IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 160/06**

In the matter between:

WILLIAM MANANA **Applicant**

and

ROYAL SWAZILAND SUGAR CORPORATION LTD **Respondent**

CORAM:

P. R. DUNSEITH	**:**	**PRESIDENT**
JOSIAH YENDE	**:**	**MEMBER**
NICHOLAS MANANA	**:**	**MEMBER**
FOR APPLICANT	**:**	**M. SIMELANE**
FOR RESPONDENT	**:**	**M. SIBANDZE**

R U L I N G ON POINT IN LIMINE – 08/08/06

[1] The Applicant applied to the Industrial Court for determination of an unresolved dispute in which he claims an entitlement to a voluntary exit package. The application is supported by a certificate of unresolved dispute issued by the Commission for Mediation, Arbitration & Conciliation (CMAC).

[2] The Respondent has raised a special plea in limine, to the effect that

the application is not properly before the court because the Applicant failed to report his dispute within six months of the date upon which the dispute first arose, as required by Section 76 (4) of the Industrial Relations Act 2000.

[3] Section 76 (4) of the Act was amended in terms of the Industrial Relations (Amendment) Act of 2005 on the 1st September 2005, but the parties agree that this special plea must be determined in accordance with Section 76 (4) as it existed prior to the amendment.

[4] In his statement of claim, the Applicant alleges that he resigned from his employment with the respondent on the 19th January 2005. The Respondent refused to accept his resignation, and subsequently terminated the Applicant's services on the grounds that he had deserted from duty. The Applicant learnt about the termination of his services on 10th March 2005.

[5] At the latest then, the issue giving rise to the dispute arose on 10th March 2005, and the dispute should have been reported to the Commissioner of Labour within a period of six months from that date.

[6] The dispute was infact reported on the 10th November 2005, some two months out of time.

[7] Section 76 (4) of the Act provides that a dispute may not be reported to the Commissioner of Labour if more than 6 months have elapsed since the issue giving rise to the dispute first arose but the Commissioner may, in any case where justice requires, extend the time during which

a dispute may be reported.

[8] The Applicant's counsel conceded that the dispute was reported out of time, but he argued as follows:

8.1 The Commissioner of Labour transmitted the dispute to CMAC and the parties attended conciliation before a CMAC Commissioner.

8.2 This can be deduced from the certificate of unresolved dispute issued by CMAC.

8.3 The Commissioner of Labour must be assumed to have extended the time for reporting the dispute, in the exercise of his powers under Section 76 (4) of the Act.

8.4 The court should not go behind the certificate of unresolved dispute, which is regular on its face.

[9] A similar argument was raised before the High Court sitting as the Industrial Court of Appeal in the case of SWAZILAND FRUIT CANNERS (PTY) LTD vs PHILLIP VILAKATI AND ANOTHER SLR 1987-1995 (2) 80 . At page 81, Hannah CJ rules as follows:

" Generally speaking, if a party comes before the Industrial Court armed with an "unresolved dispute" certificate signed by the Labour Commissioner, the court would be entitled to assume that all is in order and that the procedures set out in Part V11 [the forerunner to the present Part V111] of the Act have been properly observed. The maxim is "omnia praesumuntur rite esse acta" [everything is presumed to be rightly done]. However it is always open to one or other of the parties to challenge the presumption of regularity and when

that occurs the Industrial Court has a duty imposed upon it by Rule 3 (2) of the industrial Court Rules 1984 to ascertain what the true position is."

[10] Rule 3 (2) provides:

"The court may not take cognizance of any dispute which has not been reported or dealt with in accordance with Part V111 of the Act."

[11] Since the Respondent has raised an objection to the court taking cognizance of the application on the grounds that the dispute was reported out of time, the court is entitled, and has a duty, to go behind the certificate issued by CMAC to ascertain whether the provisions of Part V111 of the Act have been substantially complied with.

[12] Since the Applicant concedes that the dispute was reported out of time, he must establish that the time for reporting was duly extended by the Labour Commissioner.

[13] The Labour Commissioner normally issues a certificate of extension of time when he grants an extension in terms of Section 76 (4) of the Act. The certificate explicitly states the period for which the extension has been granted.

[14] The Applicant has not placed any documentary or other evidence before the court to show that an extension was granted. He relies solely on the inference to be drawn from the conduct of the Labour Commissioner in transmitting the report of dispute to CMAC, and argues that the Labour Commissioner must in the circumstances be taken to have impliedly extended the period.

[15] In the **SWAZILAND FRUIT CANNERS** case (supra at 88), Hannah C.J. stated as follows:

> "In exercising the power conferred on him to grant an extension of time, the Labour Commissioner is exercising a quasi- judicial power and, in my view, he is bound to observe the rules of natural justice. That includes the duty to give all parties who may be affected by the decision an opportunity to make representations to him."

[16] This court is not willing to draw the inference that the Labour Commissioner extended the time for reporting the dispute in an arbitrary manner and without observing the rules of natural justice. This is not the most probable inference. On the contrary, the Labour Commissioner is normally most diligent in giving affected parties an opportunity to make representations, and in recording any extension of time in a proper certificate. It is more likely that the office of the Labour Commissioner overlooked the fact that the dispute was reported out of time and transmitted the report to CMAC in error.

[17] In the premises, the court does not accept the submission that the Commissioner of Labour must be taken to have granted an extension of time. The dispute was reported out of time, and the court may not take cognizance of the matter until this defect had been remedied.

[18] The special plea in limine is upheld and the application is dismissed.

There is no order as to costs.

The members agree.

P. R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT