

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.108/2000

In the matter between:

DUDU SIMELANE

APPLICANT

and

SWAZI SPA HOLDINGS LIMITED

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

FOR APPLICANT:

MR. M.Z. MKHWANAZI

FOR RESPONDENT:

MR. N.J. HLOPHE

JUDGEMENT

15/2/02

The applicant seeks maximum compensation for unfair dismissal, payment in lieu of notice, additional notice and severance pay. The cause of action is alleged to have arisen from the respondent's conduct of terminating the services of the applicant unfairly on the 16th December, 1998.

Applicant testified under oath and said she was employed by the respondent in 1984 and that her services were terminated in 1998. She was dismissed after a disciplinary hearing for allegedly fighting at work and theft of meat.

According to the applicant in November 1998 there was a Chinese party at Ezulwini Sun. At the end of the party she asked for a piece of meat which was part of left overs. Solomon Dlamini, the acting head chef gave her the piece of meat.

Applicant told the court that she was given wine by one Cynthia. According to applicant she poured the wine in an empty bottle - and on her way home

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she started to drink her wine. She got so drunk that she did not know what was happening.

In the morning a security car came to her residence. The security personnel told her that she fought with some people in the bus that ferried her home.

Applicant had apparently left her bag in the bus. From the bag the security personnel retrieved a piece of meat weighing 500 grams. She was eventually charged with theft of meat and for assaulting her fellow employees. The outcome of the hearing was dismissal.

Respondent called the chief cook, Solomon Dlamini who according to applicant, gave her the piece of meat. Solomon denied giving the applicant the piece of meat. According to this witness, the meat in

question was suspected to be contaminated with grease cutter and as such the meat could not be given to any person as the substance is poisonous.

Applicant was a security officer. She was aware of the rules. She admits under cross examination that all items at the hotel could only be taken out with a 'pass out' obtainable from those in charge. As a security officer the applicant was the one to ensure that the said rule was not breached.

On the question of assault, RW3, Jabulani Zikalala said the applicant assaulted one Makhekhe Zikalala whom she also insulted. She further went on and assaulted RW3 whose jacket was torn in the process.

Applicant in her evidence told the court that after drinking her wine she does not know what happened thereafter. She did not deny having assaulted the two.

The evidence given by Jabulani Zikalala in this regard is credible and there is no reason to suggest that it was concocted. This witness could not be shaken under cross-examination.

On the theft charge it is clear that the applicant took the meat without authority. According to company policy, unauthorised removal of property from the company premises constitutes theft. The meat was quite a small amount, however, applicant in her position as the security officer was supposed to be exemplary in this regard. She was a security officer and as such responsible to execute the policy of the company. She was the one

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responsible to see to it that employees who had in their possession company property had 'pass outs'. Her position was that of trust and she betrayed such trust.

Regarding the count of assault; applicant as a security officer was charged with a duty of maintaining peace and order in the company. It is unfortunate that she decided to drink until she could not know what was happening around her.

After considering all surrounding circumstances it is the opinion of this court that it was reasonable for respondent to terminate applicant's services.

Consequently, the application is hereby dismissed.

No order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)

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