IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 560/07**

In the matter between:

SWAZILAND NURSES ASSOCIATION **APPLICANT**

And

SWAZILAND GOVERNMENT **RESPONDENT**

CORAM:

P. R. DUNSEITH	**:**	**PRESIDENT**
JOSIAH YENDE	**:**	**MEMBER**
NICHOLAS MANANA	**:**	**MEMBER**
FOR APPLICANTS	**:**	**V. DLAMINI**
FOR RESPONDENT	**:**	**Z. JELE**

J U D G E M E N T – 30/01/2008

1. The applicants were dismissed by the respondent following individual disciplinary enquiries in which each of them was charged with stealing ten bags of Kanas fertilizer from the Sivunga section of the respondent's farm.

2. The applicants reported their respective disputes to the Conciliation, Mediation and Arbitration Commission, claiming that their dismissal was unfair. The disputes could not be resolved by Conciliation, and the Commission issued a Certificate of Unresolved Dispute in respect of each applicant's respective dispute.

3. The applicants then instituted separate applications in the Industrial Court, each claiming notice & additional notice pay, severance allowance & maximum compensation for unfair dismissal. Their applications were subsequently consolidated by order of the Industrial Court.

4. In their particulars of claim, the applicants allege that their dismissal was substantively and procedurally unfair, in that:

4.1. substantively, there was no evidence that the applicants committed the dishonest act alleged against them;

4.2. procedurally, there was no proper disciplinary hearing. The respondent's only witness Ben Dlamini testified in their absence. On appeal, the applicants were given no opportunity to make representations, and the Assistant Human Resources Manager of the respondent should not have chaired the appeal hearing.

5. In its Reply, the respondent avers that:

5.1. the applicants were casual or seasonal workers, and in the circumstances Section 35 of the Employment Act 1980 does not apply to protect them from unfair termination of their services;

5.2. the applicants were in any event fairly and lawfully dismissed on grounds of dishonesty after a fair disciplinary enquiry;

5.3. It did not pay the applicants any notice pay, additional notice pay and severance allowance because it was not obliged to do so by virtue of the termination of their services having been fair and reasonable.

6. The first applicant testified that he was employed by the

respondent in 1994 and his wages were paid monthly. He said he worked seasonally between 7-9 months in every year until his services were terminated on 27 November 2003. This evidence was not challenged in cross-examination, nor was any other evidence adduced by the respondent as to the nature of the applicant's employment.

7. Section 35 of the Employment Act 1980 applies to an employee contracted to work in Swaziland unless he is –

- An employee who has not completed his period of probation;

- An employee whose contract of employment requires him to work less than twenty-one hours each week;

- An employee who is an immediate family

member of the employer; or

- An employee engaged for a fixed term and whose term of engagement has expired.

8. There is no evidence that suggests that the 1st applicant was a casual worker, or that his seasonal term of engagement had expired when his services were terminated, or that he worked less than 21 hours each week. He was neither a probationary employee, nor a member of the respondent's family (the respondent being a corporate entity). He was registered by the Swaziland National Provident Fund as a permanent employee of the respondent. His letter of dismissal expressly states that his dismissal is "in terms of section 36 (b) of the Employment Act 1980;" and Section 36 (b) only applies to employees to whom Section 35 applies.

9. We find on a consideration of the evidence that the 1st

applicant has proved on a balance of probabilities that at the time his services were terminated he was an employee to whom Section 35 applied.

10. The 2nd applicant testified that he was permanently employed by the respondent from 1985 until his services were terminated on 27 November 2003. This evidence was neither challenged nor contradicted. We find that the 2nd applicant has proved that he too was an employee to whom Section 35 applied at the date of his dismissal.

11. In the presentation of a complaint of unfair dismissal, once an employee has proved the application of Section 35 to his contract of employment, his services shall not be considered as having been fairly terminated unless the employer

proves –

9.1. That the reason for termination was one

permitted by Section 36; and

9.2. that, taking into account all the circumstances of the case, it was reasonable to terminate his services

(See section 42 of the Employment Act 1980).

12. The respondent alleges that it terminated the services of the applicants for dishonesty as permitted by Section 36 (b) of the Employment Act. The onus of proving the dishonesty rests squarely upon the respondent, which must also prove that the termination of the applicants' services was reasonable in all the circumstances.

13. The manager of the Sivunga section of the respondent's farm, one David Mabaso, testified on behalf of the respondent. According to his uncontradicted testimony, in November 2003 he was the custodian of fertilizer kept in a warehouse by the respondent for spreading on its

sugar cane fields. Mabaso issued out fertilizer according to the volume required for the particular field to be spread. On 20 November 2003 he received a report from his foreman Ben Dlamini to the effect that the fertilizer issued for the field called Shelatane 8 at Sivunga section had been insufficient to cover the entire field. Mabaso inspected the field and estimated that there was a shortfall of about 12 bags of fertilizer. He became suspicious that this shortfall arose due to a theft of some of the bags of fertilizer issued for Shelatane 8. He instituted an investigation and, following a tip-off, ten bags of fertilizer were recovered by the police.

14. It is common cause that these ten bags of fertilizer were recovered from the rural homestead of the 1st applicant at Maphungwane.

15. In their testimony before court, the applicants explained their involvement with the 10 bags of fertilizer found at

Maphungwane. According to their evidence, 2nd applicant found the bags next to one of the respondent's fields at Sivunga section besides the main gravel road from Big Bend to Siteki. He was walking to football training with the 1st applicant when he stopped to urinate and discovered the bags. The applicants say they thought the bags had been left there by the owner for collection, but when they returned from training some hours later and the bags were still there, they decided to remove them to the house of the 1st applicant.

16. Under cross-examination, the 1st applicant said that they kept the fertilizer in his house hoping the owner would come to claim it. He conceded that they never reported the discovery of the fertilizer to the section foreman or their workmates, but denied that he and the 2nd applicant hid the fertilizer at his house with a view to stealing it.

After keeping the fertilizer for a period, the applicants hired a van to transport the ten bags to 1st applicant's homestead at Maphungwane. Before the 2nd applicant could remove his share from Maphungwane to his own home, the police arrived and confiscated the bags.

17. Both applicants vehemently denied stealing the bags of fertilizer. They agreed that they had removed the bags from where they were found without reporting their discovery to the respondent, but they denied acting dishonestly. They said they were not aware that fertilizer had gone missing from Shelatane 8 field, nor did they know that the ten bags of fertilizer were the property of the respondent.

18. The 1st applicant admitted that the brand of the fertilizer they found was Kanas, which the respondent uses to fertilize its cane fields. He said he was not aware that

Kanas is used exclusively by the respondent and is not commercially available to other persons. He admitted that he was part of the work team spreading fertilizer on Shelatane 8 field on 20 November 2003 and that there was insufficient fertilizer to complete spreading the field. He said the foreman Ben Dlamini told the team that the job would be completed after more fertilizer was collected from Farm Chemicals, a local supplier.

19. The 2nd applicant denied all knowledge of Kanas fertilizer and denied that the fertilizer they removed was the kind used by the respondent. He said it was the same kind he used on his own fields at home. He also denied that he was part of the team spreading fertilizer on Shelatane 8 field on 20 November 2003, notwithstanding that the respondent's field labour records reflect that he was part of the team assigned to this task.

20. The 1st applicant admitted signing a written statement

which was shown to him in cross-examination, but he alleged that the statement was made by the company security officer and he signed it on his instruction without knowing its contents. The respondent did not call any witness to contradict this allegation, and the court will in the circumstances attach no weight to the contents of the statement. The 2nd applicant was also shown a statement which he was alleged to have made to the police. He denied knowledge of the statement and denied that the thumbprint thereon was his own. No evidence was called to prove the authenticity of the statement, and the court will also have no regard to the contents of this statement.

21. During the cross-examination of the applicants, it was insinuated by counsel for the respondent that they had somehow contrived to steal the ten angs of fertilizer from the bags earmarked for spreading on Shelatane 8, and that they hid the stolen bags next to a nearby field for

later retrieval. The applicants denied this insinuation and insisted that they had nothing to do with the shortfall or disappearance of fertilizer at Shelatane 8 field.

22. The shortage of fertilizer on that day, as reported to Mabaso by the foreman, is verified by the 1st applicant, and the shortage may well have been due to theft.

23. Although the ten bags found at Maphungwane may well be the fertilizer missing from Shelatane 8, the applicants have explained that they found these bags at the side of the road a short distance from Shelatane 8. There is nothing inherently improbable or implausible in this explanation.

24. How the 10 bags of fertilizer came to be hidden beside the road is a matter for speculation. It is possible that they were stolen by the applicants, but it is equally possible that they were jettisoned there from the tractor before

delivery at Shelatane 8, or that they were stolen by other workers, even the foreman himself, from Shelatane 8. The balance of probabilities does not implicate the applicants in a calculated theft from Shelatane 8 field. If anything, the probabilities implicate the foreman, who was presumably responsible for checking the number of bags issued to each worker against the number of empty bags returned. If he fulfilled his responsibilities as a supervisor, it is difficult to understand how the theft of 10 bags of fertilizer and the identity of the culprits could have escaped his knowledge.

25. The foreman Ben Dlamini is late, and the court has no wish to cast aspersions on a deceased man who cannot defend himself. We shall however revert to the role of the foreman at a later stage when we deal with the respondent's conspicuous failure to call him as a witness at the applicants' disciplinary hearing, when he was still alive.

26. The 2nd applicant denied that he was part of the team spreading fertilizer at Shelatane 8 field on 20th November 2003. The only evidence that contradicts this denial is Exhibit “R5”, the respondent’s field labour record. This document was completed by the late Ben Dlamini. and constitutes hearsay evidence. Although the applicants’ counsel raised no objection to the production of this document, it is hearsay evidence. Moreover, it was never put to the 2nd applicant in cross-examination. In our view, the evidential value of this hearsay document is insufficient to overturn the sworn testimony of the 2nd applicant.

27. Whatever deficiencies or contradictions there may be in the evidence of the applicants with regard to other aspects of the case, there is insufficient direct or circumstantial evidence to link them with any

disappearance or theft of fertilizer at Shelatane 8 field on 20 November 2003.

28. We are satisfied on a preponderance of probabilities that the Kanas fertilizer discovered by the applicants was company fertilizer issued for spreading on Shelatane 8 field, but we find that the respondent has failed to prove that the applicants removed or stole such fertilizer whilst they were working at Shelatane 8 field on 20 November 2003.

29. On a balance of probabilities, the court accepts the evidence of the applicants that they discovered the ten bags of fertilizer beside the road near the respondent's field. The real enquiry is whether their actions after the discovery were dishonest and constituted the act of theft for which they were charged, found guilty and dismissed.

30. A person is guilty of the crime of theft if he dishonestly

appropriates property belonging to another with the intention of permanently depriving the owner of his property.

31. There can be no doubt that the actions of the applicants in removing the 10 bags of fertilizer to 1st applicant's house and from there to Maphungwane constituted an appropriation calculated to permanently deprive the owner of his property. What the court must determine is whether the applicants' appropriation of the fertilizer was dishonest.

32. Whether the applicants acted dishonestly relates to their state of mind at the time they appropriated the fertilizer for their own use, and is a question of fact to be determined from their conduct and all the surrounding facts and circumstances.

33. An appropriation of another person's property cannot be

regarded as dishonest if the perpetrator *bona fide* believes that the property is abandoned, or that it is lost and the owner cannot be discovered by taking reasonable steps

Halsbury's Laws of England (4th Ed) Vol. II para. 1263 note 4

34. The court is unable to find that the applicants *bona fide* believed that the bags of fertilizer had been abandoned or lost. The 1st applicant said when they first discovered the fertilizer they believed the bags had been left there by the owner for collection. The elapse of a few further hours before they removed the bags to the 1st applicant's house could not reasonably have given rise to a new belief that the bags had been abandoned or lost. In fact the 1st applicant specifically stated that they kept the fertilizer in his house hoping that the owner would come

to claim it.

35. No reasonable person would believe that a valuable truckload of fertilizer in bags, without any apparent defects, had been discarded, let alone mislaid.

36. The bags of fertilizer were discovered on land under the control and management of the respondent, beside one of the fields cultivated by the respondent. The 1st applicant recognized the fertilizer as the Kanas brand used by the respondent on its cane fields, and we do not believe the 2nd applicant's protestations of ignorance as to the type and appearance of company fertilizer. A reasonable person in the position of either of the applicants would have believed that in all likelihood the fertilizer belonged to the respondent.

Since the fertilizer was discovered in an unusual place, hidden from view, a reasonably honest person in the position of one of the applicants would have left the fertilizer where it was and reported the discovery to his supervisor.

According to the minutes of the disciplinary enquiry, the 1st applicant said they carried the bags to his house at about 8 p.m. at night. We are satisfied that the minutes can be relied upon in this regard, despite their other shortcomings, because this evidence is explored in the minutes and also referred to in the chairperson's reasons for finding the 1st applicant guilty. Percy Maziya in his evidence also confirmed that the applicants admitted moving the fertilizer at night at the disciplinary hearing. The applicants contradicted each other in their court testimony as to the time of day they carried the bags to 1st applicant's house, the 1st applicant saying 6 p.m. and the 2nd applicant saying 3.30 - 4 p.m. In our view, the applicants were running away from the fact that they transported the fertilizer after dark, since this was found to be damning at their disciplinary hearings.

37. In our opinion, the conduct of the applicants with regard to the 10 bags of fertilizer was not that of reasonably honest persons. They moved the bags at night under cover of darkness. They hid the bags in 1st applicant's house until they could be moved to Maphungwane. They concealed their discovery from the respondent and their workmates, and they deliberately refrained from making a report to their supervisor or the company security office.

38. We find on a preponderance of probabilities that the applicants believed, indeed knew, that the fertilizer

belonged to the respondent and that they dishonestly appropriated it for their own use with the intention of depriving the respondent of its property. In other words, the applicants stole 10 bags of fertilizer from the respondent.

39. The applicants were charged by the police with theft, and convicted by the Swazi National Court. After their conviction, the respondent held disciplinary enquiries at which the applicants were each found guilty of stealing 10 bags of Kanas fertilizer from Sivunga section and their services were terminated.

40. The respondent has proved that the termination of the applicants' services was for a reason provided in section 36 of the Employment Act 1980, namely committing a dishonest act in terms of section 36(b).

41. We also find that it was reasonable in all the circumstances to terminate the applicants' services. Calculated dishonesty cuts at the root of the employment

contract and destroys the employment relationship. The applicants had ample time to reconsider their appropriation of the fertilizer, but they actively concealed it until they could spirit it away to their homes under cover of darkness. Although neither of the applicants was in a position of trust, the respondent could not be expected to continue employing persons who regard unsecured company property as a personal windfall. The length of service of the 1st and 2nd applicants - 9 years and 18 years respectively – aggravates the extent of their disloyalty to their employer, and cannot override the gravity of the offence.

42. In the premises, it is the finding of the court that the dismissal of the applicants was substantively fair and lawful.

43. On the question of procedural fairness, the applicants allege that the respondent's witness Ben Dlamini testified

in their absence at the disciplinary hearing. They also complain that they were given no hearing on appeal, and the handling of the appeal by the Assistant Human Resources Manager was irregular. We shall deal with these issues in turn.

44. We have already alluded to the role played by the late Ben Dlamini as section foreman supervising the spreading of fertilizer at Shelatane 8 field. Since it was the respondent's case at the disciplinary hearing that the applicants had stolen 10 bags of fertilizer issued for spreading at Shelatane 8, the respondent was expected to call Dlamini as a witness at the hearing. It failed to do so, and the complainant Mabaso resorted to giving hearsay evidence on behalf of Dlamini. According to the applicants, they objected and demanded that Dlamini be produced as a witness so that they could question him. Mabaso confirms that the 1st applicant demanded that Ben Dlamini be called.

45. The 1st applicant testified that Ben Dlamini was thereafter called to the office where the 1st applicant's disciplinary hearing was taking place. The 1st applicant and his representatives were asked to leave the room and Ben Dlamini remained behind with the chairman, the complainant Mabaso and the Human Resources Officer Percy Maziya. In cross-examination, it was put to 1st applicant that Ben Dlamini was not called to the disciplinary hearing, but his statement was relied upon. The 1st applicant insisted that Dlamini was called, and went on to deny in re-examination that any statement made by Dlamini was read at the hearing. Indeed there was no mention of any statement made by Ben Dlamini by respondent's witnesses, nor any reference to such statement in the minutes of the hearing. If the chairman did rely upon such a statement without giving the applicants an opportunity to know its contents, that in

itself is a serious procedural irregularity.

46. A certain Fihlo Michael Magagula was called to testify on behalf of the applicants. He was the 2nd applicant's representative at the disciplinary hearing. He confirmed that Ben Dlamini came to the hearing, although he became confused as to the stage of proceedings when this occurred. In cross-examination of Magagula, it was conceded for the first time by respondent's counsel that Dlamini came to the hearing - not as a witness, but for 'administrative' reasons.

47. When the Section Manager Mabaso testified, he said that he called Dlamini to the hearing in order to give him work instructions. He could not recall the nature of the instructions. He agreed that 1st applicant was sent out of the room. He said this was to prevent the applicant overhearing instructions about other employees, although

he later said he whispered his instructions to Dlamini. He said it was more convenient to adjourn the hearing and send out the applicant and his representative instead of popping outside to talk to Dlamini, because he was inside and busy with what he was doing.

48. We found Mabaso's evidence on this issue to be strained, improbable and implausible. The respondent's version took a further tumble when Percy Maziya testified that Ben Dlamini did not enter the office where the hearing took place, but Mabaso went out to him leaving 1st applicant and his representative inside the office with the chairman.

49. We find it highly unlikely that a disciplinary hearing would be interrupted and the 1st applicant and his representative made to leave the room so that Mabaso – a mere observer at the hearing – could give instructions

to a foreman on a matter unrelated to the hearing. Such an interruption would be grossly discourteous to the other participants in the hearing, and there is no reason why – if his version were correct – Mabaso would not have excused himself to talk to Dlamini outside the office.

Considering the insistence of 1st applicant that Dlamini be called to confirm Mabaso's hearsay evidence, it is far more probable that the complainant and the chairperson procured Dlamini's attendance as a witness. These probabilities, the inconsistencies in the versions advanced by the respondent's witnesses and their counsel in his cross-examination, and the unfavourable impression made by Mabaso as a witness, have led the court to conclude that the respondent has concocted a story to explain away the presence of Dlamini at the disciplinary hearing. The reasonable and most likely inference to be drawn from the respondent putting up a false story is that Dlamini was called to testify in the absence of the applicants.

50. We find it proved in the circumstances that there was a gross procedural irregularity in the disciplinary proceedings. This irregularity prejudiced both applicants since the chairman must have relied on Dlamini's evidence to make out a case that fertilizer had gone missing at Shelatane 8 field. The applicants were also denied the opportunity to elicit facts from Dlamini which might explain how the fertilizer went missing only to be discovered beside the road near a different field.

51. The applicants were not given formal letters of dismissal. They both appealed against their dismissal. When their appeal hearing had not been promptly convened, they reported a dispute to the Labour Commissioner. After calling the parties to a conciliation meeting, the Labour Commissioner referred the matter back to the respondent for the convening of an appeal hearing. According to the uncontradicted evidence of both applicants, they were

called for an appeal hearing but after a series of postponements no hearing was held and they were simply given letters confirming their dismissals.

52. On the issue of the appeal, both letters contain the following statement:

"***Appeal***: *Management has looked at your grounds of appeal against the record of hearing and have not found any material grounds to warrant either a rehearing of the case or the reversal of the original decision to dismiss you. The original hearing of the case against you has been concluded to have been fair both on substantive and procedural grounds and the decision to terminate your services is upheld on those grounds. You are accordingly at liberty to take up the matter further if you so wish; otherwise internal processes within the company on this matter have been exhausted by this correspondence."*

Both letters are signed by the Assistant Human Resources Manager, one M.P. Dlamini

53. The dismissal of the appeal was a managerial decision taken without affording the applicants a hearing or any opportunity to advance their grounds of appeal.

54. In the minutes of the 1st applicant's disciplinary hearing, he is expressly informed of his right to appeal to the next level of management. It is reasonable to assume that the 2nd applicant was also notified of his right of appeal, and that the right arises from the respondent's disciplinary code and procedure.

