E906.40 and

E38.40 in respect of underpayments because the Respondent paid her E450.00 per month instead of the minimum statutory salary at the time of E453.40. The E38.40 represents the difference for twelve months worked.

Though the attorney for the Respondent cross examined the Applicant, he did not call any witness after the close of the Applicants case. In the circumstances no evidence was led to prove on a balance of probabilities that the Applicant was dismissed for a reason permitted by Section 36 of the Employment Act.

The Respondent further failed to show that the dismissal was fair and reasonable under the circumstances of the case. All the claims by the Applicant remained unchallenged.

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Accordingly, the court finds that the Applicant was dismissed unlawfully and unfairly. She was still unemployed at the time of the hearing inspite efforts to obtain alternative employment She had suffered loss of income to support herself and her dependants. She had worked for one year for the Respondent.

The court considering all the circumstances of the case as enumerated under Section 15 of the 1996 Industrial Relations Act awards six (6) months compensation for unfair dismissal in the sum of E2,719.20

January & February salary	E 906.40
One month's notice	E 453.20
Annual leave	E 52.29
Underpayments	E 38.40
Easter holiday (5th April 1999)	E 17.43
TOTAL	E4,186.92

The Respondent is to pay costs of the suit. The members agree.

Nderi Nduma

Judge President - Industrial Court

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