

IN THE INDUSTRIAL COURT OF ESWATINI

RULING ON POINT OF LAW

Held at Mbabane

Case No. 97/2018

In the matter between:

BONGANI MAVUSO

Applicant

And

LECHWELIGHT PRIMARY SCHOOL

Respondent

Neutral citation: Bongani Mavuso v Lechwelight Primary School (97/18) [2018]
SZIC 81 (06 August 2018)

Coram: N. NKONYANE, J
(Sitting with G. Ndzinisa & S. Mvubu
Nominated Members of the Court)

Heard: 17/07/18

Delivered: 07/08/18

Summary: Applicant employed by the Respondent as a bus driver---Applicant told by letter dated 20th October 2015 that his position was redundant---Applicant given two and a half months' notice that his last day of employment would be 31st December 2015---Applicant reporting a dispute in April 2017---Respondent

raising a point of law that the dispute was reported outside of the eighteen months period allowed by the law.

Held---The Interpretation Act defines month as calendar month---Calendar month means a period of time between the same dates in successive calendar months---The first calendar month therefore was from 20th October 2015 to 20th November 2015---As the dispute was reported before 20th April 2017, it follows that the eighteen months period had not yet elapsed---Point of law raised accordingly dismissed.

RULING ON POINT OF LAW

1. The Applicant instituted legal proceedings in terms of Rule 7 of this Court's Rules, for determination of an unresolved dispute between him and the Respondent.
2. The Respondent is a Primary School situated at Mahlanya. The Applicant was employed by the Respondent as a driver on 01st January 2011. He remained in continuous employment until he was dismissed by the Respondent on 31st December 2015.

3. The Applicant was employed to drive a bus for transporting school children. On 02nd October 2015 the bus was involved in a road accident whilst transporting the school children and two of them were injured. The bus had to be sent to a garage for repair work to be done on it. The bus was insured. The insurers requested certain documents from the bus owners in order to process the claim and pay for the repair work but the Applicant refused to submit these documents to the Respondent. The Respondent eventually paid for the repair work from the school coffers well after the applicant was terminated on 31st December 2015.

4. As there was no bus to drive, the position of the Applicant was declared redundant. The Applicant was notified by letter dated 20th October 2015, Annexure “**BM1**” herein, that his position was redundant. In terms of this letter the Applicant was given two and a half months’ notice until 31st December 2015.

5. The Respondent filed its Reply in opposition to the Applicant’s application. The Applicant thereafter filed a Replication.

6. In its Reply the Respondent raised a point of law that the matter was not properly before the Court as the dispute was reported after the expiry of the eighteen months period within which a dispute could be reported to CMAC.
7. It was argued on behalf of the Respondent that since the position of the Applicant was declared redundant on 20th October 2015, that should be taken as the date on which the dispute arose. It was argued that since the dispute was reported in April 2017, it was then more than eighteen months since the dispute arose in October 2015. It was argued that the dispute should have been reported in March 2017.
8. The questions for the Court to decide therefore are; when did the dispute arise and, secondly; was the dispute reported within the eighteen months period stipulated by the Industrial Relations Act.
9. What is clear from the evidence before the Court is that the dispute between the parties arose in 2015. The applicable legislation therefore is the **Industrial Relations (Amendment) Act No.3 of 2005**. Section 76 (2) thereof provides that;

“A dispute may not be reported to the Commission if more than eighteen (18) months has elapsed since the issue giving rise to the dispute arose.”

10. On a proper reading of this section, it becomes clear that the operative phrase is “*the issue giving rise to the dispute arose.*” *In casu*, the Applicant was dismissed because his position was declared redundant on 20th October 2015 and was required to serve notice until 31st December 2015. The issue giving rise to the dispute therefore was the declaration of the Applicant’s position as redundant. That decision was communicated to the Applicant by the letter that was written to him on 20th October 2015.

11. From the letter notifying the Applicant that his post had become redundant, it is apparent that the Respondent had taken the decision that the Applicant would cease to render services to the Respondent on 31st December 2015. The Applicant therefore learnt about his intended termination on 20th October 2015, not on 31st December 2015 which was his final working day. The Applicant was specifically told that as from 20th October 2015 up to 31st December 2015 he would be serving notice. The present case is therefore distinguishable from that of **William Manana v Royal Swaziland Sugar Corporation Ltd, case no. 160/06** referred to by the Applicant’s representative.

12. In the **William Manana** case (supra) the Applicant alleged in his statement of claim that he resigned on 19th January 2005. The employer 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. When dealing with the question of when did the dispute arise, the Court held in paragraph 5 that;

“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.”

In casu, the Applicant learnt about the termination of his services on 20th October 2015. If the issue giving rise to the dispute arose on 20th October 2015, the eighteen months period lapsed on 20th April 2017. The argument by the Respondent that if you calculate eighteen months from October 2015 to April 2017 it is more than eighteen months was not correct. The Applicant was not given the notice of the redundancy on 01st October 2015, the notice was given on 20th October 2015. The first month of the eighteen months period therefore elapsed on 20th November 2015 and the last month elapsed on 20th April 2017.

13. There was no evidence before the Court that the dispute was reported to CMAC after 20th April 2017. From the evidence before the Court, **Annexure BM4**, the certificate of unresolved dispute shows in paragraph 3 that the Commissioner who handled the conciliation process was appointed by the Commission on 19th April 2017. The certificate of unresolved dispute was issued on 10th May 2017. In terms of Section 80 (1) of the Industrial Relations (Amendment) Act it is provided that;

“On receipt of a dispute being reported in terms of Section 76, the Commission shall appoint a Commissioner within (4) days who shall attempt to resolve the dispute through conciliation.”

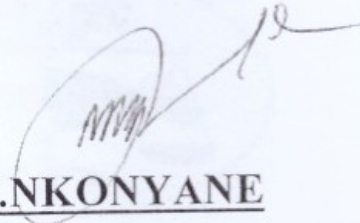
If, therefore, the Commissioner was appointed on 19th April 2017, it can, therefore, be safely concluded that the dispute was reported to CMAC at least four days earlier than that date. Whatever the date that the dispute was reported, what is clear from the certificate of unresolved dispute is that it was not reported after 20th April 2017.

14. According to the **Interpretation Act No.12 of 1970**, “Month” means calendar month. The Concise Oxford Dictionary of Current English, 09th edition at page 881 defines calendar month as; *“a period of time between the*

same dates in successive calendar months.” In casu, the period of a month started from 20th October 2015 to 20th November 2015. The period of eighteen months therefore was to come to an end on 20th April 2017. As already pointed out herein, the evidence shows that the Commissioner was appointed on 19th April 2017, it follows that the dispute must have been reported on any date earlier than 19th April 2017.

15. From the evidence before the Court, the Court has no hesitation in coming to the conclusion that the dispute was reported to CMAC before the lapse of the eighteen months period which lapsed on 20th April 2017 when taking into account that the issue giving rise to the dispute arose on 20th October 2015.
16. In the premise, the point of law raised by the Respondent cannot be sustained and ought to be dismissed.
17. The Court will accordingly make the following order;
 - (a) The point of law if dismissed.
 - (b) There is no order as to costs.

18. The members agree.



N.NKONYANE
JUDGE OF THE INDUSTRIAL COURT OF ESWATINI

For Applicant: Mr. E. B.Dlamini
(Labour Law Consultant)

For Respondent: Mr. E.M. Simelane
(Attorney at Mbuso E. Simelane & Associates)