

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 212/99

In the matter between:

LILIAN DLAMINI

APPLICANT

and

NANTEX TEXTILES SWAZILAND (PTY) LTD

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR SICELO DLAMINI

FOR THE RESPONDENT:

MR. SIFISO DLAMINI

JUDGEMENT

14. 09. 2000

The Applicant seeks reinstatement into her employment and in the alternative maximum compensation for unfair dismissal in terms of Section 15 (4) of the Industrial Relations Act 1996. She also seeks terminal benefits comprising of notice pay. Additional notice pay and severance allowance.

The Applicant was employed by the Respondent on the 31st September 1993 as a Layer in the cutting department and was in continuous employ until 8th of February 1999 when she was dismissed. She earned E541.00 per month but was paid E270.50 fortnightly. Her work entailed making of T-shirts.

On the 8th February 1999 whilst at her place of work there was a shortage of the required working material. She was working together with Thuli Mamba, while one Thuli Hlatshwayo worked with Siphwe Mhlanga. The two groups were advised to look for left over material to continue with their tasks. Whilst in that process the two groups had a quarrel over a roll of material.

The teams broke for lunch and when they resumed, the Applicant got hold of a pipe used for rolling materials on and she chased Thuli with the intention of hitting her.

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Thuli ran away but was trapped by some bags. The Applicant apparently pushed her and hit her with the pipe that was displayed in court.

Whilst this took place, a supervisor by the name of Mr. Kong appeared and intervened in the fight. Although the Applicant denies hitting Thuli with the pipe, she conceded that she threw it at her before Mr. Kong had intervened.

The two employees were questioned by a manager Mr. Feng about the scuffle at the work place. According to the Applicant, Thuli told him that they had been playing. The two were suspended for two weeks. During the meeting, a Mr. Upul and two union committee representatives were present.

After the two weeks's suspension Thuli returned to work but the Applicant received a letter of dismissal from the Respondent.

Applicant alleges that there was no hearing before the decision to dismiss her was taken. She approached her union SMAWU who made an appeal on her behalf. The appeal was heard and the dismissal was confirmed.

Under cross examination the Applicant told the court that she was angry when she chased Thuli. She however insisted that her intention in approaching Thuli was to question her about the clothing material she had taken but not to assault her. She said she threw the yarn pipe to Thuli but did not hit her as she was far away from her.

She admitted that Mr. Kong was attracted by the screaming of the co-workers. She said by that time she had thrown the pipe at her twice. The pipe was approximately a metre long and she had broken it into two for ease of use.

She denied that she had a propensity to fight at the work place and further refuted allegations that she carried knives to work.

The Respondent called Thuli Hlatshwako as DW1. She narrated to the court how the two teams were advised to look for left over material by their supervisor. She got a yarn which the Applicant's team had spotted at the same time. An altercation ensued between the two over the material. The quarrel subsided and they continued working as normal but after the lunch break she alerted her colleague Siphwe to run away as the applicant was approaching her with a yarn pipe but was surprised when the applicant started assaulting her. She attempted to run away and in the process fell on the bags. While she lay down, the Applicant assaulted her severally with the pipe.

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The Applicant was held by other employees and the assault stopped. She explained that Mr. Kong the supervisor had seen the Applicant assault her and at the time she was crying.

The two were summoned before a committee on the Friday that followed. After the hearing, on Monday, she was suspended for two (2) weeks, and when she reported to work she heard that the Applicant was dismissed.

She told the court that the assault was extremely painful.

The Applicant justified her conduct by saying that Thuli had stolen her working material while Thuli denied this allegation stating that she had found the material first but the Applicant insisted on taking it away from her, hence the quarrel. Thuli said that she was suspended for participating in the quarrel and running over the bags.

On an analysis of the evidence before us, it is clear that the Applicant was the aggressor, she in fact admitted throwing the pipe twice with the intention of hitting Thuli. We do find that she severally assaulted Thuli while she lay prostrate and helpless.

She was caught red handed by her supervisor while assaulting Thuli. That notwithstanding she was afforded an opportunity to explain her conduct prior to the dismissal.

All factors considered, we find that the dismissal was both procedurally and substantively fair as it was for a reason contained in Section 36 of the Employment Act and the decision to dismiss was fair and reasonable in all the circumstances of the case.

The Members agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT