



**IN THE CONCILIATION, MEDIATION & ARBITRATION COMMISSION
(CMAC)**

HELD AT MANZINI

SWMZ480/16

In the matter between:-

VUSI SHABANGU

Applicant

And

ENVIROWISE

Respondent

CORAM:

Arbitrator	:	Mr. Mphilisi Mtshali
Applicant	:	Mr. Vusi Shabangu
For Respondent	:	Mr. Velaphi Magagula
Nature of Dispute	:	Unfair Dismissal
Dates of Hearing	:	01/09/16; 06/10/16 and 11/11/16 .

ARBITRATION AWARD-25/01/17

1. PARTIES AND REPRESENTATION

1.1 The applicant is Vusi Shabangu an adult Swazi male of Logoba, in the Manzini district. The Applicant appeared in person during the proceedings.

1.2 The Respondent is Envirowise (Pty) Ltd a company duly incorporated in terms of the company laws of Swaziland carrying on business at Matsapha Industrial Site.

1.3 The parties agreed that the matter will be deemed to be finalized upon filing of their respective written closing submissions. Accordingly, the Applicant filed his closing submissions on the 11th November 2016 and the Respondent filed her closing submissions on the 20th October 2016.

2. ISSUES IN DISPUTE

2.1 The Applicant insists that he was unfairly dismissed by the Respondent without a good reason and no disciplinary hearing was conducted before his dismissal.

2.2 On the contrary, the Respondent stated that the Applicant deserted his post and resigned from the Respondent's employ. Therefore the question to be determined in this matter is whether or not the Applicant's dismissal was fair both procedurally and substantively.

3. SUMMARY OF EVIDENCE **APPLICANT'S EVIDENCE**

3.1 The Applicant's testimony is that he was employed by the Respondent on the 4th January 2016 as a truck driver.

3.2 The Applicant stated that he was dismissed by the Respondent on the 26th July 2016 and was earning a salary of E1 200.00 per month.

- 3.3 His evidence is that on the 25th July 2016 while working at his station, he was confronted by his supervisor one Mzwandile Dlamini and told him that the office is not happy about his performance.
- 3.4 This did not make sense to the Applicant and he then asked his supervisor what was wrong about his performance. Although the supervisor did not come out clear according to the Applicant.
- 3.5 The Applicant further testified that he requested the supervisor, Mzwandile Dlamini on the 25th July 2016 to accompany him to the Respondent's main office to enquire about these startling allegations regarding his performance.
- 3.6 The Applicant's evidence is that he ended up not going there on that day. Instead he went there on the following day, the 26th July 2016.
- 3.7 Upon arrival at the Respondent's main office, the Applicant spoke to one Nelly Shabangu who is the Respondent's Manager, and when he got there the latter was in the company of one Thobile Ndlovu.
- 3.8 The Applicant stated that he asked Nelly and Thobile about the company's concerns regarding his performance. However, Nelly the manager told him to go and get his supervisor so that the issue can be discussed.
- 3.9 Accordingly, the Applicant went back to his station of work to get his supervisor Mzwandile Dlamini and both of them proceeded to the main office again.

- 3.10 The Applicant stated that he then asked to meet the company's Managing Director, Mcebo Ginindza in his office.
- 3.11 Subsequently, he was told by the Managing Director that he is aware that the Applicant had come to say goodbye to him. The Managing Director then bid the Applicant farewell because he was leaving the company.
- 3.12 This took the applicant by surprise and he asked the Managing Director what he meant by that. However, the Managing Director replied in Siswati and said the following words "batsi utosivalelisa". Thereafter the Managing Director told the Applicant to go home since he is not ready to beg him.
- 3.13 The Applicant then asked whether he was being dismissed from work or not and proceeded to ask for his terminal benefits. The Managing Director then called the Respondent's accountant and asked how the Applicant received his salary.
- 3.14 The Accountant informed the Managing Director that he was paid through the bank.
- 3.15 The Applicant was then told by the Managing Director to go home and that he will receive his salary through his bank account when everybody gets paid.
- 3.16 The Applicant's evidence was that he then went home. After a while he went to report the matter to the Labour Commissioner's office,

and then went to CMAC to report a dispute. He was advised to write a letter of demand to the Respondent and there was no response.

3.17 During cross-examination it was mentioned that Mzwandile Dlamini was indeed the Applicant's supervisor, and that the Applicant reported to him.

3.18 It was also suggested during cross-examination to the Applicant that he had earlier indicated to his supervisor, Mzwandile Dlamini, that he was going to resign from the Respondent on the 25th July 2016. However, this was denied by the Applicant on the basis that he only asked the supervisor to accompany him to the Respondent's main office to ascertain the Respondent's concerns about his work performance.

3.19 The Respondent insisted that the Applicant had already closed his ticket on the 25th July 2016, and that he merely came back the next day on the 26th July 2016 to get his salary because he had resigned from employment.

3.20 This assertion was denied by the Applicant.

3.21 Furthermore, the Applicant denied that he was called by Ginindza regarding the concerns raised by the office. Instead he maintained that the Managing Director, Mcebo Ginindza called him and told him that he had come to say goodbye.

3.22 The Respondent's representative also alluded to the Applicant during cross-examination that the Respondent's Managing Director asked the Applicant to talk about his work performance.

3.23 The Applicant also denied this assertion.

3.24 The Respondent's representative further asked the Applicant why he had not reported to work on the 27th July 2016 and the Applicant's response was that he did not go to work because he had already been dismissed.

3.25 The Applicant further stated during cross-examination that he had not received his salary for July 2016 until he wrote the letter of demand to the Respondent.

3.26 The Respondent's representative further indicated that the Respondent will proceed and lay disciplinary charges for (4) days absenteeism against the Applicant.

RESPONDENT'S EVIDENCE

3.27 The first Respondent's witness was Nelly Shabangu.

3.28 Her evidence was that she is the Manager within Respondent's employ, and that the Applicant was employed as a truck driver by the Respondent.

3.29 The evidence given by this witness is that the Applicant came to the office on the 26th July 2016 to enquire about the company's dissatisfaction regarding his performance.

- 3.30 The witness then advised the Applicant that this matter can only be discussed by the office in the presence of his Supervisor, Mzwandile Dlamini.
- 3.31 Subsequently, the witness stated that she decided to call the supervisor herself using the office telephone to come to the office and discuss the matter.
- 3.32 The witness also stated that the Managing Director then called a staff meeting with one Nomvula Nkambule, Nelly Shabangu and Thabile Ndlovu.
- 3.33 The witness also confirmed that the Applicant was not part of that meeting, and that the Respondent's Managing Director did not dismiss the Applicant.
- 3.34 The witness stated that on the 26th July 2016, the Applicant was called inside the Managing Director's office and he sat down on the floor. He then told the Managing Director that he had come to say goodbye and also demanded his terminal benefits.
- 3.35 The witness also testified that the Applicant did not come to work on the 27th July 2016. She then typed a charge sheet to give to the Applicant for being absent at work. The charge sheet was presented as evidence and was marked "R1".
- 3.36 During cross-examination the Applicant asked the witness why she prepared the charge against him, yet she had earlier stated that he (Applicant) had resigned from work. However, the witness changed her tune and stated that the Applicant did not resign but was

absent from work on the 27th July 2016. As a result the Respondent had prepared disciplinary charges against him.

3.37 The Applicant further asked the witness that it's not true that he (Applicant) resigned from the Respondent's employ. The witness conceded that the Applicant did not resign.

3.38 On re-examination, the witness stated that the Managing Director asked the Applicant how he is going to survive since there is scarcity of employment, but the Applicant insisted that he was going.

3.39 Furthermore, it was established that the Applicant was always reporting to his supervisor, Mzwandile Dlamini.

3.40 The next witness was Mzwandile Dlamini.

3.41 His testimony was that he hired the Applicant as a truck driver because he presented his qualifications as a truck driver.

3.42 His evidence was also that the Applicant did not report for work on the 27th July 2016.

3.43 The witness testified that he had a conversation with the Applicant on the 25th July 2016 and the Applicant indicated that he wanted his money from the Respondent. He was then directed to claim his money from the main office.

3.44 The witness also stated that he indicated to the Applicant that the office was not happy with him because he left a package at Simunye at one instance. Furthermore he was once arrested for a traffic offence while driving the Respondent's truck.

- 3.45 The Applicant went to the office on the 26th January 2016 and the Managing Director told him that since he is not driving the truck on that day, this meant that the Applicant does not want to work and consequently leaving the Respondent.
- 3.46 The witness's evidence is that the Applicant enquired from the Managing Director what he meant by those words. The Managing Director responded by stating that since the Applicant was not doing his duties as a truck driver this meant he was leaving the Respondent.
- 3.47 The Applicant asked the Managing Director that, who said he was leaving? The response was that since the truck was parked, it was a clear indication that the Applicant was not interested to work for the Respondent.
- 3.48 The witness also stated that the Applicant left the Respondent's company voluntarily.
- 3.49 During cross examination the Applicant asked the witness if he recalled when the Managing Director called him into his office and the Managing Director asked him that he heard that he had come to say goodbye.
- 3.50 The applicant also established during cross examination that the Managing Director did not give him a chance to talk. Instead, the Managing Director told the Applicant that he had come to pick up his money.
- 3.51 The witness elected not to comment on these questions.

- 3.52 The Applicant reminded the witness that the Managing Director told him to go because he does not beg. However, the witness' response was that he did not recall that.
- 3.53 The last witness called by the Respondent was Mcebo Ginindza.
- 3.54 His evidence was that he is the Managing Director and that the Applicant was a truck driver within the Respondent's employ.
- 3.55 His evidence was that on the 26th July 2016 he was told by his assistant that the Applicant was waiting outside his office to say goodbye to him. Furthermore, the Applicant also asked for his terminal benefits.
- 3.56 The witness also confirmed that he received the letter of demand from the Applicant and he ignored it because the contents were not reflecting what transpired in the office.
- 3.57 The witness stated that he did not dismiss the Applicant.
- 3.58 During cross-examination the Applicant tried to establish that when he asked to meet the Managing Director, the latter called a meeting between management before meeting him.
- 3.59 The witness denied this assertion and maintained that management was supposed to meet on that day.
- 3.60 Another question asked by the Applicant from this witness is whether he recalled when he told the Applicant that he had come to say goodbye on the 26th July 2016 in his office.

3.61 The response from this witness was that he heard from the Applicant's supervisor that the Applicant had come to say goodbye to him.

3.62 The Applicant also reminded the witness when he told him to go home because he does not beg him.

3.63 The Applicant asked the Managing Director why he denied him the opportunity to talk when he had asked to see him in his office. The Managing Director's response was that the Applicant had left his work station and demanded his money, the latter also alluded to the fact that the Applicant had never set foot in his office.

4. ANALYSIS OF THE EVIDENCE

4.1 In the present case, the Applicant alleges that he was unlawfully dismissed by the Respondent.

4.2 According to the Applicant, the reason for his dismissal is that he was told by his supervisor Mzwandile Dlamini that the Respondent was not happy about his performance.

4.3 Subsequent to that, the Applicant approached the Managing Director's office to enquire about these allegations.

4.4 The evidence presented in these proceedings was that the Managing Director told the Applicant that he (Managing Director) heard that the Applicant had come to say goodbye to him.

4.5 The evidence given in these proceedings was also that the Managing Director, Mcebo Ginindza, did not give the Applicant the chance to

discuss the performance issue, and perhaps allow the Applicant to express his side of the story.

- 4.6 In fact, the Applicant stated in these proceedings that the Managing Director simply told the Applicant to go home and bid the Applicant farewell.
- 4.7 The Applicant's evidence was also that he asked the Respondent's Managing Director if he was terminating him but the Managing Director did not answer him. Instead he asked the Accountant how the Applicant received his salary from the Respondent.
- 4.8 Subsequently, the Applicant was told to go home, and that he would receive his salary from his bank account. The Applicant then went home.
- 4.9 Thereafter, the Applicant went to report the matter to the Labour Commissioner's office, wrote a letter of demand and reported the dispute to CMAC.
- 4.10 On the other hand, the evidence given by Nelly Shabangu was that the Respondent had prepared disciplinary charges against the Applicant for being absent from work.
- 4.11 However, this witness could not answer the Applicant satisfactorily when the Applicant asked why the Respondent prepared charges against him yet the witness had testified that the Applicant had resigned from work.

- 4.12 The Applicant also challenged the witness testimony that he had resigned from the Respondent's employ. It is therefore my finding that the Applicant was unfairly dismissed by the Respondent.
- 4.13 The Respondent failed to discharge the onus vested upon it in terms of **Section 42(2) of the Employment Act of 1980 (as amended)** to prove that the Applicant's dismissal was fair and reasonable.
- 4.14 The Respondent also failed to produce evidence to prove that the Applicant has resigned from the Respondent's employment. Instead, the Respondent's witness Nelly contradicted herself during cross-examination and accepted that the Applicant did not resign from the Respondent's employ.
- 4.15 The Managing Director, Mcebo Ginindza, also did not give the Applicant the opportunity to explain why he wanted to see him. Furthermore, the Respondent failed to convene a disciplinary hearing before terminating the Applicant for the alleged offence of absence from work.
- 4.16 The Applicant's evidence is unequivocal in regard to the attitude he received from the Managing Director in his office. The latter did not give consideration to what the Applicant wanted to say to him.
- 4.17 As a result, the Managing Director's words "BATSI UTOSIVALELISA" were indirectly informing the Applicant that his services were no longer required by the Respondent.
- 4.18 The applicant also tried to resolve the situation in an amicable way by involving the office of the Labour Commissioner which was

followed by a letter of demand. The Respondent remained unshaken and did not consider the Applicant's difficult situation.

4.19 Hence I am entitled to hold that the Applicant's dismissal from the Respondent's employ was unfair both procedurally and substantively.

5. AWARD

5.1 In the circumstances the Applicant is entitled to compensation of five (5) months. The Applicant did not commit any offence within the Respondent's employ and the Respondent failed to prove that the Applicant resigned from work as alleged. At the time of his dismissal, the Applicant had worked for the Respondent for six (6) months and was earning a salary of E1 200.00 per month. The Respondent is therefore directed to pay the Applicant notice pay and compensation of five (5) months calculated as follows;

(a) Notice Pay	E1 200.00
(b) Maximum Compensation (5months)	E6 000.00
TOTAL	E7 200.00
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5.2 The Respondent is further directed to pay this amount on or before the 28th February 2017.

DATED AT MANZINI ON THIS THE ___ DAY OF JANUARY 2017.

MPHILISI MTSHALI
CMAC COMMISSIONER