

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

Case No. 14/93

In the matter between:

DAVID LANGWENYA Applicant

and

ROYAL SWAZI SUN Respondent

CORAM:

MARTIN BANDA : PRESIDENT

VUSI DLAMINI : MEMBER

JOSIAH YENDE : MEMBER

NSIBANDE : FOR THE APPLICANT

PATRICK FLYNN : FOR THE RESPONDENT

JUDGEMENT

It is not seriously in dispute that the Applicant was employed by the Respondent on the 1st July, 1988 as a dealer in the Casino. He was dismissed on the 25th February, 1992. At the time of his dismissal the Applicant earned a monthly salary of E775.00.

It is common cause that in February 1992 the Respondent conducted a disciplinary inquiry involving the Applicant. The Applicant was charged with the contravention of two procedures namely: (a) manipulating the black jack game and (b) cheating in collusion with punters. Notice of the hearing was given and the Applicant was represented by Mr. Joe Sikhosana the Assistant Estates Manager. The Respondent lead the evidence of its witnesses. They were cross examined by the Applicant. The Applicant gave his evidence. The inquiry was held on the 20th February, 1992. The decision was given on the 25th February, 1992. The Applicant was found guilty of the charges raised against him and was dismissed.

It is common cause that on the 13th January, 1992 the Respondent conducted a disciplinary inquiry involving the Applicant. A decision was made after the inquiry which became the subject of an appeal by the Applicant. The Applicant challenged the inquiry on the grounds that it was unprocedural and that insufficient time was given to him. The Applicant was represented by Mr. Nkambule. The appeal was upheld.

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The Respondent decided that the matter be reheard. It was reheard. There was no appeal after rehearing.

The history of this case is that in November 1991 a surveillance team whose duty is to ensure that

Casino procedures are adhered to by staff and the public visited the Royal Swazi Sun the Respondent. They were instructed to identify people that were not complying with company procedure. The instructions of the surveillance team was that the tips procedures were not being adhered to on casino tables. What the team did was to play on the table posing as members of the public. The staff in the casino did not know that there were surveillance officers. As a result of the visit of the surveillance team the Applicant was charged with breaking company rules. He was charged with peeping the cards, manipulating the game and participating in the game. An inquiry was held concerning the Applicant.

The case of the Applicant is that he was dismissed summarily in February 1992. The reason for dismissal was that he was dishonest. The Applicant alleges that he was given some sort of hearing and that despite the hearing the dismissal was unfair. The Respondent on the other hand contends that the dismissal of the Applicant was fair and lawful for dishonesty after a disciplinary hearing.

The Applicant testified before court and stated that the Spa Holdings sent people from the headquarters in Johannesburg to come down to the Swazi Sun to check on how they were cheating the cards. They came on the 24th November, 1991 and he was dealing on table 4. They alleged that the Applicant for about 90% of the time spent at the table he was checking the cards looking at the cards. On the 6th January at about 9.30 p.m. the Applicant was called into an office. In that office he found about 9 or 10 persons seated. The only people the Applicant knew in that office were Mr. Robson, Mr. Jele, Mr. Kentgens, Mr. Peter Jones the Assistant Manager Casino and a surveillance officer. Mr. Robins asked the Applicant if he knew the other people and the Applicant said he had never seen them before. Mr. Robins tried to threaten the Applicant. He banged the table and asked the Applicant if he knew these people. Mr. Robins said the Applicant should talk the truth. The surveillance officer was then asked to take the Applicant to the Security office. He was kept there for 2 1/2 hours. After this the Applicant was given a letter saying that they were suspending him for cheating in the Casino. The Applicant was told to come back on the 13th January for hearing. On the 13th there was a hearing. The Casino Manager was there and three people. Before

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the hearing the Applicant told the Casino Manager that his representative was not present. Mr. Robins gave the Applicant 5 minutes to look for his representative. When the Applicant told Mr. Robins that he was not prepared to sit for the hearing the Applicant and Jerome were told to 'fuck off'. Mr. Robins gave the Applicant 5 minutes to look for his representative. The Applicant tried to look around the Casino and met Mr. Matikweni a Shop Steward also known as Nkambule who agreed to represent him. The hearing was conducted witnesses testified. The Applicant was asked to come on the 15th for the results. He was given a dismissal letter. He appealed to the Personnel Manager. The Applicant was called for a second hearing on a date he has forgotten. The result of the second hearing was also a dismissal.

The Applicant had 5 years experience as a dealer. He said it is impossible to peep at the cards when you are dealing. The procedure is that you have to deal fast. The Applicant said the dismissal was so unfair even the money the people who say they played for him didn't even give him the money. Even the certain Waitress they say gave him money never gave him the money. He did not do what was alleged.

The Applicant has gone to a great length to describe the events that happened in the first hearing conducted on the 13th January. The decision was given on the 15th when he was handed a letter of dismissal. He appealed to the Personnel Manager. He was called for a second hearing. The evidence of DW5 Mr. Vusani Simelane the Personnel Manager of the Respondent is that he is the Appeal Chairman. He dealt with an appeal from a hearing in which the Applicant was involved. The disciplinary inquiry of 13th January, 1992. The grounds of appeal were that the Applicant felt that

certain issues were unprocedural and that insufficient time was given. The Applicant was heard on appeal. The Appeal Chairman was persuaded that the disciplinary hearing was unprocedural. He entered his decision. He then looked for another person to re-hear the case.

It will be recalled that we did earlier in the judgement state that it is common cause that the appeal of the Applicant from the hearing conducted on the 13th January, 1992 was upheld and a re-hearing was ordered. This is the hearing that DW5 was testifying about. The reason for ordering the re-hearing was that it was unprocedural and that insufficient time was given to the Applicant. The Applicant has not testified on the conduct of the second hearing other than he was called to a second hearing on a date he has forgotten. The result of the second hearing was also a dismissal. The case of the Applicant is that he was dismissed

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summarily after some sort of hearing and that despite the hearing the dismissal was unfair. His evidence in support of this claim is that it is impossible to peep at the cards when you are dealing. The people who say they played for him did not give him the money even the Waitress they say gave money to him never gave him the money. He did not do what was alleged.

The Respondent lead evidence of its witnesses and conducted a demonstration to the court on an inspection in loco to disprove the evidence of the Applicant. The evidence of the Applicant under cross examination was that he was not given an opportunity to call witnesses. He said the Surveillance Officers were at this table at 4.00 p.m. He was not the dealer at that time but Florence. He checked on the list and rota. On that day he started work at half past six. In re-examination the Applicant said when he checked with the list he started work at half past eleven to half past twelve on the 24th November. The contradiction in time is clearly evident. In evidence in chief the Applicant did not say he was not given an opportunity to call witnesses during the second hearing.

The evidence of DW1 Ben Danny Steyn a Surveillance Officer is that on the 24th November, 1991 he visited the Royal Swazi Sun in a team of four surveillance officers, Nick Swart, Peter Engelbrecht and H. Fourie. They were instructed to identify people who were not complying with company procedure on tips at the casino tables. What they did was to play on the table the four of them posing as members of the public. They came across an incident involving David Langwenya on the 24th November, 1991. They were playing on Black Jack table number 4 and when David approached them he immediately dominated the whole game by peeping at the cards. By so doing he determines who wins and loses on a particular box They proceeded on playing the game and gave tips to the Applicant. The person playing on the first box Mr. Fourie pushed tips for the Applicant over the table.

Mr. Fourie then placed those tips on a second box next to him. This was irregular. As the game progressed no tips were handed to the Applicant. His tips were placed on that desk. They gave their tips to Mr. Fourie and he handled them. He was in charge of the tips. Those tips became part of the game. The Applicant was then participating in the game as a dealer and employee of the Respondent.

This was irregular. Those tips got more and more. This hand was winning. When Applicant's turn to deal was over. He was relieved.

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Whereupon a waitress by the name of Nellie approached Mr. Fourie to ask for David's tips. She took the tips. This included the winnings and tips everything. The total amount was E380.00. DW1 gave evidence to the inquiry on this matter. He attended both inquiries on the 13th January and the other on 20th February, 1992.

Under cross examination DW1 said Mr. Fourie opened the box for David. He knows because he was told by Mr. Fourie. Mr. Fourie did not talk to David before the game. To the personal knowledge of DWI there was no discussion of the box being opened for David. The atmosphere is of such a kind that you speak freely to the dealer and the dealer speaks freely to you. To the personal knowledge of DWI he does not know if David picked up any money from Nellie. Mr. Fourie told DWI that he must give the tips to him as well as Mr. Swart and Engelbrecht. Mr. Fourie told DWI while the game was progressing. DWI personally thought the waitress was an intergral part to be called as a witness.

The evidence of PW2 Nellie Jozini a waitress is that she knows about the dismissal from employment of the Applicant. She was called by management in connection with this matter. She was asked by the management if she ever accepted or was ever given any money by the punters at the Casino. Her response was that she had not and did not have any entitlement to accept such money. She does not remember when she was called.

Under cross examination PW2 said she only remembers that she was called and asked questions concerning the dismissal of David. She was being asked by the Casino Manager Mr. Robinson. She told him she knew nothing about what he was asking her.

DWI under continued cross examination said when they went to the table there were inspectors on the table. Most of the time while they were playing David was peeping at the cards. The inspector on the table didn't see this. The surveillance officers did not see it. There were surveillance officers on the floor patrolling the casino floor. DWI said it is very difficult for someone operating the camera or walking the floor to pick it up. They are also trained like him. The game goes on with a lot of speed and there are people between them and the Applicant. They cannot see.

Under re-examination DWI said the inspector did not see what was going on. If she did she would have stopped it. The cheating which was going on was very professional. If the inspector concentrated on the other table it would be difficult for her to notice the cheating. He couldn't

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blame her. The surveillance officers were on the floor patrolling a wide area. Because of the speed of the game and people sitting at the table they form a barrier between him and the dealer. It would be very difficult for the surveillance officer to pick it up. There are cameras in the casino. It was very difficult for a person operating the cameras to pick it up. The cheating by the Applicant could only be picked up by someone playing on the table.

The Respondent then lead the evidence of DW2 Nicholaas Jacob Swart who was a Surveillance Shift Manager and is now a Security Shift Supervisor. In November 1991 he came to Swaziland on duty with three surveillance officers Harry Fourie, Ben Steyn and Engelbrecht. The purpose of his visit was to identify people that didn't adhere to procedures on the tables in the casino. The local casino did not know that they were coming down. They came down to Royal Swazi as a group of golfers. Quite noisy and happy group. They played with a lot of money and topped with a lot of money.

On the 24th November, 1991 they played on Black Back table number 4. One dealer was relieved and a new one came in. The dealer who came in immediately made an arrangement with Mr. Harry Fourie. Mr. Ben Steyn told DW2 to pass on the tips that he would have given the dealer over the table to pass it over to Mr. Fourie. At this stage they had identified a pattern. Due to previous experience on that same weekend they had already identified the pattern of how they dealt with the tips that were received from the punters. It was not strange for DW2 to pass on his tips to Mr. Fourie. Mr. Fourie kept the tips next to him in a little tray where you can place chips. DW2 saw that Mr. Fourie took those chips and opened the next box with those chips. These were chips provided as tips to the dealer. Mr. Fourie was playing on behalf of the dealer. This was an irregularity. DW2 has no doubt that the dealer

who was involved in the irregularity was David he could only identify him with his name tag.

DW2 testified that what happened when the dealer was cheating the cards is that he played the game so fast that it was impossible for the punter to control the game. In the normal game the punter has a roll. They have 7 boxes. The dealer starts from the left hand side. Each box that is placed on that table gets one card and the dealer gets one card. Then the dealer deals a second card for each box that is open. The dealer does not get a second card. When he dealt with the last card the dealer had already drawn another card out as if there was another box to be played. The dealer already knows the denomination of the card. He places the card under the shoe.

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a dealer points to a box and announces a total of perhaps 6 or 16 and then it is up to the punter to respond by saying card or stay. Under cross examination DW4 said with the amount of experience that an inspector has these cheat moves would have been picked up. DW4 said she does not understand why the inspector did not spot the cheat moves if he was doing his job properly. Under re-examination DW4 said if you knew what you were looking for you could see the cheat moves on the monitor that is on the camera. This evidence is in direct contradiction to that of DW1 who said that the inspector on the table didn't see the Applicant peeping at the cards. The surveillance officers didn't see it. DW1 said it is very difficult for someone operating the camera or walking the floor to pick it up.

Under cross examination DW2 said he was told by Mr. Steyn DW1 to hand over the tips to Mr. Fourie.

DW2 said you can play more than one box per punter. DW2 did not hear what Mr. Fourie discussed with the Applicant. It was reported to him by Mr. Fourie after the game. It was possible that Mr. Fourie had opened the other box for himself. After the game there was a conversation between Mr. Fourie and the waitress. DW2 cannot tell what the conversation was about. He cannot tell whether those chips were taken to the Applicant. DW2 said he was surprised that the inspector did not pick up the irregularities during the 45 minutes that they played at the table. DW2 did not know that Mr. Fourie was playing for the Applicant.

In re-examination DW2 gave the following as irregularities in the playing of the cards by the Applicant.

The dealer was looking at the cards. Opening a second box for the dealer. The fact that the dealer was not giving punters a choice was an irregularity. We have pointed out that DW4 has said peeping at the cards is not an irregularity it is not a breach of procedure. DW2 did not know that a second box was opened for the dealer he was only told by Mr. Fourie. According to DW2 the inspector assigned to the Applicant's table was performing her function properly.

DW3 Peter William Engelbrecht a Surveillance Shift Manager gave evidence more or less like the other of the Respondent's witnesses. He said on the 24th November, 1991 he played on the table where the Applicant was the dealer. Mr. Swart who was seated next to him told him all the tips must pass to him to Mr. Fourie who was keeping the tips on the side. He did that. In the course of play he realised that the Applicant was peeping at the cards before dealing to the players. The Applicant was making choices for the punters where the card would go. DW3 saw

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Mr. Fourie passing the chips they gave as tips to Nellie a waitress.

Under cross examination DW3 said the peeping would have been picked up by anyone trained in the casino. The casino managers, inspectors and dealers, surveillance department would have picked it up. This is the job they were paid for the surveillance officers and inspectors. They passed the tips to

Mr. Fourie on the instructions of Mr. Swart. DW3 does not know why Mr. Fourie gave the tips to Nellie.

DW4 in her evidence in chief said she can prove a lot of cheat moves that she has seen on camera.

DW4 said it is possible to peep at cards and that the game can be controlled if the punters have indicated to the dealer that they wish to cheat or the dealer has indicated to the punters that he would like to cheat. This evidence must be viewed with that given by the same witness when she said that it is important to make eye contact with the punter to give the game a bit more of a personal touch and to better understand what the punter wants sometimes his body language or his hand signals don't correspond with what he really wants. This evidence must be viewed with that of other witnesses who do not say they heard the Applicant talk to Mr. Fourie. These witnesses said Mr. Fourie told them to pass their tips meant for the dealer to him. It is Mr. Fourie who opened the second box. The punters gave their tips to the Applicant. The person playing on the first box Mr. Fourie pushed tips for the Applicant over the table. It is not clear to whom or where the tips were pushed. What is clear is that Mr. Fourie then placed those tips on the second box next to him. DW1 says this was irregular. It is not clear whether the Applicant knew that those were his tips. It is not clear if the Applicant knew that the tips were being placed on the second box for him. It is not clear if the Applicant was aware that he was there after participating in the game. All we have before us are inferences no clear evidence. We have been placed with a lot of assumptions and conclusions but no evidence to clearly assist us in coming to the same conclusions and assumptions as made by the Respondents witnesses. The same witnesses say there was no breach of procedure by peeping at the cards by the dealer. The witnesses have also said the punter can open two boxes at the table. It was necessary for evidence to be lead to show that the box which Mr. Fourie opened was not his but that of the dealer. We have heard that in a normal game the punters and the dealer speak freely. DW2 said the tips ought to have gone into a slot. He did not describe

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the procedure and how the tips should finally end up in the slot. He does not explain why Mr. Fourie did not place the tips in the slot.

DW2 attempted to explain the procedure of tips. He said what a dealer does when he received a tip is to tap on the table so that the inspectors attention can be drawn that he is not keeping the tip for himself. He did not explain how the dealer receives the tip. He did not explain how the dealer knows he has received a tip. He did not explain how that tip ends in the slot.

DW4 in her evidence in chief said most people when they come into the casino do not understand the game. Quite often they would ask the dealer for perhaps advice or ask the other punters advice on how to play. DW4 then explained how the first card is deal by the dealer to the punters and himself. A second card is dealt to each player or punter. The dealer does not deal himself a second card. The dealer then asks the person playing on the first box whether he would like a card. If he wants a card he is given a card. The dealer then asks the person on the second box if he would like a card or not.

The choice of the player depends on what the dealer has. If he wants a card he is given a card. If he is then happy with his hand then the dealer goes and asks the person on the second box whether they would like a card.

DW2 said the correct procedure was to deal each punter two cards and then ask the first punter if he wants another card or not and then draw that card. DW2 said the Applicant everytime instead of asking the first punter he drew out another card as if to deal. With the speed of the game there was no time for the punter to decide whether he wants a card or not. With the speed of the game the dealer was deciding for the punter. The dealer decided who could win with the knowledge of the card.

There has been no suggestion or evidence that other than the box which Mr. Fourie was allegedly

playing for the dealer any of the other punters benefitted from the knowledge that the dealer had of the card.

The Respondent in their reply say the Applicant was dismissed for reasons of dishonesty. The Applicant says he was charged with peeping at the cards. We have already held that in view of the evidence before court there was no contravention or breach of the Respondent's rules by the Applicant peeping at the cards. The Applicant was also charged with manipulating the game. That is deciding the game for the punters. None of the witnesses have said before court that when he was offered a third card by the Applicant he did in anyway inform the Applicant he did not want the card but had the decision made for him by the Applicant. DW4 said to better understand what the

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punter wants there is need for the contact as sometimes the body language or his hand signals don't correspond with what he really wants. There was need therefore for evidence to be placed before court clearly showing that the Applicant knew what the punters before him wanted. It was necessary to show that in spite of knowing what the punters wanted the Applicant proceeded to ignore the wishes of the punters and made the decisions for them irrespective of whether they wanted a card or not. The other charge against the Applicant was that he was participating in the game. The evidence of DW1 is that Mr. Fourie told him he had opened the box for the Applicant. To the personal knowledge of DW1 there was no discussion of the box being opened for the Applicant. The evidence of DW2 is that he did not hear what Mr. Fourie discussed with the Applicant. It was reported to him by Mr. Fourie after the game. It was possible that Mr. Fourie had opened the other box for himself. DW2 did not know that Mr. Fourie was playing for the Applicant. DW3 did not give any to the court on this point. There is clearly no evidence before court showing that the Applicant was participating in the game.

The Respondent then lead the evidence of DW6 John Cameron Fraser the Financial Director of the Respondent who stated that in February 1992 he had occasion to deal with a disciplinary inquiry involving the Applicant. He was the chairman of the inquiry. Mr. John Robins the Casino Manager at the time was the prosecuting officer. The Applicant was charged with contravention of two procedures and manipulating the black jack game thereby cheating in collusion with punters. The charge was put to the Applicant. He was represented by the Assistant Estates Manager Mr. Joe Sikhosana. More than one week notice was given for the inquiry. Two witnesses Mr. Ben Steyn and Henry Fourie were called. The Applicant was given an opportunity to put questions to the witnesses. He put questions to the witnesses. It was explained to the Applicant that he had opportunity to give evidence. He gave evidence . Questions were put to him by the charging officer. The Applicant was told he could call witnesses for his defence. He did not call any witness. After all the evidence was heard DW6 considered what the decision would be. The inquiry was held on the 20th February, 1992. DW6 gave his decision on the 25th February, 1992. DW6 considered whether the Applicant was actually cheating. His decision was that the Applicant was guilty of the offence. Having gone through the evidence DW6 found that there were reasonable grounds that the Applicant was guilty of the offence. DW6 gave the reasons for his decision. He said the Applicant was guilty of contravening the procedures. The Applicant was charged with contravening two procedures basically cheating.

Cheating

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is a serious offence. It is a dismissable offence. DW6 considered that the dismissal was reasonable and warranted in the Applicant's case. Mitigating factors were looked at. The Applicant was told of the disciplinary action that was to be taken. He was thereafter informed of his rights of appeal. The Applicant waived his right of appeal.

The Applicant at the end of the case made an application to amend the heads of his claims and the application was granted. The Applicant's claim is now represented as follows:

- a) Compensation E4650.00
- b) Severance Allowance 1291.00
- c) Additional Notice Pay 516.67
- d) Leave Pay 775.00

The salary per month of the Applicant was also amended to E775.00.

The evidence of DW6 is that DW1 Ben Steyn and Mr. Fourie testified before the inquiry. The court has not heard the testimony of Mr. Fourie. It has heard the testimony of DW1 Ben Steyn. The evidence of DW1 before court is that Mr. Fourie told him he had opened the box for the Applicant. To the personal knowledge of DW1 there was no discussion of the box being opened for the Applicant. This is the evidence that DW6 heard as Chairman of the disciplinary inquiry. The Applicant says his dismissal was unfair. The Respondent says the dismissal was fair and reasonable after a disciplinary inquiry was conducted to hear the matter. The court has been shown the conclusion that DW6 decided to place on the evidence that was before him. The court has not been shown what evidence was placed before DW6. We are aware and appreciate that cheating among the staff in the casino of the Respondent as shown by DW1 is a very serious matter which can lead to disastrous financial consequences for the Respondent. A dishonest dealer would have detrimental consequences on the undertaking of the Respondent. Being mindful of that it is for the Respondent to show that a dealer was dishonest and not leave the matter to chance, speculation or doubt. In the present proceedings the Respondent has not been able to show what evidence was placed before it. The Respondent has failed to show that it took into account all the circumstances of the case and decided that it was reasonable to terminate the services of the Applicant. The Respondent has failed to show through evidence and witnesses that the Applicant was guilty of dishonest acts. It is our decision that at the time when the Applicant's services were terminated he was in continuous employment of the Respondent. It is our decision that the dismissal of the Applicant by the Respondent was unfair and unreasonable.

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Both the Applicant and the Respondent did not lead any evidence on the claim for leave pay. We are therefore not in a position to decide on this head of claim and shall make no order on it.

It is ordered that the Respondent do pay the Applicant the following terminal benefits:-

- a) Severance allowance E1291.00
- b) Additional notice pay 516.67

We are satisfied that the Applicant has discharged the requirements of Section 13(3) of the Industrial Relations Act. We order that the Respondent do pay the Applicant six months salary by way of compensation.

The members have concurred.

MARTIN SAMSON BANDA
PRESIDENT INDUSTRIAL COURT