

10/85

In the matter between:

DUMISA E. KHALISWAYO APPLICANT

AND

CITY ENGINEERING RESPONDENT

C O R A M : J. A. HASSANALI PRESIDENT

FOR APPLICANT : MR. S. MOTSA

FOR RESPONDENT : MR. P. DODDS

ASSESSORS : MESSRS OLIVER AND MATSEBULA

ISSUE IN DESPUTE : WRONGFUL DISMISSAL

A W A R D

(Delivered on 4th July, 1985)

In this matter Dumisane Khaliswayo is claiming compensation for wrongful dismissal.

The Applicant was employed on 1/8/82 by the Respondent Company as a painter. On 19/5/83, Mr. Felix Fillinger, the owner of the Company was told that one of the keys to the workshop was missing. When he opened the premises with his spare key on 20/5/83, he discovered that a VW Engine which was there had disappeared. He immediately reported this to the Police. On 23/5/83 the applicant was taken into custody by them for interrogation.

Ruben Lokotwayo in his evidence stated that he and two others helped the applicant to carry an engine to applicant's house, which engine applicant said he had obtained from Johannesburg. At a later date the the applicant directed the police to a particular spot where the engine was found in a hallow place.

Lokotwayo's evidence is substantially corroborated by the evidence of Police Constable Dlamini. According to Dlamini, Applicant led him and other police Officers to a bush near his house and pointed out the engine which was hidden under branches.

5 I found Lokothwayo and Constable Dlamini to be reliable witnesses and in my view they gave truthful accounts of what happened. It is very unlikely that they could ^{have} fabricated their stories.

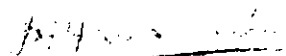
10 Therefore on the evidence placed before me I am satisfied that the applicant removed the Engine from the Respondent's workshop with the sole intention of converting it to his own use. As such he is guilty of a dishonest act as contemplated under Sec. 36(b) of the Employment Act No. 5 of 1980.

15 The Accused was charged in the Magistrate's Court for theft where after trial he was found not guilty and acquitted. However, I have held in Case No.3/85 that this Court has jurisdiction notwithstanding the decision in criminal courts to take appropriate action in matters pertaining to Industrial disputes.

20 By stealing the engine the applicant gravely abused the trust placed in him by his employer. To put it at its lowest, the continuation in service of such an employee would severely prejudice the good name and interests of the employer.

I am satisfied that the termination of the applicant was justified and I consequently dismiss his application. My Assessors agree with my decision.

3/


J. A. HASSANALI

P R E S I D E N T

In the matter between:

SAMUEL DLAMINI Applicant

PEAK TIMBERS LTD. Respondent

Issue in Dispute: Wrongful dismissal of Samuel Dlamini

C O R A M : Hassanali. J.

FOR APPLICANT: Mr. FAKUDZE (Labour Department).

FOR RESPONDENT: Mr. PETER DODDS (Swaziland Federation of Employers).

The parties were heard on 18/8/83 and relied on their written and verbal evidence.

AWARD

The Applicant was employed by the Respondent Company as a stores assistant and was working with one Simon Ndwandwe. He was summarily dismissed as from 13/1/1982 on the grounds that he committed theft of two injector pumps belonging to the said Company.

The theft was reported to the Police and eventually a criminal charge was preferred against him. However on 3/2/1982 he was acquitted and discharged without any evidence being offered against him.

The Applicant took up the position that since he was acquitted of the criminal charge he should be:-

- (a) re-instated
- (b) paid compensation from the date of suspension to date.
- (c) paid a sum of E.94
- (d) paid a sum of E.135 in lieu of notice.

(a) paid 52 days wages in lieu of additional notice.

(b) paid F030 in lieu of severance allowance

According to the respondent's witness, Z. Dlamini, a security officer, he checked vehicle No. 87 on 9/1/82 and found nothing before it was parked in the yard of the company. On 10/1/82 at about 7.15 a.m. he stopped the same vehicle which was driven by the applicant for a routine check. He and one Zikalala discovered 2 pumps wrapped in a white cloth hidden behind the drivers seat. When the applicant was questioned as to why he was taking this vehicle out of the yard, he replied that he was going to collect the keys from one Moses Gama. However Moses Gama denied knowledge of the keys. When the denial was conveyed to him, the applicant got down from the vehicle and ran away but was eventually caught. In cross-examination he said that the applicant refused permission to search the vehicle. However he was forcibly removed and the vehicle was searched.

Simon Ndwandwe, the other witness for the respondent said that the pumps belonged to the company.

The applicant in his evidence ^{said} that he stole the two pumps.

Z. Dlamini witness for the respondent created a good impression on me as a witness and I am satisfied that he did honestly and truly relate the events of that morning. On the other hand the applicant was an unsatisfactory witness and his demeanour suggested untruthfulness.

Since the applicant was not acquitted in the Magistrate's Court, on the merits I am of the opinion that this Court could inquire into the allegation of theft and make a

finding thereon.

On the evidence I am satisfied that the applicant did steal the two injector pumps belonging to the respondent Company and was caught red handed by the employees of the Company, while attempting to take them out of the yard. It also transpired in evidence that the Garage Sub-Committee consisting of Management and workers representatives presumably after due inquiry into this matter, dismissed the applicant from Service.

In the circumstances I hold that the termination of the services of Samuel Dlamini, the applicant, by the Respondent Company is justified and that he is not entitled to any relief.

I make my award accordingly.

J.A. HASSANLI
PRESIDNET

I Agree:

ASSESSOR

I agree:

ASSESSOR