

IN THE INDUSTRIAL COURT OF SWAZILAND
HELD AT MBABANE

CASE NO. 97/2002

In the matter between:

IRENE P. MOEKETSI

APPLICANT

and

METRO CASH AND CARRY (PTY) LIMITED

RESPONDENT

CORAM:

NDERINDUMA: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: A. LUKHELE

FOR RESPONDENT: M. SIBANDZE

J U D G E M E N T - 09/02/06

The Applicant was employed on the 1st December 1998 as a receptionist. The position had been advertised in the local daily.

Responsibilities attached to the position as advertised were as follows:

- "1. Answering switchboard*
- 2. General Admin/office procedure.*
- 3. General receptionist/switchboard duties.*
- 4. Typing".*

The qualifications required were as follows:

1. O' level.
2. Excellent telephone manners and customer relations skills.
3. Computer literate (Ms Office).

The Applicant received a written contract of employment dated the 23rd November 1998.

In terms thereof, normal working hours were from 08.00 hrs to 17.00 hrs between Mondays to Fridays with a 1 hour paid lunch and 08.00 hrs to 13.00 hrs on Saturdays.

Clause 10 described her responsibilities as follows:

"You will report directly to the person mentioned on the first page hereof or any other person appointed as your immediate supervisor".

Clause 13, reads:

" The company has the right to alter conditions of service from time to time".

She was bound by Clause 16, *"to comply with all company rules and regulations and to carry out reasonable instructions issued by management".*

The facts of the matter as presented by both the Applicant and the Respondent are largely not in dispute. These are as follows *inter alia*:

The source of the dispute leading to the dismissal of the Applicant on the 1 November 2001, was with regard to the duties of the Applicant in that the Respondent required the Applicant to among other things: sweep and clean the floor area of the duty station of the Applicant being the reception area.

It is agreed that this was at the front of the shop but there was no

agreement as to the size of the area. The Applicant indicated that it was a much larger area of approximately 20 square metres, whereas the Respondent indicated that the area was about 3 square metres.

The applicant took issue with the cleaning and contended that it was not part of her duties. This dispute continued over a long period of time and is documented in the correspondence between the Applicant and the Respondent in exhibit R pages 10, 11-16 and 19-20. She was subsequently charged and thereafter dismissed.

These issues were demonstrated in the evidence of AW1 (Applicant) and the Respondent's witnesses Malta Shongwe (RW1) and Thandi Nxumalo (RW2).

Before the dismissal, the applicant had been given a warning for insubordination for failure to obey Thandi Nxumalo's instruction to clean the reception. Thandi was her manager. She contended that prior to the arrival of Thandi Nxumalo at the shop, the previous manager Mr. Joseph Dlamini had told her that it was not her responsibility to sweep. That there was a person employed for that purpose. At the reception there was a chart indicating the duties of a receptionist. It was headed "Reception Minimum Customer Care Standards." Regulation three (3) thereof reads " *keep work area clean and tidy*".

The Applicant told the court that she had sought clarification from Mr. Joseph Dlamini on this rule and was told that cleaning did not include sweeping and scrapping the floor but related to general tidiness, dusting the table, and the like.

One Doris Sibiya a cleaner, was doing the cleaning of the reception area, and served tea. She also cleaned other offices.

It was in the year 2000 when Mrs. Nxumalo replaced Mr. Joseph Dlamini that her problems started. Doris stopped cleaning the reception but continued to clean other offices.

Mrs. Nxumalo referred the issue to Mr. Motsa, the Human resources manager, who informed the Applicant that sweeping and scrapping was part of her responsibilities and that she should resign if she did not want to work. She answered that there was no reason to resign because her duties did not include cleaning.

The Applicant admits that she did not heed the instructions of her manager and that of the Human resources manager to regularly clean (including sweeping or scrapping) of the reception area, because she considered that not to be part of her duties.

She was then dismissed.

The Respondent argued that the Applicant had cleaned the reception area during the probation period of 3 months without any protest. That according to Malta Shongwe and Nxumalo, the Respondent in all its 160 outlets in Swaziland and South Africa, does not employ cleaners in its shops and that all the staff were responsible for the cleaning of their respective areas of work. It was only the buying office and the manager's office that were cleaned by the tea lady at the Manzini branch.

Upon a careful analysis of the facts of this case, it is apparent that the Applicant was introduced to cleaning of the reception area during the probation period. She did not protest until after the expiry of the probation period when she approached Joseph Dlamini, the then manager who told her that sweeping and scrapping was not part of her job. The applicant did not sweep or scrap during the year 1999.

She should have however, heeded the instructions of two senior supervisors, to clean, sweep and mop the reception. If she was aggrieved by the instructions, she should have then lodged a formal protest, in terms of the grievance procedure at the workplace. There is no place for outright insolence and disobedience at the work place. This kind of conduct, if allowed to persist infects the entire work force.

JUDGE PRESIDE!

The administrative structure would as a consequence collapse and with it a complete failure in production. This cannot be allowed to happen and when it rears its ugly head must be nubbed in the bud.

The Applicant was given time to reconsider her stance. She received a written warning to desist from her insolence. She persisted in her misconduct. Consequently in terms of Section 36 (a) of the Employment Act No. 5 of 1980, the Respondent was entitled to dismiss her.

Disobedience of this nature strikes at the root of the production chain in an undertaking of this nature. It is lethal to the survival of the business. Considering the circumstances of the case, the court finds that it was fair and just to terminate the employment of the Applicant as per the dictates of Section 42 (2) (b) of the Employment Act. The Respondent discharged its onus on both legs of Section 42 on a balance of probabilities.

The application is dismissed.

No order as to costs.

The members agree.

NDERI NDUMA

JUDGE PRESIDENT- INDUSTRIAL COURT