



**IN THE CONCILIATION, MEDIATION & ARBITRATION
COMMISSION**

HELD AT MBABANE

SWMB59/09

In the matter between:-

MBALI SIHLONGONYANE

APPLICANT

And

PIMENTAS KFC (PTY) LTD

RESPONDENT

CORAM

Arbitrator : Ms. P. Ginindza

For Applicant : Mr. E. B. Simelane (Labour
Consultant)

For Respondent : Ms. L. Mngomezulu (Attorney)

ARBITRATION AWARD

1. PARTIES AND REPRESENTATION

The Applicant in this matter is Ms. Mbali Sihlongonyane, a Swazi Adult female of P. O. Box 2703 Mbabane, who is represented by Mr. Erick Simelane of Maduduza Zwane Labour Consultants. I will refer to her as the Applicant, the employee or simply as Ms. Sihlongonyane.

The Respondent is Piementa's KFC (PTY) LTD, a legal entity of P. O. Box A1025 Swazi Plaza, Mbabane. The Respondent is represented by Ms. Lindelwa Mngomezulu of Currie, Sibandze Attorneys. I shall hereinafter refer to it as the Respondent or as the employer.

2. ISSUES IN DISPUTE AND HEARING

The Applicant reported the dispute to the Commission on the 13th February 2009 in terms of Sections 77 and 78 of the Industrial Relations Act of 2000, as amended.

Following a conciliation facilitated by the Commission, the parties failed to reach an amicable settlement to the dispute. Consequently, the dispute was declared unresolved, and Certificate of Unresolved Dispute number 166/09 was issued and listed the following issues as being in dispute:

1. Notice Pay
2. Leave Pay
3. Maximum Compensation

The parties failed to reach an agreement as the Applicant argued that the dismissal by the Respondent was substantively unfair. On the other hand, the Respondents averred that the dismissal was fair.

I have perused the documentation relating to the dispute and submit that the matter is properly referred to arbitration and confirm that my appointment is in terms of Section 81 of the Industrial Relations Act of 2000, as amended.

3 BACKGROUND INFORMATION

The parties held a pre-arbitration meeting, wherein the arbitrator was advised that the issues in dispute reflected on the Certificate of Unresolved Dispute remained unresolved.

In addition, the parties agreed that they will be deliberating on the substantive aspect of the applicant's dismissal.

The Respondent will call four witnesses, namely Mr. Michael Dlodla, Ms. Futhi Mthimkhulu, one Dudu and Mr. Emmanuel Du Pont.

The Applicant on the other hand would be calling one witness, Ms. Celiwe Simelane, and the Applicant herself.

The parties agreed to make discovery before the 19th June 2009.

In their opening statement, the Applicant's representative submitted that she will lead evidence to prove that the dismissal of the Applicant was substantively unfair. The Applicant will testify that the Respondent relied on the evidence of unreliable witnesses, who were seeking revenge since the supervisor called her "sweetie". In addition, the respondent relied on hear-say evidence during the disciplinary hearing. The applicant's representative concluded by submitting that the sanction imposed against the applicant was harsh under the circumstances and therefore substantively unfair.

In their opening statement, the Respondent submitted that they will lead evidence to prove that the applicant is guilty of the charges laid against her and that the applicant committed the offences as charged. In addition, the respondent will prove that the dismissal of the applicant was in terms of Section 36 of the Employment Act of 1980, as amended, and that the dismissal was reasonable in the circumstances. The respondent will further lead evidence to prove that the applicant's dismissal was as a result of her dishonesty.

4. EVIDENCE AND ARGUMENTS

The evidence lead during the arbitration has been summarized to contain the points expounded which were instrumental in assisting the Arbitrator to make a ruling on the matter.

The evidence of the applicant, which was given under oath, is summarized as follows:

THE APPLICANT'S CASE

The applicant testified that she was employed by the Respondent on the 3rd January 2007 and was dismissed on the 9th October 2007 while engaged as a cashier earning E 1 200-00 per month.

The applicant testified that one of the respondent's methods of checking the accuracy of the cashiers was to bring in a mystery shopper, who would ensure that the cashier served the customer in an efficient manner and adhered to procedure. That is the issuance of a receipt and the correct change.

The applicant in her evidence testified that she worked eight hour shifts and the relieving shift would start working after they had completed their shift.

It is the evidence of the applicant that their supervisor Mr. Dlodla, was having an affair with one of the employees, Ms. Futhi Mthimkhulu, who alleged that she saw the applicant stealing money while manning the till.

The applicant submitted that her relationship with Futhi was never a good one, this deteriorated when Dlodla started calling the Applicant "sweetie", an endearment reserved for Futhi. The applicant contended that this was the reason Futhi fabricated the story about her stealing money while at the till.

It is the evidence of the applicant that the version stated by Futhi is incorrect, as their shifts never overlapped.

The applicant further submitted that prior to this incident, she was never called by her supervisors to explain any shortages, but they were briefed as a group starting a shift by the Manager in charge about the shortages in stock.

The Applicant submitted that she was transferred to be a teller after Dudu Zwane was dismissed for misappropriating funds, which were found in her possession. It is the evidence of the applicant that she was dismissed after less than a month of being appointed teller and that at the time of her dismissal, she was not familiar with some of the operations at the front desk.

It is the evidence of the applicant that prior to her suspension, she heard from her neighbour, one Sibongile, that she was accused of dishonesty. In addition, she heard this being discussed at the locker room. Thereafter she was suspended and not told of the charges laid against her.

The applicant further submitted that she learnt at the hearing that Futhi alleged that she had stolen E 100-00. Due to the fact that she was unable to express herself well at that time, the applicant testified that she failed to state her case. At the appeal hearing, she was able to state that the reason Futhi fabricated the lies against her was because Futhi was framing her as Mr. Dlodla, her lover, called the applicant 'sweetie'.

The applicant thereafter prayed that she be paid her terminal benefits and maximum compensation for unfair dismissal amounting to E 16 050-00. The applicant explained her current situation that she is 25 years old and presently unemployed. As a result of the dismissal, she has been adversely affected as she is unable to settle the debts she accumulated while working and is unable to pay school fees for her dependants.

Under cross-examination, the applicant agreed that she had been employed by the respondent for ten months, as the respondent took over the company in January 2007 and the employees entered into new contracts of employment.

It was put to the applicant that the first charge preferred against her is that she took goods and re-sold to a customer. She agreed that this was the first charge but only learnt of the E 100-00 at the hearing. The applicant submitted that although the letter containing the charges and invitation to the hearing was delivered 14 days before the hearing, she did not know

that she could seek clarification on issues that were unclear to her.

The Applicant maintained that even the suspension letter outline the charges, but not specifically what she did.

The respondent put it to the applicant that she was aware of the details of the charge, as Futhi had cautioned her on the spot, to which the applicant maintained that Futhi fabricated lies against her, that she saw her taking E100-00.

It was further put to the applicant that at the hearing, she testified that they had a good relationship with Futhi, whereas she told the Commission the contrary. To this, the applicant explained that their relations became strained after she lodged her appeal.

The respondent's representative put it to the Applicant that the relationship with Futhi was good before the hearing and became bad after the dismissal of the applicant; to the extent that the applicant became violent towards Futhi and that the issue of the affair between Futhi and Dlundla was an excuse for the applicant's unlawful behaviour.

The applicant stated that she only saw Futhi's true colours after she made up the story about her stealing from the respondent.

The applicant maintained that it was common knowledge at the outlet that Futhi and Dlundla were an item and Futhi was upset by Dlundla calling the applicant "sweetie". This, she said was supported by the fact that Futhi was the only employee who made tea for Dlundla and that during the hearing, Futhi was wearing Dlundla's jacket and putting her feet on his lap. This too was witnessed by a fellow employee, Claudia.

Thereafter, the respondent applied to add Claudia to their list of witnesses. There was no objection from the applicant.

When asked whether she had ever been a trainee teller, the applicant replied in the affirmative. When further asked whether she remembered telling one Thuli that she wished to

be a teller, in order to make fast money, the applicant admitted having a conversation with Thuli, but not to the effect stated by the Respondent, although Thuli later spread the rumor that the applicant had said that she would take cash from the till, once she is appointed as a cashier.

With regard to shift hours, the applicant confirmed that her shifts never coincided with those of Futhi during the days she worked for eight hours. The respondent's representative put it to the applicant that when she worked from 8am to 4pm, her shift would coincide with that of 2pm to 10pm. The applicant was adamant that her shifts never coincided with Futhi's and demanded time sheets to prove this.

The applicant was further asked why she failed to dispute Futhi's evidence during the disciplinary hearing, to which the applicant responded that she was tongue-tied and amazed.

At re-examination, the applicant confirmed that her relations with Futhi were not good and that Futhi and Dlodla were having an affair.

The applicant further denied telling Claudia that she wanted to be a cashier, to be able to steal money from the cash till. In addition, she confirmed that Futhi never saw her misappropriating funds while manning the till.

When asked by her representative, the applicant agreed that when she worked the 8am to 4pm shift, this shift coincided with the 2pm to 10pm shift, which Futhi would sometimes work.

The applicant denied misappropriating the sum of E 100-00 and submitted that her dismissal was based on hearsay. At the conclusion of the applicant's testimony, the applicant's representative applied to close the applicant's case, as they would not be calling further witnesses.

THE RESPONDENT'S CASE

The Respondent thereafter called their first witness, Mr. Michael Dlodla, whom I shall refer to as RW1. Mr. Dlodla made

an affirmation and submitted the following evidence which is summarized as follows:

Mr. Dlodla testified that he was employed by the respondent as a General Manager and identified the applicant as one of the former employees of the former employees of the respondent who were dismissed for stealing stock.

The witness submitted that part of his responsibilities was to ensure that there were no shortages in stock and to achieve this, he would give the incoming shifts a pre-shift brief, where he emphasised the importance of decreasing shortages. None of the employees owned up to the shortages, until he discovered the existence of a syndicate that was responsible for the shortages.

Thereafter, the witness testified that he called all the cashiers to write statements. It was then that Futhi admitted that she saw Mbali take cash and put it in her pocket. This was the evidence the respondent used to dismiss Mbali.

It is the evidence of RW1 that after Futhi confirmed her report; the applicant was suspended and dismissed following a disciplinary hearing, where both himself and Futhi were among the witnesses for the Respondent.

RW1 used page 23 of the respondent's bundle of documents, which is a daily report stating the items sold and the shortages. He submitted that the main shortage was chicken, chips, mini loaves and soft drinks. This was because some meals had same prices with other packages, and the cashiers would sell these items to customers without ringing them, and therefore pocket the money.

RW1 further submitted pages 20 to 41 of the respondent's bundle of documents as part of his evidence, outlining the increase in the daily shortages and observed that the applicant was on duty during these times and it is evident that she was partly responsible for the shortages.

The witness testified that after the dismissal of the applicant, the daily shortages declined a further indication that the applicant was partly responsible for the losses.

RW1 submitted page 5 of the respondent's bundle of documents as part of his evidence. These are the minutes of the applicant's disciplinary hearing, where he was a witness.

When questioned on his relationship with Futhi, RW1 admitted calling her "sweetie" but stated that their relationship was professional, as he considered all the employees as his children. He confirmed that he would request Futhi to make him tea, but he would also request Claudia to make him tea as well.

When it was put to him that the applicant led evidence that during her hearing in Manzini, the witness and Futhi were seated intimately, RW1 submitted that this was not possible as they were seated outside the store and there was a huge influx of people milling about.

The witness further submitted that the panel relied on his and Futhi's evidence during the hearing and confirmed that at the time of dismissal, the applicant had previous warnings, although the company had changed ownership.

Under cross-examination, RW1 submitted that the applicant was part of a syndicate that stole the stock during their shifts. He further explained that the applicant's wrongdoing was unearthed after he called all the cashiers to write reports of incidents of pilfering and warned them against concealing information.

The witness further confirmed that he called Futhi "*sweetie*" but emphasized that their relationship was purely professional and that he would occasionally request her to make tea for him. Although Claudia too would run the same errand for him, he elected to reserve this name for Futhi.

The witness refuted claims by the applicant that Futhi reported her misconduct because she was bitter that Dlodla was calling the applicant "sweetie" as well, and insisted that it was only Futhi he called by this name. He further submitted that he was

not aware of any bad blood between the two employees, as nothing was ever reported to him by either of the parties.

It is the evidence to the RW1 that following the dismissal of the applicant, the shortages of stock decreased drastically.

At re-examination, the witness submitted that the documents used to make a case against the applicant were the daily stock reports and Futhi's written and verbal report. Following the submission of the written report, the witness and other Managers called Futhi to interview her.

The witness further emphasized that his relationship with Futhi was purely professional, and that he did not have an affair with Futhi, as alleged by the applicant,

The respondent thereafter called their second witness, Ms. Futhi Mthimkhulu, whom I shall refer to as RW2, whose evidence under oath is summarized as follows:

It is the evidence of RW2 that she is employed by the respondent as a cashier and that at the time of the dismissal of the applicant, they would sometimes work together as cashiers when their shifts overlapped.

