IN THE HIGH COURT OF SWAZILAND

Civ. T. 1129/91

In the matter of

CENTRY BHEMBE	Applicant
and	
THE CHAIRMAN OF THE CIVIL SERVICE BOARD	1st Respondent
THE CIVIL SERVICE BOARD	2nd Respondent
THE ATTORNEY-GENERAL	3rd Respondent

CORAM	:	Hull C.J.
FOR THE APPLICANT	:	Mr. S. Earnshaw
FOR THE RESPONDENT	:	Mr. Mabuza

J U D G M E N T (ORAL)
(26/3/93)

Hull, C.J.

It seems to me that this application must succeed because although there is a document' R1', which does indeed give Mr. Bhembe notice of his dismissal from the Service as contemplated on the basis of specified charges, and that is dated 15th March, 1990, the record does not show at all - and indeed, it is not asserted - that, when a formal hearing was held and he was invited to appear, he was told that he was being called upon to answer the allegations that were made against him and of course a fundamental principle of the rules of natural justice, quite apart from the statutory provisions of the Civil Service Board Regulations which I will come to in a moment -

is that a person who is accused of a matter of this nature is entitled to know, in good time in advance, the nature of the charge against him and he is also entitled to be given a proper opportunity to respond to it. Now the record does not show that when he was eventually summoned to appear or invited to appear before the Board, he was told that that was what he was invited to appear on.

The procedure for disciplinary action is set out in the regulations. It is set out in the Part headed "B. Disciplinary Proceedings", from Regulation 41 onwards. In the Civil Service Board General Regulations, that procedure does not abrogate the rules of natural justice at all. It is compatible with them. That procedure first of all sets out in Regulation 41 that the Departmental Head is to cause a departmental preliminary investigation to be made so that he can decide whether or not to prefer formal charges. Then in Regulation 42 it goes on to say what he shall do if he considers that formal charges should be preferred.

It does say, inter alia that he must transmit the formal charges to the officer and call upon him to state in writing, within a reasonable specified time, any grounds on which he wishes to rely upon to exculpate himself. It further says that the officer shall be warned by the Head of Department that anything he says in writing may be used in evidence in subsequent disciplinary proceedings.

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He was by this notice - which is R1, as I say - told of the contemplated charges and told that they were brought with his dismissal in contemplation, and was also given the warning and was also given the opportunity to exculpate himself. I may say in passing that it was an error - a misunderstanding - in my view that the Department took the view that it should insist that he sign it. It could certainly ask him to sign it. it is easy to understand why a person in his position may hesitate in signing it, but the fact of the matter is that it is not necessary to obtain his signature anyway to a notice of this nature. It is quite sufficient to give it to him, and then for somebody to make an affidavit, or make a note, that he has duly served it upon him.

The real point in the case is that the matter was then subsequently set down for hearing and, more precisely, he was invited to attend before the Board in the first instance. Now at that stage he was not told that this was going to be a formal enquiry, in which the charges against him would be heard and determined. The record does not show that at all.

If you look at Regulation 43 of these Regulations, it sets out clearly what is to happen if a person does not exculpate himself to the satisfaction of the Head of Department. The matter is to be reported to the Board. Regulation 43 (2) sets out the information - the record - that is to go before the Board. Regulation 44 deals with the procedure on the enquiry; 45 deals with witnesses; 45 (2) contains an express provision that no documentary evidence is to be used against an officer until he has been supplied with a copy or given access to it.

And it appears to me from the record that those steps were not followed in this case. It is true that Regulation 49 goes on to say that the Board can proceed otherwise than formally, but that is only in a case where the alleged misconduct is not serious enough to warrant formal enquiry. Now it can not be said in the present case that misconduct which the Board decided was sufficient for dismissal could not be serious. There is nothing more serious in the context of an employee and employer relationship than dismissal.

And so for those reasons, in my view, this application must succeed. I think that what happened after that first enquiry is, strictly speaking, irrelevant, because the fundamental point is that he was not given a proper opportunity in accordance with the rules of natural justice to appear and answer the charges at the first trial. He was not given due notice that the charges were being proceeded with him. And it would also appear that he was not given all the papers that he was entitled to to make his defence.

So in those circumstances the order prayed for, which is that the decision of the 20th August 1990 dismissing him from the Service with effect from the 31st August 1990, is set aside and the applicant is entitled to his costs.

David Hull
CHIEF JUSTICE