

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 39/99

In the matter between:

LYDIA SIMELANE

APPLICANT

and

MORKELS RETAIL GROUP t/a BERGERS

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. SIPHO MOTSA

FOR THE RESPONDENT:

MR. ZONKE MAGAGULA

JUDGEMENT

14 09.2000

The Applicant claims maximum compensation for unfair dismissal and terminal benefits emanating therefrom.

She was employed by the Respondent as a Manageress in 1986 and remained in continuous employment until the 9th January 1998 when she was summarily dismissed for alleged breach of company cashing up and banking procedures and gross negligence.

It is common cause that on the 9th January 1998 the cashier Sonny boy Simelane had a cash short fall in the sum of E1,300. By the time the Applicant discovered the short fall the Banks had closed as it was a Saturday, she therefore directed the cashier to put the money in the shop safe for Banking on the Monday that followed.

Meanwhile she notified Mr. Barend Martinez Grimsel from the head office of the shortfall and he promised to look into the matter on Monday.

When the Applicant and the cashier recounted the money on Monday, there was a further shortfall of E300 making a shortfall of E1,600. It appeared to the Applicant that the cashier had pocketed this money as he was in the habit of keeping shop takings into his pockets and was constantly rude and insurbodinate.

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The Applicant told the court that she had made several verbal reports about her dissatisfaction with the work performance of the new cashier but her plea had been ignored by Mr. Grimsel who was the regional manager responsible for Swaziland operations.

The Applicant made a further report of the extra shortage to Mr. Grimsel. He did not come that Monday but promised to send someone.

An officer from Nelspruit office arrived and instructed the Applicant and the cashier to record statements.

On the 8th January 1998 Mr. Grimsel and Mr. Taizer arrived at the shop and summoned the Applicant and the cashier to a meeting held at a sister shop in Manzini.

The Applicant was advised to bring a representative and she brought Mr. Dlamini, a Manager of the Mbabane branch. The Applicant and the cashier were questioned. The meeting was adjourned briefly and Mr. Grimsel called the Applicant and asked her to resign. The Applicant was shocked as she felt she was completely innocent. The Applicant declined to resign and her services were terminated.

She told the court that she was not charged for any offence prior to this meeting. The cashier was also dismissed. She reported the matter to the Labour Commissioner's office. Attempts to reconcile the dispute failed and the Applicant was provided with a certificate of unresolved dispute.

The Applicant earned E2,556 per month at the time of her dismissal. She was a widow and had three children.

She told the court that for the entire period she worked as a manager, she was not permitted to take leave. She had however been paid partly in lieu of leave and as at the end of January 1997 she had 74 ½ days accumulated leave.

She prayed for compensation, leave pay, additional notice pay and 100 days severance allowance.

She had failed to secure alternative employment inspite of efforts she had made. Due to her advanced age, she had almost zero chances of getting another job.

DW1 was Barend Yohannes Martinez Grimsel. He was the Regional Manager Swaziland in 1997. He told the court that everyday at 5.00 o'clock, the cashier cashed up the takings and upon counting the money, the manager cross checked that the money was properly balanced. The money was then put in a safe for banking the following morning.

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He told the court that the Applicant followed up the cashing procedures properly until the 15th December 1997. The procedure was neglected for several days and the shortages started to occur.

He produced exhibit "A" a charge sheet against the Applicant for the offence of gross negligence for which he found her guilty after conducting a hearing.

He narrated that the trust relationship between the Applicant and the Respondent had been broken hence he dismissed her.

He denied that the Applicant had informed him that the cashier was unco-operative. The cashier had been employed for one year only.

The main defence of the Applicant was that at the time the short fall of cash occurred she had received permission from Head office to leave the store early hence she was not present for the cashing up procedures at the end of the day.

Mr. Grimsel in his evidence in chief admitted that this was possible as the Respondent had staggered working hours for its workers. He told the court that if the Applicant was away during the cashing up at the end of the day, it was the responsibility of the cashier to do the cashing up. It is apparent that no one was acting in the position of the Applicant while she was away to counter check the counting of the money and ensure that it had balanced.

The Applicant told the court that in the morning when she reported, she could not repeat the cashing up procedure as she would immediately commence the new days work. She in the circumstances blamed the Respondent for the shortages that occurred during her absence.

Mr. Grimsel on the contrary told the court that the Applicant should have gone through the cashing up procedure in the morning.

Clearly this is contrary to the Respondent's cashing up policy in that cashing up was to be done at the end of a working day and not at the beginning of a fresh day for obvious reasons.

It was incumbent for the Respondent in the circumstances to ensure that there was someone to oversee the Manager's role in the daily cashing up procedures in her absence.

The Respondent failed to make such alternative arrangements to ensure the daily cashing up was done in terms of the company procedure and therefore has itself to blame for the shortages that occurred, especially taking into consideration that it had a relatively new cashier at the Bhunu mall shop.

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The Applicant had worked for the Respondent for a continuous period of twelve (12) years as a manageress. We do believe her testimony that the new cashier was insubordinate and often kept cash for the shop in his pockets. We accept her evidence that her complaints to the regional Manager about the cashier went unheeded. We do accept that she was away for the entire period when the shortfalls arose during the 5.00 o'clock cashing up and Banking operation at the shop and find that she was not even remotely to blame nor negligent in her work as a manageress to warrant the respondent to take disciplinary action against her.

The Respondent has accordingly failed to show that it dismissed the Applicant for a reason contained in Section 36 of the Employment Act No, 5 of 1980. Furthermore, the dismissal of the Applicant was most unreasonable taking into consideration all the circumstances of the case.

In awarding compensation to the Applicant we have considered her twelve years of service as a manager of the Respondent. This was a position of high responsibility and trust. She had failed to secure alternative employment due to her age. She had lost her accumulated pension benefits as a result of the dismissal. She had three dependants and was a widow. She did not in any way contribute to her dismissal but her good record had been affected by the recruitment of a dishonest cashier in the shop she had for a long time successfully managed by the Respondent. The Respondent especially Mr. Grimsel is fully to blame for the predicament the shop found itself in.

We accordingly award the Applicant fourteen (14) months compensation in the sum of E35,804.00 for unfair dismissal in terms of Section 15 of the Industrial Relations Act 1996 since the cause of action arose when this law was in operation.

We further award her 74 ½ days pay in lieu of accumulated leave in the sum of E9,457. The Applicant is also awarded terminal benefits as follows;

Severance Allowance	E 9,831.00
Additional Notice pay	E 3,932.40
	E 13,763.40
<b>TOTAL AWARD</b>	<b>E 59,024.40</b>

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There will be no order as to costs.

The members agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT