

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 6/2001

In the matter between:

WILSON M. DLAMINI

APPLICANT

and

THE PUBLIC SERVICE PENSIONS

FUND

RESPONDENT

CORAM

KENNETH NKAMUBLE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

FOR APPLICANT:

MR. J. MAVUSO

FOR RESPONDENT:

MR. N.J. HLOPHE

JUDGEMENT

27/9/02

The applicant seeks two prayers before court:

Prayer No. 1 is proper grading or notching of the position of administration manager by equating with that of a similar organisation the Swaziland National Provident Fund (S.N.P.F.).

The second prayer is that the applicant wants to receive the difference between what he is earning and what he could have earned had his salary been equated with that of the administration manager of the S.N.P.F.

The applicant gave evidence under oath. It is common cause that the applicant is employed by the fund as administration manager. As

1

administration manager the applicant falls within the members of the executive of the fund.

It is common cause further that in 1998 there was a study to upgrade the salary structure of the fund. Applicant was tasked with conducting a research on salaries paid by other public corporations with the view of having the respondent's salaries made comparable and/or competitive.

According to the applicant upon completion of the study and presentation of the grades and salary structures of the various financial organizations the posts and salary structure of the Swaziland National provident Fund (SNPF) was, on the 14th April 1998 adopted and implemented as is by the respondent's board of trustees.

Applicant states that the salary structure which was wholly adopted from the SNPF stood as reflected in

Annexure 'B' of the applicant's application. Prior to the adoption of the structure, respondent's own structure stood as reflected in Annex 'C'.

From a comparison of Annexure 'B' and 'C' it is clear that though the salary structure of the SNPF was adopted, it was not one hundred percent adopted. Three employees' salaries were enhanced more than double. These figures are not reflected in Annex 'B' of the Notice of Application.

It is therefore not correct to say the SNPF salary structure was adopted as is. It would be more appropriate to say that ninety eight percent of what appears on Annexure 'B' was adopted by the Fund.

It is also important to mention that all the executive members' salaries were increased in line with Annex 'B', save for the salary of the applicant.

Comparing Annex 'B' with Annex 'C' it is clear that the adoption of the salary structure was lateral in so far as it concerns the executive. For example the Chief Executive Officer in the respondent's employ was upgraded to earning the same salary as the Chief Executive Officer in the employ of SNPF. The same was true of the other job categories of the executives of the respondent.

RW2 Mr. J.F. Mabuza, the financial accountant of respondent told the court that there was no formal adoption of any structure by the fund but that

2

comparisons were used to reach respondent's salary review objectives. He stated that the SNPF salary structure was used but not to its entirety.

According to RW2 the issue of salaries is handled by the CEO. He stated that at the Fund there is no formal grading of posts. The CEO. is the one who unilaterally decides who should get what.

According to this witness applicant's salary was raised in terms of Annexure 'B'. On presentation of the new structure the CEO altered applicant's new salary and equated it with that of the senior benefits controller.

According to this witness the applicant was not in good terms with the CEO. It is the evidence of this witness that applicant was not allowed in meetings of the executives though he was an executive. The reason from the CEO was that the applicant divulged secretes regarding salaries and other confidential material.

RW2 further pointed out that it is against the company policy to discuss peoples salaries. However, there is no evidence that the CEO charged the applicant and found him guilty of this offence. We only hear that he was banned from attending any meeting of the executive.

According to this information it is clear that the CEO in this corporation was running a one man show. He was the one and only one who decided who should get what. In this case it was clear that the applicant was not in his good books. We really do not know whether the salary accorded to the j applicant was the proper one.

According to RW2 he gave applicant the corresponding package of the manager administration of the SNPF (Annex 'B'). This was however, changed by the CEO giving no reasons to RW2 for charging the figure. It is clear that RW2 as a financial manager had used professional discretion in awarding applicant such a salary.

According to RW1, the CEO, the structure of SNPF was used as a guideline and it was not adopted. The financial manager used the SNPF structure and then presented it to the CEO. RW1 stated that the salaries of the three managers maintained the differences between them.

The CEO stated that after completion the salaries were discussed with the chairman of the board of trustees and later presented to the board for approval.

It is clear that at no time did the CEO sit down with the three managers to deliberate on this study. He did not tell us in his evidence that the financial manager had given applicant an amount equivalent to the administration manager of the SNPF and that he (CEO) rejected that figure and substituted it with a lower one. He also did not tell us that the administration manager who was in charge of human resources was not allowed to sit in any meeting where staff issues and salaries were discussed. He further did not tell us that he was not in good terms with the applicant because the applicant used to divulge confidential material.

We really do not know why this witness hid this important information regarding his relationship with the applicant.

What we know is that the way the CEO ran the organisation was not professional. Such a system of administration would allow unscrupulous individuals to use the high office in order to settle personal scores against members of staff who happened to be in their bad books.

In order to introduce checks and balances in an organisation it is necessary that issues regarding salaries which is one of major expenditures in any organisation be debated by management- After such a debate the CEO then transmits the document to the board of trustees for approval.

In the instant case it is clear that the CEO, in substituting the figure presented by the financial manager for a lower one was actuated by malice. He was not acting in good faith. His intention was to prejudice the applicant who was not in his good books.

For the above reasons and conclusions the applicant's application succeeds. Respondent to pay to applicant the amount as reflected in the applicant's prayer.

Respondent to further pay the applicant a salary equivalent to the administration manager of the SNPF as reflected in Annexure 'B'. This should be with effect from the payday of October 2002.

No order as to costs.

Members agree.

KENNETH P. NKAMBULE

JUDGE - INDUSTRIAL COURT