



knew she was not supposed to receive cheques.

She went home and reported to work the following morning. On the 28th May, 1997 while she was working Busi Motsa told her to stop working. She however remained at work and kept on reporting until the 30th May, 1997 when Busi Motsa asked her to go and apologise to the Respondent. This was in presence of one Mr. Magongo. She continued to work until the 3rd June, 1997 when the Respondent dismissed her.

She told the court that she had not received any previous warning. That it was normal for regular customers to pay by cheque and she had not been informed not to accept cheques from any particular customer. She testified further that she was not given a fair hearing and she denied any wrong doing. She was paid one month salary in the sum of E689; E59 for overtime and E254.44 for unutilised leave when she was dismissed.

Her further testimony was that she had remained unemployed inspite of her efforts to seek a job. She has a lot of debts as a result of the loss of employment. She is now 30 years old. She produced exhibit "A" showing that the Respondent owed her overtime payments in the sum of E628.40 as at 31st January, 1997.

It was put to her in cross examination that company procedures did not allow a cashier to receive a cheque without prior approval of management. She however explained that was only true in case of non frequent customers. That she had received cheques from frequent customers and to her knowledge there was no problem with that.

The Respondent did not produce any document to substantiate this alleged company procedure.

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She also said that in case of regular customers, it was not necessary to seek authorisation of management before receiving a cheque. She denied ever receiving a warning from Busi Motsa regarding issuing of cheques and emphasised that this was the first time a cheque she had received became controversial.

The Respondent's counsel put to the Applicant that she had received exhibit "P1" a cheque dated 3rd May, 1997 for a sum of E1,606.10 and that this is the cheque that resulted in her dismissal.

Mr, Busi Motsa testified on behalf of the Respondent. He told the court that Applicant was dismissed in June 1997 for failing to follow company procedures inspite of numerous warnings. He said that he gave two warnings to the Applicant and the first one was in writing to all employees comprising a set of rules regarding shop assistants. He did not produce the set of rules he referred to. This was denied by the Applicant,

The second warning was given verbally according to Busi when she was called by the Managing Director and failed to explain why she had accepted a cheque without approval and she was then dismissed.

Clearly neither a set of rules issued to all employees nor a reprimand followed by dismissal can constitute a warning in terms of the law. A warning is given for a specific wrong committed by an employee. The same constitutes a notice that should the same wrong be repeated further action would be taken.

Mr. Busi Motsa acknowledged that the customer who had paid by cheque to the Applicant had replaced it with cash. According to him however, the replacement was after the Applicant had been dismissed and not before. This was denied by the Applicant who said that the money was paid before she had been dismissed although she was unclear initially whether it happened on the same date the cheque was received or on a Monday that followed.

He testified that the Applicant was given a fair hearing before she was dismissed although he admitted he was not present when the Applicant was called by Mr. Moses Motsa to his office. He admitted that on her dismissal she was not given notice or paid in lieu of notice. He also admitted that

pre-screned customers who arc regular do pay by cheque but with management's approval.

Though he alleged that Applicant received two cheques this was never put to her when she testified in chief. Indeed what was put to her is that the cheque dated the 3rd May, 1997 drawn by Wilson Investments led to her dismissal which assertions were contradicted by Mr. Busi Motsa.

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On a proper analysis of the evidence adduced by the parties, we have concluded thus:

- (i) that regular customers were allowed to pay by cheque at the Respondent's shop.
- (ii) that these customers bank details were pre-checked by management before they authorised them to be paying by cheque.
- (iii) that no warning specific to any wrong doing by the Applicant was given to her before she was dismissed,
- (iv) that she received a cheque from a regular customer on the 26th May, 1997 and when Mr. Busi Motsa declined to accept the cheque from her, the customer was requested to replace the cheque by cash which he promptly did the Monday that followed and before she was dismissed on the 3rd June, 1997.
- (v) that there is no evidence whatsoever from the Respondent, Mr. Moses Motsa, the person who dismissed the Applicant as to the reason why he did so and whether or not he had given her a fair hearing. Applicant's evidence that she was simply told "Fuseki" a derogatory term for being chased away is uncontroverted and we do accept that she was unfairly dismissed.
- (vi) No financial loss resulted from any conduct on her part since the cheque she had received was promptly replaced.

Generally, the Applicant was a credible witness and we accept her testimony regarding the facts that led to her dismissal. We reject the evidence of Busi Motsa in this respect.

We have considered the circumstances that led to her dismissal and her relationship with the management of the Respondent and concluded that this is not an appropriate case where reinstatement should be ordered.

We have considered her personal circumstances to the effect that she has not found employment since she was dismissed. Her career prospects were diminished following the dismissal by the Respondent. She supports minor children as a single mother and that she did not in any way intentionally contribute to her dismissal. She was in continuous employment of the Respondent for a period of five years and seven months.

The Respondent admitted her claim for notice pay but she has failed to adequately prove the claim for overtime which was denied by the Respondent.

We accordingly find that the Applicant was substantively and procedurally unfairly dismissed and order compensation for unfair dismissal by way of eight (8) months salary in the sum of E5,612.00.

Payment in lieu of notice E 689.00

Severance Allowance E1,230.00

TOTAL E7.531.00

The Members concur.

NDERI NDUMA PRESIDENT - INDUSTRIAL COURT