

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 184/98

In the matter between:

SHADRACK KUNENE

APPLICANT

And UNITRANS SWAZILAND LIMITED

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

FOR APPLICANT:

M. MKHWANAZI

FOR RESPONDENT:

N.J. HLOPHE

JUDGEMENT

22/11/02

The applicant seeks maximum compensation for unfair dismissal and terminal benefits emanating thereof. The application was brought pursuant to a certificate of unresolved dispute issued by the Commissioner of Labour in terms of Section 65 (1) of the Industrial Relations Act No. 1 of 1996.

The claim is made out of the following particulars of claim:

The applicant was employed by the respondent as a heavy duty driver on the 16th April 1973 and worked continuously for the respondent until the 15th December 1997 when his services were terminated by the respondent on allegations that he siphoned fuel from the tanker pulled by the truck he was driving. At the time of his dismissal he was earning a monthly salary of E1.317.12.

1

The applicant gave evidence under oath. He told the court that he was employed by the respondent as a heavy-duty driver. His services were terminated in December 1997, He was dismissed for shortage of fuel.

According to applicant his duty was to ferry fuel from Durban to a Caltex depot in Swaziland. After the discovery of the shortage by the respondent the applicant was given documents reflecting the shortage. He was further informed that he would face disciplinary committee regarding the shortage. He did attend the hearing on the appointed date.

According to applicant there is no way that a driver can remove fuel from the tanker. He stated that the procedure is that after the tanker has been filled the personnel at the Durban depot puts some seals on all areas where fuel would be siphoned. Such seals have serial numbers. These seals can only be opened by the depot manager on delivery. The depot manager compares the seal numbers on the seals with those on the documents. If they tally that is when he receives the fuel. If they don't then he calls senior management from both Caltex and Unitrans for observation.

On the day in question the applicant told the court that the tanker was sealed. On opening it the

supervisor found, that there was a shortage of fuel in the value of 259 litres.

Mr. Hlophe for respondent called two witnesses. RW1 told the court that he was a South African citizen and that he is a director of a company engaged in fraud investigations in RSA. According to this witness his company was in 1997 engaged in investigating circumstances surrounding loss of fuel in respondent's undertaking.

According to RW1 on the 4th day of September 1997 he was hired by Unitrans to do some work for them. The nature of the brief was that the company had information that fuel was stolen from the tankers transporting fuel from Durban to Matsapa.

RW1's company was employed to see if the Unitrans trucks were stopping around Hluhluwe and selling fuel. According to RW1 he waited in the Hluhluwe area (RSA) and around 7.00 p.m. a Unitrans tanker, fleet No.903 passed him. He followed the truck and just past Mkhuze Game Lodge the tanker pulled off. RW1 stopped approximately 200 metres away. There was a Toyota pick up parked next to the tanker.

2

The driver of the tanker climbed on top of the tanker and a black pipe was passed to the driver by two males who had alighted from the pick up. The pipe was almost of the thickness of a man's arm. The pick up had a 200 litres drum at the back into which petrol was siphoned.

After this the driver climbed down and proceeded with his journey. According to RW1 the whole transaction lasted for about three minutes.

The van went to a rural community in Hluhluwe where the petrol was off loaded. According to RW1 it was later discovered that there were about 12,000 litres of fuel among three homesteads in the area.

RW1 stated that as a result of further investigations in this matter it was discovered that though the procedure states that the personnel at the Durban depot should make it sure that the tankers are sealed, they would hand over the seals to the drivers to enable them to siphon the fuel and then only seal the tankers after the exercise.

RW1 also produced a tachograph which proved conclusively that the tanker did stop at Mkhuze. The applicant had denied that he stopped at Mkhuze, He told the court that he traveled from Durban without stop. He said his first stop was at Lavumisa boarder gate.

RW2 told the court that in September 1997 he was employed by Caltex and stationed at Mlawula depot. His duties entailed accounting for the stock of fuel at the depot and also receiving and recording on receipt the fuel stock.

RW2 told the court how they receive a consignment of fuel. According to him on receipt of stock they inspect the truck and see if the seals are intact. In the loading documents there are serial numbers which correspond with those physically on the seals. They would also see to it that the seals are not broken.

From there they would ascertain the quantity of fuel in the storage tank. Thereafter they would offload the fuel from the truck into the tank. After emptying the fuel from the truck they would check how much fuel was in the storage tank. They would then find the difference and the difference would be the amount of fuel deposited.

3

On the day in question RW2 stated that this method was used and that he discovered that there was a shortage of 259 litres of fuel.

The applicant did not deny that on the day in question he was driving fleet No. 309. This truck, according

to RW1 stopped at Mkhuze Game Lodge turn off. That fuel was siphoned from the tanker into a drum at the back of the van which had parked next to the road. Applicant told the court that he did not stop at Mkhuze. However, the techograph shows that the truck stopped at Mkhuze.

Applicant relied on the fact that the tankers are normally sealed when leaving the depot in Durban. However, there is evidence that this procedure was circumvented by unscrupulous personnel at the depot by giving the seals to the drivers and after the drivers had siphoned the fuel they would then seal the tankers.

The respondent has on a balance of probabilities shown that the applicant unlawfully and dishonestly in breach of the employer/employee relationship caused 259 litres of fuel to be removed from the tanker pulled by fleet No. 309, the truck he was driving on the day in question. This is a dismissible offence as it is of a very serious nature.

This is in spite of the period of service and other mitigating factors advanced by the applicant in this case. In all circumstances of the case, it was reasonable and justifiable to dismiss the applicant. The procedural irregularities complained of having no merit in our view and the evidence presented against the applicant is overwhelming.

In the circumstances he is not entitled to any compensation and/or any terminal benefits in terms of the application.

The application is therefore dismissed with no order as to costs. Members concur.

KENNETH P. NKAMBULE

JUDGE - INDUSTRIAL COURT.