IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 81/2019

In the matter between:

SABELO DLAMINI   Applicant

And

S & B RESTAURANT   Respondent

Neutral citation: Sabelo Dlamini v S & B Restaurant [2020] SZIC 47
                        (30 April 2020)

Coram: **S. NSIBANDE J.P.**

                    (Sitting with N.R. Manana and M.P. Dlamini
                    Nominated Members of the Court)

Date Heard: 16 March 2019
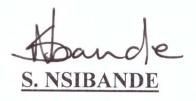
Date Delivered: 30 April 2020

RULING

[1] The Applicant applied to the Industrial Court for the determination of an unresolved dispute arising from the termination of his service on the 19th October 2018. He alleges that his dismissal was unfair and unlawful because he was dismissed without having committed any misconduct nor was he called to a disciplinary hearing. He is claiming his salary for days worked, annual leave, notice pay and compensation for unfair dismissal.

[2] The Respondent opposed the application and filed a Reply thereto denying that the Applicant had been dismissed at all. It averred that on 19th October 2018 its Managing Executive Director called the Applicant to a meeting where he was asked to show cause why he should not be called to a disciplinary enquiry because of his unsaivory conduct. It averred further that Applicant proceeded to leave the Respondent's premises without authority and has not returned thus he is taken to have deserted his post.

[3] The Applicant has now applied to the President of the Court for the unresolved dispute to be referred to the Conciliation Mediation and Arbitration Commission (CMAC) for arbitration. The Respondent has not filed any process in opposition to the application for referral. The Respondent further

did not appear before Court despite being properly served with both the application and subsequent notices of set down for hearing thereof. Despite the Respondent's absence it remains *"the duty and function of the President of the Industrial Court to weigh the benefits of robust justice by way of CMAC arbitration against the benefits of a more formal judicial determination by the Industrial Court, in the scales of fairness and equity"*. **(Sydney Mkhabela v Maxi Prest Tyres IC Case No. 29/2005)**.

[4] The Applicant submits that the balance of equity favours a referral because:

4.1 the matter is not complex as the facts can be determined by Arbitrators under CMAC who are attorneys and have vast experience in labour matters;

4.2 the amount claimed E84 692.00 (eighty-four thousand six hundred and ninety two Emalangeni) is not substantial as E4384.44 thereof is made up of leave days;

4.3 the Respondent shall suffer no prejudice if the matter was referred to arbitration.

4.4 CMAC is one of the mechanisms established by the **Industrial Relations Act 2000 as amended** for speedy resolution of labour disputes.

[5] I have considered the submissions of the Applicant together with the full set of pleadings in the main application and the application for referral. It appears to me that a number of disputes of fact will arise in the application for determination of an unresolved disputes, namely; Applicant's position at Respondent; the events of 13th October, 18th October 2018 in respect of which the Applicant was orally requested to show cause why he should not be disciplined, (whether in fact he appeared before Mrs Fyfe on 19th October 2018; and whether he was in fact dismissed or absconded as alleged.

[6] It appears to me that the Applicant's claim is substantial and it is my view that to shut the doors of the Court to the Respondent in circumstances where it will not be able to challenge an adverse finding of fact against it, would be prejudicial. **Zodwa Gamedze v Swaziland Hospice at Home IC Case No. 252/2005.** Having had regard to the particular circumstances of this matter, and for the reasons I have set out above I make the following order:

(a) **the application for referral of the unresolved dispute between the parties to CMAC for arbitration is dismissed.**

(b) **there is no order as to costs.**

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

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

For Respondent: No appearance