

IN THE INDUSTRIAL COURT OF SWAZILAND

CASE NO. 6/87

In the matter between:

MAKHAYA                      MOTSA                      Applicant

and

EMANTI CONTRACTORS                      Respondent

C O R A M :

J. A.                      HASSANALI                      President

MR. S.                      MOTSA                      for                      Applicant

MR NIGEL                      SILCOX                      for                      Respondent

MESSRS P. FOX AND A. N. MATSEBULA                      Assessors

ISSUE IN DISPUTE:      None payment of one month's wages in lieu of Notice and non payment of leave pay.

AWARD

(Delivered on 19/3/87) Hassanali, President In this case the applicant is claiming a sum of E229/45 being one month's wages in lieu of Notice on the ground that he was dismissed from employment without Notice. He also claims a further sum of E59/85 being his balance leave pay.

According to the applicant he joined the Respondent Company on 16/10/85 as a builder and worked in that capacity until he was dismissed on 27/6/86. He said that on the 27th when he returned after work at 5p.m. he was verbally informed that his services were no longer required but no reasons whatsoever were given for it. However it came out in evidence that he was dismissed because of poor work performance. Mr Silcox on behalf of the Company admitted that the applicant was at no stage warned about his work, in writing. This in my view is a contravention by the Employer of the requirements under

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Sec. 36 (a) of Act No. 5 of 1980. This section clearly envisages that a written warning should be given in the first instance before an employee is dismissed. However since the termination is not in dispute. I do not wish to make any order on it.

Taking the issues in dispute, the Respondent Company took up the position that the applicant was paid the above sums of E229/45 and E59/85 respectively which were duly acknowledged by him when he signed the register. The applicant however denied receiving these amounts and that he received only a sum of E200/97 which was one month's wages, when he received his pay envelope from J. Dlamini it had already been opened by Dlamini and a sum of E12/60 taken from it. This was in fact admitted by Dlamini who further said that the applicant signed the Register acknowledging the monies. On perusing the register, I find the applicant's signature on it but these does not indicate in any way that he received these amounts. Therefore taking all these into consideration, I have some doubts as to whether the applicant was actually paid the amounts in dispute. in the circumstances I have no other alternative but to order the Respondent Company to pay the applicant the following amounts:

One month's wages in lieu of Notice      E229/45

59.85

E289.30

I enter this Order as an award of this Court. My Assessors agree with my decision.

J.A. HASSANALI

PRESIDENT