

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 113/94

In the matter between:

STEPHANUS J. PRINSLOO                      APPLICANT

And

INYATSI SUPERFOS                              RESPONDENT

CORAM:

MARTIN BANDA                                      : PRESIDENT

JOSIAH YENDE                                      : MEMBER

NICHOLAS MANANA                                : MEMBER

MASHIKILISANE FAKUDZE                        : FOR THE APPLICANT

ZWELETHU JELE                                    : FOR THE RESPONDENT

#### J U D G E M E N T

The Applicant seeks compensation for his alleged unfair dismissal by the Respondent from his employment.

It is common cause that the Applicant was employed by the Respondent on the 11th October, 1991 as a Foreman. His services were terminated on the 13th September, 1993.

The Applicant gave evidence and stated that ne was transferred from Botswana to Swaziland in April, 1991 by the Respondent. He was stationed at Big Bend where they were rebuilding the Big Bend/Helehele road. His duties as a Foreman was to do layer works, storm water pipes, stabilization and crusher run. The Applicant stated that the owner of a filling station garage at Big Bend asked him to cut a road from the tar road to the hotel and to do construction work at the filling station. The Applicant authorised the use of the Respondent's equipment

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without obtaining authority from Head Office. This was not part of the road rebuilding project that he was involved in.

He was confronted about this project by the Security Manager MR. FERREIRA in the presence of MR. MORRISON. Prior to receiving the letter of dismissal the Applicant had a meeting with MR. BRIAN PARSSON the Managing Director of the Respondent in the presence of MR. BULMER the contract Manager. MR. BULMER explained to the Applicant why he was being dismissed. He was paid salary for September, October, November and December, 1993 in the sum of E21.000. In the letter that Applicant attached to his application his salary was reflected as R4.500 per month. In his claim for notice pay, leave pay and additional notice he claims E5.400 for each item. Under cross examination he admitted that his salary was E3,840.00 per month as reflected in the Respondent's reply and from his pay slip.

The Respondent lead the evidence of DW1 MR. ARMANDO FERREIRA the Security Manager who stated that one morning in July, 1993 a South African worker walked into his office claiming that there was work being done at a service station in Big Bend using Respondent's material and plant. DW1 took the statement from the worker. He immediately informed MR. ERIC MORRISON the project Manager who in turn informed MR. GEORGE MOYERS the Site Agent. The three of them drove to

the location and discovered that the information received was correct. They found some of the material still coming out of their bakkie and the plant bore the name of Inyatsi. The three of them then drove to the site Office at Gilgal where Applicant was summoned to appear in front of them. That is in front of MR. FERREIRA, MR. MORRISON and MR. MOYERS.

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An inquiry was made from the Applicant. He was asked if he knew the work that was being done at Big Bend Service Station. The Applicant's answer was yes. He admitted that he was involved in the work at the Big Bend Service Station and that this was with the knowledge of the Site Agent MR. MOYERS. MR. MOYERS informed the meeting that he had no knowledge of the work being done at Big Bend Service Station. He informed the meeting that Applicant had asked him for a quotation for the job. DW1 then produced a confidential report for the Managing Director. DW1 was called into the Managing Director's Office where he was told that Applicant had some information regarding other members of staff but was scared of them. DW1 made arrangements to meet Applicant outside the premises of the Respondent. Applicant then gave DW1 information about irregularities which he Applicant was aware of. DW1 investigated these irregularities and confirmed them. This information was submitted by DW1 in a confidential report to the Managing Director. DW1 felt Applicant was trying to protect himself by spilling the beans about something he knew before but never reported.

The Respondent then lead the evidence of DW2 RAYMOND THWALA a driver who worked with the Applicant on the Helehele Big Bend Road. DW2 said he knows Imbabala Service Station of Big Bend. Respondent was involved in resurfacing the service station. DW2 was one of the employees involved in the rehabilitation. Applicant was also involved. Equipment of the Respondent was used in the rehabilitation. Some of the equipment used was a roller, water tank and grader and material from the Respondent was used. The work took less than two weeks and it was done during the day and night. DW2 was sent by the Applicant to Gilgal to collect some drums of tar to be used at the filling station.

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The Respondent then lead the evidence of DW3 BRIAN EDWARD PERSSON the Managing Director who stated that it was discovered and admitted by the Applicant that he was using company material without authority to do a private job for his own financial gain. DW3 received a report from the Security Manager MR. ARMANDO FERREIRA which was confirmed by the Contracts Manager MR. MALCOM BULMER and the Site Agent MR. GEORGE MOYERS. DW3 said the Applicant admitted to him. DW3 never gave permission for the work at Big Bend Service Station to be done. He did not give authority for the regraveling of a road from the main road to Big Bend Hotel. DW3 stated that after Applicant had admitted, he instructed the Contracts Manager to dismiss him from employment. DW3 said they do not usually have disciplinary inquiries. If Applicant had denied the allegations they would have conducted a thorough investigation and given Applicant every chance to prove his innocence.

The Applicant in his own evidence had admitted that he was asked by a filling station garage owner to cut a road from the tar road to the hotel and to do construction work at the filling station. He has further admitted that he authorised the use of the Respondent's equipment without obtaining authority from the Respondent. He was confronted about this project by the Respondent. This admission of events has also been confirmed by the Respondent's witnesses.

It would appear, if we are not mistaken, that the Applicant's case is that he feels his dismissal was substantially and procedurally unfair because he never appeared before a disciplinary hearing and was not advised of his charges. We did state in the case of REUBEN MSIBI and THE LUTHERAN WORLD FEDERATION - CASE NO. 109/93 that it is not necessary that an employer should hold a formal inquiry before making its decision. What is important is that the employee should know what charges has been preferred against him by his employer. The employee should be afforded an opportunity to be heard on the xxxxxx

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In the Applicant's own evidence the owner of a filling station garage at Big Bend asked him to cut a road to the hotel and to do construction work at the filling station. The Applicant authorised the use of the Respondent's equipment without obtaining authority from the Head Office. He was confronted

about this project by the Security Manager MR. FERREIRA. He was given a hearing. He was given an opportunity to rebut allegations prior to dismissal.

In the evidence of DW1 he received the allegation in his office , went to investigate it and found it to be true and found some material still coming out of the Respondent's bakkie. The Applicant was then summoned to appear before DW1 and two other Managers. The allegation was put to the Applicant. He admitted it. The Applicant cannot now come before Court and say he was not heard because he was not charged with any offence prior to dismissal. Nor can his argument be sustained that he was never proven guilty. He was informed what was being alleged against him by the Respondent. He was given an opportunity to respond. His response was an admission of what was alleged.

What this Court has to determine is whether the Respondent had on a balance of probability proved that at the time the Applicant was dismissed it had reasonable grounds. On the basis of the evidence before us we are satisfied that the Respondent has discharged the burden of proof placed on it. In the present case the employee was made aware and did know what charge had been preferred against him by his employer. He was afforded an opportunity to be heard on the charge raised against him.

We are satisfied that the Respondent has shown what evidence was placed before it . We are satisfied that the Respondent has shown that it took into account all

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the circumstances of the case and that having taken all the circumstances into account decided that it was reasonable to terminate the services of the Applicant. It is our decision that the dismissal of the Applicant by the Respondent was fair and reasonable. We accordingly dismiss the Applicant's case.

The Members have concurred.

MARTIN SAMSON BANDA PRESIDENT

INDUSTRIAL COURT