The witness submitted that she does not know why the applicant was dismissed, but she witnessed an incident one morning when a customer purchased eight pieces and chips worth E 99-90. When the applicant attended to him, she gave the customer the goods and his change, but did not ring the transaction, and put the money in her pocket. RW2 stated that she made the applicant aware that she has seen her take the money.

The witness testified that during the same week, the General Manager instructed the cashiers to report incidents of pilferage, failing which; the shortages would be recovered from the cashiers salaries. That is when she decided to report the applicant.

The witness was introduced to a document on page 50 of the respondent's bundle, which she confirmed as her report to the manager on the pilferage.

With regard to the nature of her relationship with Dlundla, RW1, the witness testified that RW1 never proposed love to her and that he merely called her "sweetie" and that he had never called the applicant by this name.

With regard to the allegation by the applicant that the witness was framing her because RW1 was calling her "sweetie" too, the witness testified that she agreed to testify against the applicant because she witnessed the incident where the applicant took proceeds from a sale and put them in her pocket, not because she was revenging.

It is the evidence of the witness that following the disciplinary hearing, the applicant accosted her three times and assaulted her. The last incident was reported to the Police.

It is the evidence of the witness that the applicant did not make mention of her alleged affair with Dlundla, but simply wanted to hit her. She only got to know of the allegation from Mr. Du Pont.

The witness further submitted that it is untrue that during the hearing, she and Dlundla were seated in an intimate manner, as Dlundla was standing, leaning against the wall and that there were many people passing by.

Under cross-examination, the witness submitted that she did not report the applicant when she saw her steal the money as at that time, management had not threatened to recover the losses from the cashier's salaries. When this was said, that was when she decided to report the incident, not because she was revenging against the applicant as RW1 was calling her "sweetie" too, as alleged by the applicant.

The witness denied being a part of the pilfering syndicate, but said she was not concerned about the shortages, until the

cashiers were told that they would repay the cost of the shortages.

Under re-examination, the witness submitted that the minutes of the hearing were incorrect as she did not say that the applicant reported for work in the afternoon, nor did she say that she was selling a streetwise at that time of the incident. However, she did not get an opportunity to confirm the minutes after leading evidence, as she left the shop after leading evidence.

The witness testified that it was not only the applicant she saw stealing, but she witnessed incidents where other cashiers were doing the same.

The respondent thereafter called their third witness Ms. Claudia Johnson, who submitted her evidence under oath, I shall hereinafter refer to her as RW3.

The witness confirmed that she knew the applicant, who was dismissed from the respondent's employ for dishonesty. It is the evidence of Ms. Johnson that she heard that the applicant stole cash from the respondent. She submitted that she personally heard the applicant talking to one Thuli that she wanted to go to work at the tills as people who worked there always have money.

When asked about the proximity of the applicant when she made these utterances, the witness submitted that they were working at the lobby and the applicant would occasionally man the till. She eventually worked there permanently.

RW3 testified that she did not know of any conflict between the applicant and Futhi until she was briefed by the respondent's representative.

It is the evidence of the witness that it is untrue that during the hearing Futhi and Dlundla were seated in an intimate manner as she was seated with Futhi and Dlundla was standing. In addition, company policy disallows horse play. She did however confirm that Dlundla called Futhi, "sweetie", however, she did not know of any relationship between them.

Under cross examination, RW3 submitted that she did not see the applicant take any money, but heard her express the desire to do so while she was manning the till and the applicant and Thuli were at the lobby.

At re-examination the witness reiterated that she heard the applicant express a desire to work at the till and that she did not see Futhi and Dlodla sitting intimately during the disciplinary hearing and that it is not true that the two are lovers.

Thereafter, the respondent closed their case.

In his closing arguments, the applicant's representative argued that the applicant's dismissal was substantively unfair in that the respondent relied on the evidence of Futhi Mthimkhulu, who was settling a score since Dlodla had called the applicant "sweetie", an endearment exclusively reserved for her. In addition, RW2 failed to timeously report the applicant's act of misconduct, but did this as an afterthought.

Mr. Simelane refuted the evidence of RW2, and stated that she was an unreliable witness, who gave conflicting evidence at the hearing and during the arbitration proceedings.

It is the submission of Mr. Simelane that the evidence of RW3 is mostly hearsay and inadmissible. He further argued that it was improbable for the witness to have heard the applicant talking to Thuli, as she was at the till and the two were at the lobby. The lobby is a busy area and she would have been hard of hearing the conversation. In addition, the applicant was not charged with the desire to steal money, but that she actually took cash for her own benefit.

