

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE.

CASE NO: 98/89

In the matter between:

1. THOMAS NDZINISA) Applicants
2. DUMISANE NKAMBULE)

VS.

POLYFLAS (PTY) LTD Respondent

C O R A M: J.A.

HASSANALI President
MR SIMELANE For Applicant

MR. FLYN For Respondent

MR. V. DLAMINI & MR MATSEBULA Assessors

AWARD (Delivered 20-12-90)

HASSANALI, P.

In this Application the Applicants are claiming from the Respondent Company, compensation and terminal benefits for their unfair termination.

The Respondent in its reply denied their allegation and claimed that they had committed an act of dishonesty on the night of 25/26 May, 1989 by taking part in the theft of a large quantity of the Respondent's manufactured products valued at approximately E2000/= or alternatively allowing the said products to be removed unlawfully from the factory.

It is common cause that the two applicants and one Amos Ngwenya were charged in the Magistrate's Court for the theft of the said products but at the end of the Crown Case the two applicants were found not guilty and were acquitted. Ngwenya on the other hand was found guilty and was convicted.

The Respondent's case depends mainly on the evidence of the said Ngwenya since the Company did not call any other witness in support of its case. However after his initial cross-examination Ngwenya disappeared and was not available for further cross-examination.

I shall now briefly state the background to the arrests of the applicants by the Police and to their subsequent dismissals.

The 1st Applicant joined the Respondent Company in February 1975 as a machine operator. In 1982 he was promoted as a Supervisor, in which capacity he worked until he was dismissed on 25/7/89. He had served the Company for 14 years and during this period he had an unblemished record of service. The 2nd Applicant was employed in 1984 as a machine operator and worked in that position until his dismissal on 25/7/89. Both applicants worked in the machinery room. According to the evidence, the Police took them away alleging that they had stolen some manufactured products of the Company. However both denied their involvement. Nonetheless they were charged in the Magistrate's Court but were eventually acquitted.

The only evidence that links the applicants with the alleged theft is that given by Amos Ngwenya. He said that he had known the applicants at their work place where he himself had worked for a short period. He stated that on a certain day he met the 1st applicant and had asked him for a plastic basin. The applicant told him that he would look into it. A few days later he met the 2nd applicant at the market place and in the course of their conversation he mentioned of his request for a basin from the 1st applicant. The 2nd applicant asked him to be at the fence which was in close proximity to the back of the factory house. He duly waited for him there at about 9.30 p.m. the 2nd applicant then passed over to him basins and buckets of various sizes. While taking them in a van to his house pending the arrivals of the applicants, he was stopped by the security guard who handed him over to the Police. He seemed to have told the Police that the items were not his but belonged to the applicants. He was later charged in the Magistrate's Court along with the two applicants. He applicants were acquitted while he was convicted on his own plea. The applicants strongly denied these allegations.

In the course of the cross-examination of the Applicants it was put to them

3

that the 2nd applicant had admitted to Mr. Clark that he had taken the items at the instance of the 1st applicant. This was however denied by the 2nd applicant. It is most unfortunate that Mr. Clark was not available to give evidence on this.

The evidence of Amos Ngwenya stands alone without any support. It is dangerous to accept his evidence without some corroborative evidence in view of the fact that he is already a convicted criminal. As such it is quite possible that he implicated the applicants with theft.

I wish to state further that the evidence of Ngwenya remained untested in cross-examination and therefore much weight cannot be attached to the evidence he had already given.

Therefore taking the above into consideration, I am inclined to reject the evidence of Ngwenya and accept the evidence of the applicants and hold that they had been unfairly terminated by the Respondent Company.

Consequently I make the following Order - j

The Respondent Company shall pay the following -1st Applicant:

Payment of Notice Pay 2 weeks 160.00

Additional Notice Pay from 1976 - 1989 1040.00

Accrued leave Pay 8 months 160.00 i

Compensation 2080.00

Severance Allowance 2600.00

6040.00

2nd Applicant:

Payment of Notice Pay 2 weeks , 125.30

Additional Notice 1985 - 1989 313.25

| Accrued leave Pay 8 months 125.30

Compensation 1628.90

Severance Allowance 783.13

2975.88 .

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- 4 -

I make this Order as an Award of this Court, My Assessors agree with my decision.

J.A. HASSANALI, PRESIDENT.