IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO, 200/2001

In the matter between:

PETROS NDLANGAMANDLA   APPLICANT

And

J. & E CONSTRUCTION (PTY) LTD   RESPONDENT

CORAM:

NKOSINATHI NKONYANE   : ACTING JUDGE DAN MANGO : MEMBER

GILBERT NDZINISA   : MEMBER

S. GUMEDZE   : FOR APPLICANT

S. DLAMINI   : FOR RESPONDENT

JUDGMENT-7 JUNE 2004

The Applicant brought the application before court and is claiming that he was unfairly dismissed by the Respondent on the 3rd March 2000.

The Applicant is therefore asking the court to make an order for reinstatement, alternatively maximum compensation for unfair dismissal and payment of terminal benefits being notice pay, additional notice and severance allowance. In his evidence he told the court that he was employed by the Respondent in 1989 and was terminated on the 3rd March 2000.

He said Respondent sent his clerk to tell the workers that some of them would be sent home. He said that was done ten days before the 3rd March 2000. On the 3rd March 2000 the Applicant and twenty others were indeed sent home.

The Applicant and others went to report a dispute with the Department of Labour. The matter was conciliated on but no agreement was reached. The Applicant thus took it to this court on the basis that it was an unresolved dispute.

During cross examination however, it transpired that the Applicant was aware that they were being laid off and not dismissed. During cross examination he

said that he thought he was being dismissed because his pay slip was written "pay off". He also admitted that he did hear the mention of lay off when the announcement was made to the workers but said it was not directed to him specifically.

On further cross examination he again admitted that he was told that he was being laid off, but that his pay slip was written "pay off". He also admitted that at the Labour Office they were told that they were laid off but were not told for how many days. The certificate of unresolved dispute however does indicate that the Applicants were told that they were not dismissed but laid off and were to come back after thirty days. When adked why he did not ask how many days they were being laid off, the Applicant said he did not see the need for that.

At the end of the Applicant's case, the Respondents attorney applied for an absolution from the instance. The court was referred to the case of Gascoyne v Paul & Hunter 1917 TPD 170. This case laid down the lines along which the court should address itself to the question whether it will at this stage grant a judgment of absolution. It was pointed out in that case at page 173 that:

"at the close of the case for the Plaintiff, therefore, the question which arises for consideration of the court is, is there evidence upon which a reasonable man might find for the Plaintiff?........The question therefore is, at the close of the case for the Plaintiff was there a prima facie case against the Defendant Hunter in other words, was there such evidence before the court upon which a reasonable man might, not should, give judgment against Hunter?"

The matter before court is one where the Applicant says in his papers he was unfairly dismissed by the Respondent. The evidence led before the court however revealed that the Applicant was not dismissed but was laid off. He said he concluded that he had been dismissed because of what he saw written on his pay slip. When they were before the Labour Office the Respondent's representative pointed out that the Applicant and his companions were not dismissed but laid off for thirty days. The Applicant admitted during cross examination that they were told that they had been laid off.

It is not known to the court why the Applicant decided not to go back to work. The court will therefore come to the conclusion that no prima facie case has been mande for unfair dismissal.

The court will therefore grant the application for absolution from the instance as prayed for by the Respondent.

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There will be no order for costs. The members agree.

NKOSINA NKONYANE

ACTING JUDGE - INDUSTRIAL COURT

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