Mr. Simelane argued that the applicant did not have a prior warning and the sanction of dismissal was unreasonable in the circumstances. In addition, the respondent relied on evidence from a source who was settling a score with the applicant.

The applicant's representative argued that strong suspicion was not adequate grounds for termination of employment, if there has been no proof of theft, dismissal would be without an

adequate reason. **Louw V Delta Motors Corporation (1996) 17 ILJ 958(IC).**

Mr. Simelane applied that the evidence of RW3 be completely disregarded as it is purely hearsay, which is inadmissible.

With regard to the evidence of RW2, the applicant's representative argued that Ms. Mthimkhulu is an unreliable witness, who volunteered information only after being threatened by the managers and also as a means to get back at the applicant since Dlodla's attention had shifted to the applicant.

The applicant's representative submitted that the evidence lead against the applicant was insufficient to warrant a dismissal and prayed that the arbitrator rule in favour of the applicant and award her the following monies as compensation for unfair dismissal:

1) Notice Pay	E 1 200-00
2) Leave Pay	E 450-00
3) Maximum Compensation for unfair Dismissal	E 14 400-00

TOTAL CLAIM E **16 050-00**

The respondent's representative in their closing arguments submitted as follows:

Ms. Mngomezulu argued that the applicant's dismissal was substantively fair as it was in accordance with Section 36(b) of the Employment Act read together with Section 42(2).

The respondent argued that due to the increase in daily shortages, the respondent decided to deduct the cost from the salaries of the cashiers on duty at the time of the shortages.

Following this resolution, RW2 disclosed that she had witnessed an incident where the applicant did not ring a transaction, and put the E 100-00 in her pocket. RW2 submitted that she told the applicant that she saw what she did. It is the argument of the respondent that this evidence

was never disputed by the applicant when cross-examining the witness.

Ms. Mngomezulu submitted that the applicant gave conflicting evidence. At the hearing she stated that she and RW2 were on good terms, but during the arbitration she stated that their relationship was not good.

RW2 testified that their relationship soured after she testified against the applicant.

The respondent's representative argued that the dismissal of the applicant was fair as it fell within the ambit of Sections 36 and 42 of the Employment Act.

Ms. Mngomezulu stated that the undisputed evidence of RW2 should be considered by the arbitrator, as decided in **Small v Smith 1954 (3) SA 434 (SWA) at 438** where the Court held that evidence should be challenged at cross-examination, if not, it must be deemed to be a true version of the events.

With regard to the evidence of RW 1, the respondent's representative argued that RW 2 submitted her report within one week of the occurrence of the theft, which, she stated was reasonable time. It was further submitted by the witness that prior to the dismissal, management had held numerous counseling sessions advising the employees on the cost of the shortages and the importance of meeting their targets.

With regard to the applicant's allegation that she was dismissed based on the evidence of Futhi RW2, who had an axe to grind with her, the respondent's representative moved that the evidence should not be admitted, as it was uncorroborated.

In addition, Ms. Mngomezulu argued that the evidence of the applicant was in contradiction with that led at the hearing and that she failed to corroborate her evidence that RW1 called her "sweetie"

It is the contention of the respondent that the dismissal of the applicant was fair in that the respondent proved on a balance of probabilities that the employee committed the offence.

In conclusion, the respondent's representative prayed that the applicant's claim be dismissed in its totality, as the respondent had proven that the employee was guilty of the charges preferred against her and that the dismissal was in terms of Sections 36(b) and 42(2) of the Employment Act of 1980, as amended.

5. ANALYSIS OF EVIDENCE AND ARGUMENTS

I will be unable deal with all the arguments advanced during the hearing, but I will confine myself to the relevant issues relating to the decision.

The parties agreed that they would argue on the substantive fairness of the dismissal, that is, whether or not the sanction of dismissal was appropriate in the circumstances and whether the charges against the applicant had been proven on a balance of probabilities.

The applicant led evidence to the effect that the respondent's witness, Ms. Futhi Mthimkhulu alleged that she had seen the applicant pilfering money simply because she had an axe to grind with her, since Ms. Mthimkhulu's friend, Mr. Dludla, had called the applicant "sweetie", an endearment reserved solely for RW2.

On the other hand, the respondent argued that the applicant failed to call witnesses to corroborate her version of the chain of events, and that the relationship between RW1 and RW2 was a smokescreen to avoid addressing the main issue, that is, the applicant was seen by RW2 putting the proceeds of a sale in her pocket instead of the till.

In determining substantive fairness, the following guidelines were set out in ***Workplace Law, Grogan, 7th Edition, Juta & Co, at 146 as follows:***

'Any person who is determining whether a dismissal for misconduct is unfair should consider

- a) *Whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to the workplace,*
- b) *If a rule or standard was contravened, whether or not-*
 - (i) *the rule was a valid or reasonable rule or standard*
 - (ii) *the employee was aware, or could have reasonably expected to have been aware of the rule or standard*
 - (iii) *the rule or standards been consistently applied by the employer; and*
 - (iv) *dismissal was an appropriate sanction for the contravention of the rule or standard.*

In casu, the respondent has led the evidence of RW1, Mr. Michael Dlundla, who is the respondent's General Manager. RW1 testified that the employees were given a pre-shift pep-talk, where the issue of shortages was discussed. This was corroborated by both RW2 and WR3.

The applicant herself did not deny that the pre-shift meetings were held and shortages discussed. It was the evidence of RW 1 that to curb the thefts, the respondent resolved to recover the cost of shortages from the salaries of the cashiers.

It suffices to say that the rule did own by the applicant, it was and it was reasonable for the respondent to enforce such a rule. RW1 submitted during his evidence that all the members of the pilferage syndicate were dismissed when their scheme was unearthed.

The final consideration is whether dismissal was an appropriate sanction for the contravention.

The respondent led the evidence of RW2 AND RW 3. The former testified that she saw the applicant putting the money in her pocket, but failed to timeously report the theft. She waited for the issuance of a threat before the information was conveyed to the respondents, who acted on this only direct evidence.

Grogan in ***Workplace Law, 7th Edition, Juta & Co. at 146 stated as follows:***

'Proof that the employee actually committed the offence charged presupposes a proper investigation of the allegations against the employee, and the presentation of evidence that links the employee with the offence....Proof that an employee committed an offence must naturally be uncovered by first investigating the allegations..'

The respondents argued that in the absence of contrary evidence, the evidence of RW2 must stand. I disagree. RW2 proved to be a witness whose credibility the arbitrator found wanting. The respondent failed to obtain evidence corroborating the version of RW2. I further find the evidence of RW3 irrelevant, as she says she heard the applicant express a desire to commit an offence. Claudia submitted that she never saw the applicant steal money, but heard her wish to be a cashier, as they always had money.

RW2 in her evidence failed to give an explanation why the store manager called her "sweetie", an endearment which both the applicant and RW3 testified was exclusively reserved for RW2. In addition, RW2 gave contradicting evidence on the time her shift commenced, at the hearing and during the arbitration. In addition, she stated that during the hearing, she never said she was selling a streetwise on the day she witnessed the theft.

RW2 has given two conflicting versions of the same event. It would be folly to rely on her evidence in the absence of an investigation and presentation of evidence linking the applicant to the offence. Although the respondent has argued that in ***Small v Smith 1954(3) SA (SWA) at 438 the court was of the view that if evidence goes unchallenged at cross-examination, the witness must be believed, the existence of corroborating evidence proves the commission of the offence.***

Section 42(2) of the Employment Act of 1980, as amended provides that

The services of an employee shall not be considered as having been fairly terminated unless the employer proves -

- a) that the reason for the termination was one permitted by Section 36- and*
- b) that, taking into account all the circumstances of the case, it was reasonable to terminate the services of the employee.*

The applicant was employed by the respondent on the 3rd January 2007, at the time of dismissal; she did not have a valid warning. In addition, the respondent failed to investigate the allegations leveled by RW2. I therefore find that it was unreasonable for the respondent to terminate the services of the applicant without conducting a proper investigation into the allegations leveled by RW2.

6. AWARD

It having been established that the respondent failed to satisfy the requirements of *Section 42(2)(b)* in that no investigation was made to corroborate the evidence of RW2, thus rendering the applicant's dismissal substantively unfair, it is ordered as follows:

1. That the respondent shall pay the applicant compensation for unfair dismissal amounting to E 5 250-00 This amount is broken down as follows:

(i) Notice Pay	E 1 200-00
(ii) Leave Pay	E 450-00
(iii) 3 months compensation for unfair dismissal	E 3 600-00

TOTAL DUE **E 5 250-00**

2. The sum of E 5 250-00 shall be made payable by the respondent at the CMAC Offices, 1st Floor, Mbabane House on or before the 31st March 2010.

DATED AT MBABANE ON THIS THE ...DAY OF FEBRUARY, 2010.

**PHINDILE GININDZA
ARBITRATOR**