



in Ex. A for which his services were terminated was in fact done by another employee, one Themba Dlamini. Again on 1/2/84, the applicant received another letter (Ex. E) but there again it was found that he was not responsible for the work complained of, and consequently the warning was withdrawn. However Mr. Nkambule the Supervisor, admitted that there was some fall off in the applicant's work performance but he said that these did not warrant strictures or warnings as they were not of a serious nature.

3

It Seems to me that the applicant's services were terminated under Sec.36 of the Employment Act No.5 of 1980 which reads as follows-

"It shall be fair for an employer to terminate the services of an employee for any of the following reasons (portions that are not relevant to this matter have been omitted)

a) because the conduct or work performance of the employee has after written warning, been such, that the employer cannot reasonably be expected to continue to employ him.

There is no doubt that there had been some deterioration in in the applicant's work performance and this has been reasonably confirmed by Mr. Nkambule and Mr. Catterick. But the evidence does not disclose that he lacked the ability or capacity to perform his tasks. Incompetence which results from carelessness is not necessarily gross to merit a dismissal. Therefore I hold that the applicant did not show sufficient interest in his work after his Election as Chairman.

Although it did not come out very clearly in evidence, it seems to me that the main reason for the applicant's termination was his active involvement in the workers Committee; thus placing the employees interest above the employers. Termination under such circumstances is not just, nor does it restore harmony between labour and capital or ensure normal flow of production. It would after all, be more fitting in modern society, to recognise positively the roll and place of Workers Committee/ Trade Union, to welcome it and to strengthen it, and allow it to flourish, rather than to stifle it. This would no doubt create a friendly atmosphere for a sound employer/employee relationship.

4

Since I have some doubts as regards the reason for his termination, I wish to give him the benefit of that doubt and hold that he was unfairly dismissed because of his Union activities.

However taking into consideration the fall of in Applicant's performance. I do not wish to award him any compensation, nor terminal benefits other than the severance allowance.

Consequently I order the Respondent to pay the applicant his severance allowance of E1,010 only.

My Assessors agree with my award.

J. A. HASSANALI

PRESIDENT