

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 8/2002

In the matter between:

ISABEL MAVIMBELA

Applicant

and

SNIP TRADING (PTY) LTD

Respondent

CORAM:

P. R. DUNSEITH: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: M. R. NDLANGAMANDL A

FOR RESPONDENT: NO APPEARANCE

J U D G E M E N T - 25/06/08

1. This is an application for determination of a dispute which CMAC certified as unresolved on 30 May 2001.
2. The matter was properly set down for trial on Monday 23 June 2008 by notice delivered to the Respondent's attorneys of record on 23 May 2008.
3. On Friday 20th June 2008 the Respondent's attorneys filed notice of withdrawal as attorneys of record.
4. When the matter was called, there was no appearance for the Respondent. The court directed that the trial proceed.
5. The Applicant testified that she was appointed as branch manageress of the Respondent's Mbabane branch in 1998. She was given the keys which unlocked the main door of the shop by the area manager. She was given no specific instructions as to the handling of the keys or any security precautions she was required to observe. She was given no prior training on security procedures.
6. In about January 2001 the Applicant was charged with a breach of procedure because she was found to be in possession of the keys which opened both locks on the front door of the shop. According to the Respondent's new area manager, the Applicant was supposed to keep one key whilst the key to the other lock was kept by her subordinate. This was a security precaution so that at least two employees were present when access was gained to the shop, to minimize stock loss.
7. The Applicant says she was unaware of this precaution, which had never been revealed to her. Nevertheless she was found guilty of a breach of company procedure and summarily dismissed.
8. A certain Nokuthula Fakudze also testified for the Applicant. She was appointed relieving manageress after the Applicant's dismissal, and she was later promoted to be the substantive branch manageress. She said when she was given the keys, two other employees were simultaneously given the keys to the other locks on the main door. They were all caused to sign a form acknowledging their custody of the keys.
9. The court finds that the Applicant was an employee to whom Section 35 of the

Employment Act 1980 applied. The Respondent bears the onus of proving fair reason for her dismissal. No such reason has been shown. Firstly, an employee cannot be dismissed for failing to follow a procedure about which she was unaware. Secondly, failure to follow a company procedure is a form of poor work performance. Before an employee may be dismissed for poor work performance, she must be given prior written warning. No such warning was given to the Applicant, who says she had a clean disciplinary record prior to her dismissal.

10. In the absence of any evidence from the Respondent which established fair reason for the dismissal of the Applicant, we find that her dismissal was substantively unfair.

11. The Applicant is entitled to be paid her terminal benefits and compensation for unfair dismissal. She is no longer seeking reinstatement.

12. The Applicant's dismissal occasioned her considerable hardship. She had been transferred to Swaziland from Barberton, but the Respondent failed to relocate her back to Barberton. She was the breadwinner for six dependants when her employment was abruptly terminated. She was unable to afford payments on furniture she bought when she was transferred to Mbabane, and her properties were repossessed. Her dismissal for a procedural irregularity, in the absence of any proved stock loss, was an excessive sanction. She has been unable to obtain alternative employment.

13. Judgement is entered against the Respondent for payment to the Applicant of the following amount:

Notice pay E 2050-00

Additional notice E315-40

Severance allowance E 788-50

12 months wages as

compensation for unfair dismissal E24600-00

TOTAL E25703-90

The Respondent is to pay the Applicant's costs.

The members agree.

P.R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT