

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 15/98

In the matter between:

ABRAHAM ZWANE

APPLICANT

and

O.K. BAZAARS (PTY) LIMITED

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. L. SIMELANE

FOR THE RESPONDENT:

ME MUSA SIBANDZE

JUDGEMENT

07. 09. 2000

The Applicant seeks maximum compensation for unfair dismissal, severance allowance and one month notice pay.

In brief, the Applicant's case is that he was employed by the Respondent in 1978 and was in continuous employment of the Respondent until 18th January 1994 when he was summarily dismissed.

The dismissal followed a disciplinary enquiry wherein the Applicant was charged for violating the company policy by converting E300.00 worth O.K. money into cash for personal use to the detriment of the Respondent.

In his particulars of claim, the Applicant denied changing O.K. money into national money alleging that he obtained his lawful entitlement to the O.K. money and bought grocery at the O.K. shop for E300.00 as per the company procedure.

In his evidence in chief however, the Applicant told the court that he owed E250.00 to his landlady. He decided to shop for two customers at the shop using his O.K. money entitlement and in return the two customers gave him E300.00 cash.

2

The Applicant was a Sectional Head of the Grocery Department and had supervisory role over the staff in the department.

The Applicant explained to the court that it was common to change O.K. money into national currency in the manner he had done and saw nothing wrong in it.

He explained that even his immediate manager Mr. Nkambule had instructed him and other members of the staff to utilise their O.K. money entitlement by converting it into national currency.

Each employee was entitled to the equivalent of 2/3 of their monthly salary in O.K. currency for shopping purposes. This was a staff benefit in that they bought goods at a discounted rate using the O.K. currency.

The day that followed the event, the Applicant was suspended by Mr. Nkambule pending a disciplinary hearing. The Applicant attributes the attitude of Mr. Nkambule towards him to personal vendetta. He told the court that he had never received any notice from the Respondent that converting O.K. money to national currency was wrong.

As regards the procedure followed in disciplining him, the Applicant alleged that he was never notified of his right to representation, however the notice of disciplinary enquiry served on the Applicant dated 19th December 1993 outlines what the Applicant was entitled to at the enquiry and these included :

1. representation by a person of own choice.
2. to give evidence.
3. to call witnesses.
4. cross examine company witnesses.

The hearing was scheduled for the 15th December 1993 and indeed it proceeded on the said day before a panel chaired by Mrs Cryn Wagon from the Head Office of the Respondent.

The tribunal found the Applicant guilty as charged and he was dismissed with effect from 18th January 1994. The Applicant was paid during the days he was under suspension and was in the letter of dismissal informed of his right to appeal which right he did not exercise. He told the court that he did not know to whom he could have appealed as the decision to dismiss him had come from the Head Office.

3

The Respondent called DW1 Richard Nkambule who was the Manager at the O.K. Nhlanguano where the Applicant worked. He explained that the Applicant was a Section Manager and he was well aware that O.K. money was strictly for the benefit of the staff.

He referred to R1, a booklet entitled "welcome to the O.K" which contained the employment conditions, Staff Benefits, and Rules and Regulations of the Respondent including Safety and Security, Grievance and Disciplinary procedure, and customer service.

Mr. Nkambule referred the court to page 21 of the booklet with a subheading "O.K. Money Policy". It reads as follows :

"All staff purchases must be made with O.K. money (the only exceptions to this rule being those employees identified by Head Office Personnel Division as not qualified for the facility).

The purchase of O.K./ Hyperama money from the office will automatically result in a discount of 10% and it is important to note that this is not given at till points.

The obtaining of national money in exchange for O.K. money under any circumstances is viewed as dishonesty and is prohibited".

The Applicant told the court that he was not aware of this policy document inspite of the fact that he was a Sectional Head and had served the Respondent for a continuous period of sixteen (16) years.

Mr. Nkambule on the contrary explained that every employee was supplied with this policy document. It was the responsibility of Sectional Managers to teach their subordinates the rules and regulations

contained therein and this was one of the responsibilities of the Applicant as a Sectional Head.

Where a staff member uses E300.00 of O.K. money he get goods valued at E330,00. This benefit could not be ceded to the members of the public as the Applicant had allegedly done.

He denied that it was customary at the shop to exchange O.K. money for cash as it was viewed as dishonesty by the Respondent.

Regarding the charge against the Applicant Mr. Nkambule told the court that the Applicant admitted the offence in his presence and he signed exhibit 'R4' which reads:

4

"I took O.K. money from the cash office and went to Phindile's till and requested her to change it for national money. I had E300.00 O.K. money, Phindile gave me national money, I did not buy anything".

The document dated 9th December 1993 is signed by the Applicant and witnessed by a Works Council Committee member and a co- worker Joseph Mavuso.

The Applicant sought to repudiate this admission in court and indeed gave a complete different version of what transpired.

According to Mr. Nkambule the Applicant simply took cash from the till in exchange of O.K. money but had not exchanged the same with some customers.

The implication of doing this is that the Respondent lost the benefit of the intended sale in return for the 10% incentive given to the staff.

At the hearing on the 15th December 1993, according to the record marked exhibit "A2" when the charge was read to the Applicant he pleaded guilty and prayed for leniency as he was the only bread winner for his family and that he had exchanged the money to pay his landlady who was shouting at the store for her rent. He said he could not borrow money from the management as he already owed E50.00 at the time.

The chairlady of the panel took all these issues into consideration before dismissing the Applicant.

The Applicant appears to us to be a very untruthful witness especially in his following assertions:

- (a) that he had never seen the O.K. policy booklet prior to the commission of the offence.
- (b) that he never knew it was wrong to exchange O.K. money to national currency. © that he never made the admission contained in 'R4' a document bearing his signature and witnessed by a workers representative.
- (d) that he was not notified of his right to representation when the notice he received clearly explains this right to him and finally:
- (e) that he never pleaded guilty to the offence at the hearing as is reflected in exhibit "A2" which was produced in court by him.

We reject his testimony entirely.

5

In terms of the Respondent's Grievance and Disciplinary Procedure, dishonesty is listed as one of the offences that warranted summary dismissal.

From the totality of the evidence before us, we are satisfied that the Applicant was guilty of a dishonest act.

Accordingly, the Respondent dismissed him for a reason contained in Section 36 of the Employment Act No. 5 of 1980. Bearing in mind all the circumstances of the case, it was fair and reasonable to dismiss the Applicant.

We make no order as to costs.

The Members Agree.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT