



working days annual leave with full pay. It is obvious that the applicant's leave from 1/11/84

to 22/11/84 was his annual leave and it related to 21 working days. Since Wednesdays were his off days, he became entitled to three more extra days. Therefore his leave entitlement of 21 days expired on 26/11/84 and not on 22/11/84 as stated in the leave form. However, the applicant returned to work on 28/11/84, thus overstaying his leave by 2 days. According to him his delay in returning to work was due to his illness. This was substantially corroborated by Mr. Msibi the herbalist.

Section 36 of the Employment Act No.5 of 1980 states as follows:

It shall be fair for an employer to terminate the services of an employee for any of the following reasons:-

(a), (b),(c), (d), (e) are not relevant to this matter

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(f) because the employee has absented himself from work for more than a total of 3 working days in any period of thirty days without either the permission of the employer or a Certificate signed by a medical practitioner certifying that he was unfit for work on those occasions.

Having considered his leave entitlement, I am of the view that his absence of 2 days to work does not fall within the provisions of the above section and thus his termination appears to me to be unfair.

Even if, there existed some statutory obstacles, then, Respondent would still be faced with formidable difficulties, in persuading this court to come to its aid.

Absence from work would XXX to misconduct justifying dismissal where it is habitual and without authority.

In *Bawa Crockery House vs Bhoumick*, it is stated as follows: "we fail to see how the absence of the workmen for three days without justification can be regarded either as a gross breach of discipline or gross neglect of duty."

In deciding whether an employee's absence from duty is sufficient to justify his dismissal, the court will have to consider the circumstances in each case and prejudice to the employer is an important XXX to be taken into consideration. If an employee is accidentally absent on any occasion, when there is no serious prejudice, the employer cannot dismiss him.

The respondent in this Case did not place before court any evidence to show that" the applicant's absence was prejudicial to his business.

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However, there is evidence that the 18 years of applicant 's services to the respondent had been unblemished. So I find his termination rather harsh and not in conformity with the principles of natural justice.

However, it should be noted that chronic absenteeism strikes at the very root of production and an employer can not reasonably be expected to tolerate such a situation.

In this case a warning would have been appropriate.

I must state that the worker today is certainly not the slave of the middle ages. He is not a chattel. He has equal rights as the employer although factually he is on a different level. Employers must remember the fact, that for there to be industrial peace, labour must be handled in a sensible and reasonable way. It is too late in the day to treat labour with affront. Labour must be treated with the sanctity it deserves. The employees' sweat goes to build up our economy and employers must realise that grim fact. If this is not

done industrial chaos will prevail.

Having considered all the facts in this case, I order the Respondent Hotel to pay the applicant a sum of E542.00 being four months wages as compensation for his wrongful dismissal which order I consider just and equitable. In addition to this he will also receive the following from the Respondent -

(i) E135-50 being one month's wages in lieu of notice

(ii) Severance allowance calculated from 27/2/1967 up to the date of dismissal. This calculation must be done through the Labour Department.

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I make this award accordingly.

My assessors Mr. Perstile and Mr. Matsebula agree with my decision.

J. A. HASSANALI.

PRESIDENT.