

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 219/98

In the matter between:

MICHAEL ZWANE

APPLICANT

And

SKONKWANE HARDWARE (PTY) LTD

RESPONDENT

CORAM:

NDERINDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR APPLICANT:

M.MKHWANAZI

FOR RESPONDENT:

N. J. HLOPHE

JUDGEMENT

06/06/02

The Applicant claims maximum compensation for unfair dismissal, notice pay, additional notice, severance allowance and payment in lieu of leave pay. The Application was brought in terms of the now repealed Industrial Relations Act.1

The Applicant was employed on the 6th November, 1992 as a driver and was in continuous employment until the 28th February, 1997 when he claims he was wrongfully, unlawful and unfairly dismissed for failure to follow company procedures when collecting cash from some of the respondent's outlets.

The Applicant earned E625.00 per month at the time of dismissal, he was summarily dismissed without payment of terminal benefits.

1 Act No. 1 of 1996

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In his testimony the Applicant told the court that on the 30th December, 1996 he was assigned to drive his manager Vincent Dlamini to Nhlngano branch, Enock Mndzebele the branch manager asked him to collect cash from other branches though it was not part of his normal work to do so. He had no knowledge of the money collecting procedure.

He asked for a briefcase to carry the money from Mr. Enock Mndzebele who told him that the cash box was not functional. He gave him plastic bags for the purpose. Himself and Vincent Dlamini proceeded to Mageza branch where they left the manager with plastic bags. They proceeded to Hluthi branch and left other plastic bags there. Vincent was left there and he drove alone to Lavumisa branch. It was around 1 p.m. in the afternoon.

At Lavumisa, the cashier requested him to wait for her to prepare the cash but he decided to go to Hluthi and come back the following day. At Hluthi, cash was ready, he took it. He proceeded with an employee

based in Siteki Musa Bhembe who had asked for a lift. At Mageza cash was not ready and he waited outside for about 10 minutes.

As he bent down to collect the money, he was hit on the shoulder and ordered to lie down. Gunshots were fired. Everybody lay down including the customers.

The robbers took the motor vehicle keys and they drove off. The money from Hluthi was in the motor vehicle.

They telephoned the Police at Mhlosheni Post office. The Police arrived at Mageza. The Police recovered the used cartridges and bullets and took them away for interrogation.

The motor vehicle was recovered by the Police. They were released by the Police but on the 21st January, 1997 he was re-arrested and was charged for armed robbery. The charges were later withdrawn by the prosecution.

On the 28th February, 1997 he received a letter of dismissal. He was not brought before a disciplinary hearing. He was told he could appeal the dismissal. He denied a disciplinary hearing was held on the 26th February, 1997, 30th May, 1997 and 27th June, 1997. He was currently employed by Saligna Development Company in Nhlangoane, where he started working in

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February 1999 at a monthly salary of E1,200 per month. He was 34 years old with four dependant children. He also supported his mother.

He denied under cross examination that he had been trained by one John Lacken to transport money in 1996. He further denied that at that training John demonstrated how to operate a security smoke box for carrying money.

He further denied that part of the driver's duty was to collect money from Respondent's branches.

The Applicant told the court that he had been requested to start fetching money after John Lacken had left the employ of the Respondent. He had done so several times under the instruction of Enock Mndzebele the branch manager.

He denied that the Liaison Manager had at any time instructed him not to collect money without a smoke box. He said that he was not aware of such a standing policy and denied that he had always used a smoke box and was not to drive alone whenever he collected money. Sometimes he was sent alone to collect money. He was also never escorted by the Police. He heard about Police escort for the time first after the robbery. Drivers had not been asked to arrange for Police escort. The branch manager is now employed by Bromor Foods.

He was aware of the rule never to give a lift to any stranger. He denied that he had given a lift to a stranger at Mantambe area. From Hluthi to Mageza he had given a lift to an employee Musa Bhembe and he had over E41,000 in the motor vehicle.

It was put to him that Musa Bhembe would tell the court that he gave a lift to a stranger. He reiterated the denial.

Concerning the smoke box issue, the Applicant told the court that he had requested for it from the manager who told him it was defective. He denied that management was not aware that the briefcase was not functional.

RW1 was John Larken, who collected cash for the Respondent daily and was the Transport Manager. He had resigned from respondent's employ but had been re-employed at the time of his testimony. John told

the court that the smoke box was bought so that drivers could use it to collect cash due to his

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busy schedule. He said he had demonstrated to the drivers including the Applicant how to use it.

Mr. Larken could not remember if the Liaison Manager, Justice Nxumalo, had instructed the drivers to use the box at all times when collecting money.

John was positive that all drivers attended the demonstration of the use of the cash box but could not say for certain if the Applicant had attended the course under cross examination.

He denied that he had specifically instructed drivers not to collect money without the smoke box. He said it would have been Justice Nxumalo who told them but it was not done in his presence.

He, himself used a steel trunk to collect money. Each branch had one connected with a chain to the motor vehicle seat. He could not recall when the briefcase was bought.

He said that he did not use Police escort and that drivers collected money at times before he had resigned.

The witnesses added that the drivers were not given any special training to handle robbery situations apart from the use of the smoke box.

Even at the time of his testimony, the witness said that they did not use Police escort to collect money.

RW2 was Musawenkosi Jabulani Bhembe. He worked for the respondent at Siteki. He told the court that on the 30th December, 1996 he was given a lift by the Applicant at Hluthi branch. He was going to Mageza. Along the way after Mantambe river, they found a stationary motor vehicle. There was an old man and a boy there. The old one requested that they give a lift to the young man to fetch fuel at a filling station. They dropped the boy at the filling station and proceeded to Mageza.

He insisted that the Applicant gave a lift to a young man contrary to the Applicant's testimony before the court.

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At Mageza the Applicant parked the vehicle outside the shop. While he talked to his co-workers there, two people entered the shop and one pointed a gun at Wonderboy outside. He ran away and when he returned, he was told that money was stolen.

RW3 was Justice M. Nxumalo the company Liaison Manager. He told the court that the Applicant was aware that at the time he could only collect money in a smoke box and a Police escort. A smoke box, would stain the money if broken into. That it was part of the driver's duties to collect money.

He chaired the disciplinary hearing that found the Applicant guilty. The Applicant appealed the decision but lost the Appeal.

He told the court that he learnt that the smoke box was not working at the material time. He said whoever was to collect the money would call the Police for escort. He added that Applicant had been escorted a few times before.

The Applicant was charged for gross negligence and breach of company policy.

He admitted that Applicant's contract of employment did not state that he would collect money but the employer orally requested driver's to collect money when John Larken resigned.

E41,867.55 was taken from the car and E10,925.05 was taken from the shop. He added that between 1994 and 1996, the business had been struck by a spate of robberies, while they collected cash.

The gross negligence was in failure to use the smoke box, failure to arrange Police escort and breach of company policy by giving a lift to a stranger, while he carried money. This was regardless of the instructions he had gotten from the Branch Manager Enock because he was himself aware of the money collection procedure.

RW4, was Sergeant Mlangeni, a Police Officer based at Hlathikulu. He arrested Applicant and two others after the robbery.

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He interviewed the Applicant. The Applicant told him that he was aware of the requirement to use Police escort while collecting money but a Mr. Simelane, a Manager had asked him not to get Police escort because that would disturb their plan. The Nhlanguano Manager, Enock Mndzebele also agreed with him that since they were lowly paid, they should steal the shop takings.

The Applicant told him that the smoke box was working but the branch manager had asked him not to use it. He personally saw three smoke boxes and only one had no batteries, the other two were working.

The Police Officer concluded that the robbery was an inside job.

The Officer said that the admission was voluntarily given to him by the Applicant. He recorded a confession with the Hluthi Magistrate.

The suspects were not prosecuted because the principal perpetrators in the robbery were not arrested. The money was also not recovered. The case was then withdrawn.

He said he administered the normal caution to the Applicant upon the arrest. He denied he assaulted the Applicant nor did he suffocate him with rubber tube.

Upon a careful analysis of the evidence before us, the court has established that the Applicant collected money from various branches on the material day without use of a smoke box and with no Police escort. That at the material time, due to a spate of robberies, it was a requirement that such Police escort be arranged.

That on his way to Mageza, he gave a lift to a stranger while he had in excess of E41,000 in the car in a plastic bag. The court accepts the evidence of Jabulani Bhembe in this respect. We too accept the evidence of the Police Officer that he saw three smoke boxes and two of them were functional.

There is no reasonable explanation from the Applicant why he violated company policy by giving a lift to a stranger in the circumstances he did. His explanation about the failure to use a smoke box is wanting and same is unacceptable especially because the Applicant was aware of a spate of robberies that had taken place while cash was being collected.

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We do accept the evidence of Justice Nxumalo that the Applicant was aware that he could not collect money without the box.

The circumstances of the robbery are consistent with the admission given to the Police Officer by the Applicant that the robbery was indeed an inside job. The Applicant was charged for gross negligence and breach of company policy and was found guilty. The court finds that there was reasonable basis to find the Applicant guilty of gross negligence and disregard of company policy leading to the loss of money on

the material day. The court rejects the evidence of the Applicant that no disciplinary hearing was held. Disciplinary hearing, and appeal records were produced as exhibits.

The Respondent has satisfied the court that the Applicant had committed a dismissible offence provided under Section 36 of the Employment Act, and it was just and reasonable to dismiss him taking all the circumstances of the case into account.

No order as to costs.

The Members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT