

THE INDUSTRIAL COURT OF SWAZILAND.

In the matter between: CASE NO. 14/83  
LAWRENCE KHESWA Applicant  
vs.  
SWAZILAND UNITED BAKERIES Respondent  
LTD.  
FOR APPLICANT: In person  
FOR RESPONDENT: P. Shilubane  
Issue in Dispute: Wrongful dismissal - Applicant seeks wages  
for the period 25/11/81 to 9/6/82.

AWARD

The Applicant was employed by the Respondent Company as a despatch Clerk. Later he was promoted to the post of Trainee Manager - Administration. During this period one Mr. Simelane was the General Manager of the Company. On 7/11/81, the proceeds from the sale of bread were handed over to Mr. Simelane since there was no cashier in the office. Mr. Bailey, Assistant Regional Manager, giving evidence stated that it was the responsibility of the Applicant to have made the necessary debit entry of such sale on that day itself but instead he made the entry only on 12/11/81 in order to accommodate the General Manager. He also mentioned that the books were altered for this purpose by the applicant and the cashier. However the applicant denied this and said that as soon as he discovered the shortage of money he immediately informed the cashier, although it was not his duty to do so. He specifically denied that he fiddled with the account books. Mr. Bailey also stated that the applicant had admitted to the Labour Officer, who did the investigation in this matter that what he did was wrong when he made the debit entry on 12/11/81. In either of these two matters evidence was produced to substantiate these allegations. In the circumstances I am justified in rejecting this evidence.

Mr. Bailey said that the applicant was dismissed on 26/11/81 and his terminal benefits were paid on 9/6/82.

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The applicant said that he did not report the General Manager to Mr. Bailey or to the Management because he felt that it was not his duty to do so because of his junior rank in the Company. Furthermore the General Manager himself admitted that the money was with him at his place. The applicant also said that he received E.380 as salary per month and was claiming only 7 months salary.

It appears from the evidence that the applicant was dismissed under Sec. 36(b) of the Employment Act No. 5 of 1980 which reads as follows

"(b) because the employee is guilty of a dishonest act, violence, threats or ill treatment towards his employer, or towards any member of the employer's family or any other employee of the undertaking in which he is employed.

On the facts placed before this Court there is no evidence that the applicant is guilty of any dishonest act. His only mistake if any, was that he failed to report to Mr. Bailey or to the Management that Mr. Simelane, the General Manager was keeping company money at his home. However in fairness to the applicant,

this was immediately brought to the notice of the cashier by him.

Therefore it appears to me that the applicant has been dismissed on mere suspicion.

I feel that it is not in the interests of good employer/ employee relationship to dismiss a person on mere suspicion alone. It is desirable in such cases for an employer to first issue a letter of warning. As I stated in Case No. 19/83, the procedure adopted in some of the developing countries is to issue 3 warning letters before steps are taken to terminate the services of an employee. I recommend this procedure be adopted here too in the future.

I accept the evidence of the Applicant, and I accordingly find that the dismissal of the applicant had been wrongful.

Mr. Shilubane appearing for the Respondent Company took up the position that since the terminal benefits had been paid and accepted by the applicant as a final payment, the applicant cannot now come to Court and re-agitate this matter once again.

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I do not agree with Mr. Shilubane on this point. The acceptance of terminal benefits does not preclude an employee from coming to Court on any just matter for determination. In this case the applicant had all along maintained that he was wrongfully dismissed. Therefore in my opinion he had the right to come to this Court for a decision on this grievance.

In this case the applicant neither seeks re-instatement nor compensation for wrongful dismissal. He is only claiming his wages for the period 25/1/81 to 9/6/82. In my view the applicant is entitled to this, in view of the time taken by the Respondent Company to pay the terminal benefits. In fact it took the Company nearly 6½ months to pay this. The applicant has however admitted that he was gainfully employed elsewhere for about 5 months. Therefore in my view the applicant would not be entitled to any wages for the period during which he was gainfully employed, elsewhere. Taking this into consideration I order the Respondent Company to pay the Applicant a sum of E570 being 1½ months wages which I consider just and equitable in the circumstances.

JUDGE PRESIDENT

20/10/83

I consent

ASSESSOR.