

IN THE INDUSTRIAL COURT OF SWAZILAND**HELD AT MBABANE****CASE NO. 277/08**

In the matter between:

S'XOLILE MATSENJWA**Applicant**

and

MANSER IMPORT AND EXPORT (PTY) LTD**t/a MANZINI WASTE CENTRE****Respondent****CORAM:**

P. R. DUNSEITH	:	PRESIDENT
ANDRIAS NKAMBULE	:	MEMBER
NICHOLAS MANANA	:	MEMBER
FOR APPLICANT	:	T. MAVUSO
FOR RESPONDENT	:	B. NGCAMPAHALALA

RULING ON APPLICATION FOR**REFERRAL TO ARBITRATION - 17/12/08**

1. The Applicant has applied to the President of the Industrial Court for an order that her pending dispute against the Respondent be referred to arbitration under the auspices of CMAC in terms of section 85 (2) (a) of the Industrial Relations Act 2000 (as amended).

2. The Respondent opposes the application and submits that it prefers the matter to be adjudicated upon by the Industrial Court, particularly because the amount claimed by the Applicant is substantial.

3. In her main application the Applicant alleges that she was dismissed for alleged unsatisfactory work performance, and that her dismissal was procedurally and substantively unfair. The Applicant claims for underpayments, statutory terminal benefits and compensation for unfair dismissal.

4. The compensation claimed is equivalent to 24 months remuneration, notwithstanding that there is no allegation of an automatically unfair dismissal and the maximum compensation which the court can award for unfair dismissal is 12 months remuneration.

5. Numerous disputed issues of fact arise on the pleadings, including

- whether the Applicant was guilty of unsatisfactory performance.
- whether the Applicant was insubordinate.
- whether a proper disciplinary hearing was convened.
- what were the charges upon which the Applicant was dismissed.
- whether the Applicant had any valid prior written warnings against her when she was dismissed.
- whether the dismissal of the Applicant was reasonable in all the circumstances.
- whether the Applicant was underpaid in terms of the Wages Act, 1964.

- whether the Applicant accepted her notice and leave pay in full and final settlement of her claims.

6. None of these factual issues is particularly complex. It is not anticipated that their determination will depend upon issues of credibility of witnesses or give rise to any analytical difficulty. The dispute also does not involve determination of complex legal issues. The Applicant's claim is not particularly substantial. On the pleadings, the maximum exposure to the Respondent does not exceed E17,664-80.

7. In my view the matter lends itself to determination by the more flexible and simple process of arbitration. I do not consider that the Respondent will suffer any real prejudice by the dispute being adjudicated before an arbitrator. In all likelihood the proceedings will be resolved more cheaply and swiftly than if referred to trial before the Industrial Court.

8. I direct that the matter is referred to arbitration under the auspices of CMAC in terms of section 85 (2) of the Industrial Relations Act 2000 (as amended). The Applicant is directed to deliver a copy of this ruling together with copies of the pleadings to CMAC within 14 court days.

PETER R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT