

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

Case No. 154/91

In the Matter Between:

BERYL NICHOLAS (MRS) Applicant

AND

JOHN THATCHER T/A THATCHERS

JEWELLERS AND MANTENGA FALLS HOTEL Respondent

CORAM:

Martin Banda: President

Vusie Dlamini: Member

Josiah Yende: Member

Thembela Andrew

Simelane: For the Applicant

Micah Mavuso: For the Respondent

JUDGMENT

The Applicant in this matter is claiming compensation for the unfair termination of her employment by the Respondent. Her claim is made up as follows:

(1)	Compensation in terms of Section 13 (4) of the Industrial Relations Act	E 6,600-00
(2)	Notice	E 1,100-00
(3)	Improper deduction	E 390-00
(4)	Incentive bonus unpaid for the months of June, July and August	E 236-62
		E 8,392-62

The Respondent denies dismissing the Applicant and avers that the Applicant resigned when requested to do so after making admissions regarding irregularities in the till and missing jewellery from the shop.

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On the 19th September 1991 the Applicant filed this application in Court.

On the 21st November 1991 the Respondent filed a reply. At the time the Respondent filed his reply, the Court had already set the 28th November 1991 as the trial date. Consequent to the filing of the Respondents reply this matter was adjourned to the 17th February 1992 for trial. On the 17th February, 1992 the Court was not in a position to form a quorum. Matter was adjourned to the 24th March, 1992 for

trial. On the 24th March 1992 the Court could not succeed in forming a quorum. The case was adjourned to the 11th May 1992 for trial. On the 11th May 1992 trial of this matter commenced. The Applicant gave her evidence in chief and was cross examined. The case was adjourned to the 20th May, 1992 for submissions. The Court delivered its ruling on the 1st June 1992. The matter was adjourned to the 11th August, 1992 for the continued cross examination of the Applicant.

The case for the Applicant is that she was unfairly dismissed. The issue is whether she was unfairly dismissed or resigned. The Respondent's case is that the Applicant removed a certain amount of money and property without the proprietors consent. It is the Respondent's case that the Applicant was confronted, accusations were put to her and she admitted acts of dishonesty. She was requested to resign. She did. She was never dismissed. In the alternative it is the Respondent's case that if the Applicant was dismissed such dismissal was justified in terms of Section 36 (1) of the Employment Act.

The Court has had only the opportunity of listening to the testimony of the Applicant and not that of the Respondent.

The Applicant testified in support of her case. She stated that she was employed by the Respondent on the 1st October, 1988 as a Manageress. On the 30th August 1990 she was dismissed by the Respondent. Her monthly salary was £1,100-00. She does not know why she was dismissed. She said it is not correct that the reason for her dismissal was that she had committed a dishonest act against the Respondent. Before dismissal she was not given any warning. The Applicant stated that she was not confronted with allegations of dishonesty before she was dismissed.

On the 30th August 1990 Mr Thatcher asked the Applicant to resign because he had up to his neck. He never explained what it was. He did not specify reason for the Applicant's dismissal. The Applicant was paid £287-69 on the date she was dismissed; She was not given a written letter of dismissal.

She is unemployed.

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The Applicant was cross examined at great length. As earlier outlined the Respondent denies that he unlawfully terminated the Applicant's employment. No evidence was led to support this averment. The law provides that the services of an employee shall not be considered to have been fairly terminated unless the employer proves that the reason for the termination was one permitted by Section 36 and that taking into account all the circumstances of the case it was reasonable to terminate the service of the employee.

For the employer to discharge the burden placed on him by Section 42 of the Employment Act evidence must be adduced before court. The Respondent must testify before court.

In the present case the Applicant's testimony has not been challenged. We are satisfied that the Applicant has discharged the burden of proof on a balance of probability.

It is ordered that the Respondent do pay the Applicant the following relief:

- (1) Notice. E 1,100-00
- (2) Improper deduction E 390-00
- (3) Incentive bonus unpaid for the months of June, July and August. E 236-62

On the question of compensation. We are satisfied that the Applicant has complied with the provisions of Section 13 (3) of the Industrial Relations Act. She is 56 years of age. She is unemployed. It is ordered that the Respondent do pay to the Applicant 6 months salary by way of compensation in the sum of £6,600-00

The nominated members have concurred.

MARTIN SAMSON BANDA

INDUSTRIAL COURT PRESIDENT