

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 231/2000

In the matter between:

NTOMBI TSABEDZE

APPLICANT

and

MFUNDISI ENTERPRISES (PTY) LTD

RESPONDENT

CORAM:

NDERI NDUMA

: PRESIDENT

JOSIAH YENDE

: MEMBER

NICHOLAS MANANA

: MEMBER

FOR APPLICANT

: S. MOTSA

FOR RESPONDENT

: B. SIGWANE

JUDGEMENT

29/01/03

This is an application for unresolved dispute in terms of Section 65 of the Industrial Relations Act No. 1 of 1996. The Applicant claims maximum compensation for unfair dismissal and terminal benefits including 1 month salary pay in lieu of notice, 6 days leave pay and 14 days salary for the month of June.

The Applicant was employed on the 14th January 1997 as an office secretary until the 16th June 1997 when her services were terminated on grounds of redundancy. She was an employee to whom Section 35 of the Employment Act applied and thus should not be dismissed for a reason not permitted by Section 36 of the Employment Act. The decision should also be reasonable taking all the circumstances of the case into account.

1

She told the court that her work included cleaning office, writing invoices, making quotations, doing pay roll for the staff and producing accounts and making any other reports for the Respondent. Her work was in the nature of a general administrator and the Respondent had over ten (10) employees who were labourers involved in landscaping, construction designs and decorations. She was the only office worker at the time.

She narrated how seven (7) days prior to the date of her dismissal, the director of the Respondent Mr. Richard Mark Bishop asked all the workers to be prepared to work half day for half pay because the company was experiencing a slump in contracts hence was not able to sustain the current level of staff at full pay. They were given a 7 days notice and she told the court that the general feeling of the workers was that the notice was too short though they understood the economic difficulties the company was experiencing.

The issue was discussed in a meeting and since she was the only enlightened employee all others being gardeners, she had the duty to explain the implications of the directive to them. Most of them earned E250,00 per month, this meant they would start earning E125,00 basic salary. They too received

bonuses.

On her part she was ready to work half day for half pay provided she got a one month notice, so that she could settle her outstanding accounts . She earned E900,00 a month at the time.

On the morning of the 16th June, 1997 after the meeting of the 13th June 1997 Mr. Bishop retrenched her and dictated to her a letter of retrenchment for her to type which she did. She insisted that she was only aware of the decision that morning and had not been informed about it earlier.

She reported the dispute to the Labour Commissioner. A conciliation meeting was called but the matter was not resolved. She was not paid for days worked, for leave pay, nor for notice pay as Mr. Bishop insisted that he would only pay her if she withdrew the matter from

2

the Labour Department. No other employees were retrenched. They continued to work normally and the half day, half pay decision was only carried out for the month of June,

She claims 6 days salary in lieu of leave since she had not completed a year at work. A month's notice and salary for 14 days worked. She claims the dismissal was unlawful, unfair and unreasonable since all she requested was a month's notice. She saw the conduct of Mr. Bishop as only aimed at getting rid of her.

She denied that there was no secretary prior to her employment and that her position had become redundant. She also denied that she resisted change, but only wanted a fair notice and the issue was still under discussion when she was retrenched. She denied that she opted to be retrenched nor did she refuse to accept a cheque for terminal benefits in the sum of E920,00. He simply refused to pay unless she undertook not to pursue the matter anymore.

The Applicant stated that the assertion in the report of dispute that she was verbally dismissed on the 14th July 1997 was a mistake. She blamed the error on the union official who made the report. She insisted that she was dismissed on the 16th June 1997 and was not at work in July. She further denied that she was never dismissed.

Mr. Mark Bishop testified for the Respondent. He was a director of the Respondent. In 1997 he decided to declare some employees redundant because of a big down turn in business due to lack of contracts. He approached his staff early in March for a discussion of the matter. The staff suggested that they seek union advise. He approached SCAWU who made suggestions to him one of which was for the workers to work half day for half pay to avoid retrenchment as a temporary measure. He says, other workers who comprised gardeners accepted the arrangement but the Applicant was aggrieved and extremely dissatisfied with the decision. He added that the Applicant opted to resign rather than work half day for half pay.

3

He denied that he dismissed her on the 16th June 1997 but she opted to leave the Respondent and he asked her to type the letter confirming her redundancy. He testified that she told him she was to look for alternative employment in early May. He says he gave her a cheque of E920,00 for the full month pay but she declined and took the matter to the Labour office. He testified further that he was not in a position to retain her on a full time basis and did not replace her when she left. He used his girlfriend to help with the administration. The gardeners only received half pay in June and their employment reverted to normal.

He insisted that he had given the Applicant prior notice of the intended retrenchment and the position was confirmed in the letter of the 16th June 1997. He said the letter should have read resignation because that is what she wanted. He denied that he spoke about the issue for the first time on the 13th June, 1997.

Upon a careful analysis of the evidence, it is apparent that the Respondent was experiencing economic difficulties at the beginning of the year 1997 due to business shrinkage. That the employees including the Applicant accepted this position. What is in dispute is whether the Applicant accepted alternative arrangement so that she could be accommodated by the Respondent or she opted to resign rather than work less hours for less pay. She asserts that the Respondent just wanted to get rid of her. The two versions are mutually destructive. The onus is however on the Respondent to show that the Applicant was redundant and it could not be reasonable to continue to employ her on the same terms.

It would appear from the certificate of unresolved dispute that the Applicant had rejected the option offered by the Respondent as it was on short notice.

The version by the Respondent that she was dissatisfied and unwilling to accept adjustments to work for half day for half pay is a more probable and reasonable version. The Respondent discussed the matter with her and has satisfied the court that it could not be

4

able to sustain the employ of the Applicant at the time and since she did not accept other options, her services were lawfully terminated on grounds of redundancy in terms of Section 36 (j) of the Employment Act No, 1 of 1980.

This was a small enterprise and she was the only office employee. She had only worked for a few months for the Respondent and her services were not essential to the company especially in the light of the lack of contracts at the time. It was thus fair and reasonable to declare her position redundant In the circumstances.

The Respondent was however wrong not to pay her salary for 14 days worked for the month of June in the sum of E581,42. Similarly it ought to have paid her 6 days salary in lieu of leave and in the circumstances of the case, one month's salary in lieu of notice would have been a reasonable payment since no enhanced package was given to her.

The court therefore orders the following: The Respondent is to pay:

1.	One month's notice	E 900,00
2.	14 days worked in June	E 581,42
3.	6 days leave pay	E 249.00
	TOTAL	E1,730.42

The Respondent is to pay interest on the amount at 9% from the date of dismissal. The Respondent is further ordered to pay costs of this Application.

The Members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT

5