

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 65/98

In the matter between:

ERIC MAWELELA

APPLICANT

and

MHLUME SUGAR COMPANY

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. S. MOTSA

FOR THE RESPONDENT:

MR. Z. JELE

JUDGEMENT

19. 09.2000

In his application, the Applicant claims 24 months maximum compensation for unfair dismissal, 30 days pay in lieu of leave, sixteen (16) unpaid working days, arrear wages and statutory terminal benefits comprising of notice pay, additional notice and severance allowance.

The Applicant was employed by the Respondent on the 1st July, 1989. He was in continuous employ thereof until the 3rd June 1996 when he was dismissed after a disciplinary tribunal found him guilty of appropriating 25 litres of Respondent's diesel for personal use under false pretences.

At the time of the alleged conduct, he was a Sectional Manager holding a position of trust.

In his defence the Applicant alleged that he had lawfully borrowed the 25 litres of fuel from the Respondent with the intention of replacing it. He states that in the circumstances the dismissal was wrongful and unfair as there was no sufficient evidence to prove the charge of dishonesty laid against him.

The Applicant earned E3,796.00 per month at the time of his dismissal. He avers that upon his dismissal he was not paid all his dues.

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He reported the dispute to the Labour Commissioner in terms of Section 41 of the Employment Act 1980. The dispute was not resolved and a full report annexed to the Application as "A" was prepared by the conciliating officer.

On the contrary, the Respondent avers that the Applicant was fairly dismissed upon being found guilty of dishonesty in terms of Section 36 (b) of the Employment Act.

The key witness for the Respondent was Johannes Nsingwane (DW1) who worked as an oil and diesel

attendant at Mhluine since 1994. The Applicant was a Manager at Mhlume and was well known to this witness.

On the 4th May 1996 the Applicant brought a 25 litre container and asked the attendant to supply him with diesel using the vote for burning roots. He filled up the container and filled the record as per the instructions. He further prepared a gate pass indicating that the fuel was for burning of the roots and the Applicant signed the pass.

Later on a security officer approached him and asked where the applicant was taking the diesel. He explained to him that the Applicant had instructed him to charge it to the vote for burning roots. This was a Friday.

On Monday the workers who were burning roots came to request for diesel. They worked under the Applicant's supervision. He supplied the workers with diesel. On Tuesday, the Applicant called him to his office and wanted to know who had reported to the senior management about the diesel he had taken yet he had said he would replace it.

On Wednesday he was called to the Head Office and he was questioned about the 25 litres of diesel and gave a similar explanation to management.

The Applicant had indeed confided in him that he was to use the diesel to fetch his car from Manzini over the weekend and was to replace it on Monday. He obeyed his instructions as he was his subordinate. The Applicant however only returned the diesel on Wednesday after he had been questioned about it.

The pass out note was produced in court indicating that the 25 litres were charged to vote No. 77591/70/06 which was the roots burning vote. It had the signature of the Applicant. He denied that the Applicant borrowed the diesel from him but acted under his instruction as a subordinate.

DW2 was Zephaniah Magongo the Field Services Manager of the Respondent at Mhlume. He told the court that a security officer by the name of Robert Khumalo reported that the Applicant had removed a container of diesel out of the company premises stating that it was to be used for burning of the roots and that he had established from the workers that burnt the roots that they did not receive the diesel from the Applicant.

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A disciplinary hearing was commenced against the Applicant. He denied that there was an established practice of borrowing fuel from the company as alleged by the Applicant.

He had gotten a report from DW1 and forwarded the matter to his superiors. The manner in which the Applicant took the diesel was irregular according to him in that he did not inform him about it. The pass out note did not indicate that the Applicant was to use the diesel in his personal car. Instead the document falsely reflected that the diesel was used for burning roots at the company fields.

DW3 was Ian Hugh More, the Agricultural Manager at Mhlume Sugar Company. He had worked for the respondent for thirty six years.

He was involved in the Applicant's 2nd level appeal and had upheld the decision to dismiss him for theft of fuel from the company.

He found that the Applicant had appropriated 25 litres of fuel without authority and under false pretences. He had involved a junior officer in a dishonest act which was viewed very seriously by the company. He denied that the company had a policy of lending fuel to its staff members. If he had intended to use the fuel on his personal errands he should have booked the fuel as such in his personal debtors account and get approval from a senior manager. He confirmed that the fuel was only returned on Wednesday after the Applicant was confronted.

We are satisfied that the Applicant drew company diesel without permission from senior management and under false pretences. This constitutes dishonest conduct in terms of Section 36 (b) of the Employment Act.

Taking into account the circumstances of the case, including the fact that the Applicant failed to satisfactorily explain his conduct, the respondent acted fairly and reasonably in dismissing him. He had betrayed the trust bestowed upon him by the Respondent especially by involving his subordinate in preparing false documentation to cover up his dishonest act.

Upon his dismissal the Applicant was paid E374.00 for days worked, E422.00 back pay, E7,238.00 notice pay, E499.20 leave pay and E157.33 productivity bonus.

In this light, the claim for 30 days leave pay, 16 worked days and back pay in the sum of E422.00 in the particulars of claim remain unsubstantiated and the same must also fail.

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The Application is dismissed with no order as to costs.

The Members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT