

IN THE HIGH COURT OF SWAZILAND

LINDSEY VELOSO

V

A. E. WOLMARANS

THE CHAIRMAN DISCIPLINARY ENQUIRY STANDARD BANK OF SWAZILAND LIMITED

Civ. Trial No. 932/98

Coram S. W. Sapire, CJ

For Plaintiff Dr. H. Fine

For Defendant Mr. D. Smith

JUDGMENT

(15/03/99)

This is an application by a former employee of the 2nd respondent. This applicant had been an employee of the bank for many years and had reached the higher level of management. Unfortunately for him and unfortunately for his career he had apparently been engaged in conduct which the respondent found to be exceptionable to the extent that he could no longer occupy the position which he then occupied. A disciplinary enquiry was held and after full hearing made recommendations upon which the Board of Directors of the 2nd respondent acted. The Applicant was dismissed

The applicant seeks to review the proceedings before the disciplinary board and he seeks an order that the finding made by made by 3rd respondent on the 30th February, 1998 recommending that the applicant's service as an employee of 2nd respondent is summarily terminated be set aside.

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In regard to this disciplinary enquiry it is to be noted that the level of the applicant's employment and his status in the 2nd respondent did not require to be given the benefit of a disciplinary enquiry in terms of any recognised contract with any combination of workers. I doubt whether this decision by the disciplinary board is in fact reviewable.

The difficulty facing the applicant is this that the substantive relief that he sought is that the 2nd respondent's decision dated the 24th February 1998 summarily dismissing the applicant be reviewed and set aside. I know of no case, none has been quoted to me, where the decision of a Board of Directors of a private company has been reviewed and set aside.

To review the proceedings of the disciplinary enquiry even if competent would be futile. If I were to find that there were irregularities in those disciplinary proceedings, which impeached the recommendation, made as a result thereof, it does not follow that I could in effect order the reinstatement of the applicant. This would be the effect of setting aside the decision of the board of directors. The Standard Bank through its board of directors acted either lawfully or unlawfully in dismissing the Applicant. If the dismissal was unlawful his remedy (if any) in this court, would be confined to a claim for damages.

The applicant's claim is one in respect of an alleged unfair dismissal. The labour legislation, The Employment Act, 19801 and The Industrial Relations Act² provide for the remedies allowed and procedures to be followed in cases such as the present. The Applicant was ill advised in coming to this court and not pursuing any claim he may have or have had in the Industrial Court.

The application is dismissed with costs

S W Sapire

Chief Justice

1 Part V Act No.5 of 1980

2 Section 5 Act No 1 of 1996