

IN THE INDUSTRIAL COURT OF SWAZILAND

HOLDEN AT MBABANE:

CASE NO: 84/89

In the matter between:

ABSALOM B. GINA

Applicant

VS.

SWAZILAND DAIRY BOARD

Respondent

C O R A M:

J.A. HASSANALI

President

MR. D. LUKELE

For

Applicant

MR. FLYN

For

Respondent

MR. DLAMINI &

MR MATSEBULA

Assessors.

AWARD

(Delivered 15 January 1991)

HASSANALI, P.

In this Application the Applicant is claiming from the Respondent the following for his unfair termination -

Severance Allowance    E 5775.00

Compensation                    6930.00

E12705.00

The Respondent however denies unfair termination and claimed that the termination had been fair on/ground that the Applicant had committed various acts of dishonesty in the form of misappropriating the funds of the Respondent Board.

At the outset of the trial, Mr. Lukhele with the consent of the Respondent's Representative filed an amended application.

Mr. Flyn representing the Respondent withdrew his preliminary objections and indicated to Court that he would restrict his case to facts only.

It was agreed between the parties that the applicant's claim would be as follows:-

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proceeds of driver salesmen, you failed to show and to explain to me -

(a) the actual amounts of money you took from each salesman's sales proceeds

(b) the dates when you took the amounts of money and

(c) all the Dairy Board's purposes for which you used the various sums of money.

The Dairy Board views your actions in a very serious light and I now inform you that you are dismissed from the employment of the Dairy Board with effect from 5th May, 1989."

The uncertainty of the amounts misappropriated and then seeking information regarding it, are clear indications that the books relating to accounts and stocks at the Depot had not been properly maintained. Furthermore it seems to me that there had been some slackness on the part of the officers as regards to their periodic checks of the Depot. This unfortunate situation would not have arisen had the checks been periodically carried out.

Misappropriation of Board Funds is a serious crime. The applicant however denied this and asserted that they were false accusations brought against him by the Board. The Board apparently held an Inquiry into the matter and produced the Minutes of the Inquiry (Ex.1). However it does not show that he had anyone to represent him. This means that he was not informed of his rights nor given an opportunity to retain one in terms of Paragraph 43(c) of Code of Practice, read with Sec. 81(3) of the Industrial Relations Act. I should have thought therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak on his own behalf, he also had a right to retain a representative of his own choice. Therefore this in my view constitutes a violation of the principles of natural justice.

In the course of the applicant's cross examination, it was shown that he had misappropriated funds on various occasions. The Applicant strongly denied these. Unfortunately most of the charges had not been substantiated by any evidence.

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he is doing this, to tell the employee that he must not do it and to warn the employee that if he persists in doing it, he may have to go."

The Board had also failed to take into consideration the promotion, the Applicant had gained during the course of his employment. I wish to refer to the Case of Kendrick Vs Concrete Pumping Ltd (1973) IRLR 83 in which it states that when an employee's past record has been such, as to result in promotion (as it is seen here) this may be viewed by industrial tribunals as increasing the degree of responsibility to be borne by Management.

Therefore taking the above into consideration, I am of the opinion that a strong warning in writing to the Applicant would have been reasonable under the circumstances. Hence I find the termination of the applicant unfair.

After careful consideration of the applicant's claims, I have reached the conclusion that he cannot claim any compensation in view of this involvement in the two matters I have referred earlier in my judgment.

Consequently I Order the Respondent Board to pay the Applicant a sum of E5240/= being his severance allowance.

I make this Order as an Award of this Court.

My Assessors agree with my decision.

J.A. HASSANALI,

PRESIDENT.