55. The Labour Commissioner postponed conciliation on the dismissal dispute for the express purpose of affording the applicants the opportunity to exhaust their remedy of an internal appeal. The respondent called the applicants to

an appeal hearing, but apparently decided to dispense with the hearing altogether. The applicants' letters of appeal have not been placed before the court, so there is nothing *ex facie* the grounds of appeal which indicates that the respondent's management had any justification for its decision to dispense with the appeal hearing.

56. It is well-established in our labour law that an important ingredient of a fair disciplinary hearing is the right to appeal to a higher level of management.

Mahlangu v CIM Deltak (1986) 7 ILJ 346-7

Ndumiso Nhlengethwa v Standard Bank Swaziland (IC Case No. 288/2002)
Joseph Sangweni v Swaziland Breweries (IC Case No. 17/2003)

57. As was stated by the eminent jurist and judge **EDWIN Cameron** in his article **"The right to a hearing before dismissal - Part I" (1986) 7 ILJ 183:**

"A right to an appeal is an important safeguard, giving the affected

> employee a chance of persuading a second tier of authority that the adverse decision was wrong or that it should otherwise be reconsidered. In the end, the final decision will have been the subject of more careful scrutiny, prolonged debate and sober reflection."

58. It has also been held that disciplinary appeal proceedings must be more than a mere formality, and the members of the appeal panel must apply their minds fairly and impartially to all the relevant facts and considerations in the same manner as the labour courts have long required of the disciplinary enquiry itself.

> **The Mineworkers Union v Consolidated Modderfontein Mines (1979) Ltd (1987) 8 ILJ 709 (IC) at 713.**

59. In the Mineworkers Union case (supra) it was held that the employee must be given the opportunity to explain his grounds for appeal

(See also Van Jaarsveld & Van Eck:

Principles of Labour Law para. 506)

60. Having granted the applicants the contractual right to an appeal hearing, and invited them to attend such a hearing, it was procedurally unfair and irregular for the respondent to then deny the applicants the opportunity to make representations in support of their grounds of appeal.

61. There are other disquieting aspects relating to the appeal process. The letters dismissing the appeal state that "management" concluded that the original hearing was substantively and procedurally fair. The letter is written by the Assistant Human Resources Manager M.P. Dlamini. He is subordinate to the Area Manager who chaired the original disciplinary hearing. Furthermore the disciplinary hearing was attended by Percy Maziya, a senior Human Resources Officer. He testified that it was his role to ensure that there was a fair hearing, and to

give advice to the chairman. He specifically advised the chairman to dismiss the applicants. It was entirely inappropriate for a Human Resources Assistant Manager to determine an appeal from a decision of his senior manager, even more so where his Human Resources colleague Maziya participated in, and took an attitude on the outcome of, the disciplinary hearing.

62. It is also noted that the minutes of the disciplinary hearing are no more than a summary of proceedings recorded in the third person. The recorder Percy Maziya concedes that he did not record all the events that transpired at the hearing. This illustrates the danger and unfairness of “management” deciding an appeal in the absence of the applicants on the basis of its own sketchy and incomplete record of proceedings.

63. In the view of the court, the applicants were denied a proper appeal hearing and the management decision to

dismiss their appeal without giving them a hearing was procedurally irregular and unfair.

64. The 1st applicant's letter of dismissal informs him that he is entitled to various terminal benefits, including cash in lieu of notice. The 2nd applicant's letter of dismissal likewise informs him that he is entitled to one months pay in lieu of notice and additional notice. Both applicants testified that they were not paid any terminal benefits on termination of their employment. The respondent led no evidence to show that the applicants were paid their notice pay as undertaken in their letters of dismissal. We find that the respondent is liable to pay the applicants the notice calculated in terms of section 33 of the Employment Act 1980. Such notice includes so-called 'additional' notice. The amount owing to the 1st applicant is E2048.84, and to the 2nd applicant is E3388.24.

65. Having regard to the procedural irregularities which occurred in the disciplinary process against the applicants, the court considers that these were not mere lapses due to oversight or a layperson's ignorance of the requirements of the labour law, but were serious high handed breaches of the company's own disciplinary code and procedures. Even in situations where management is convinced of the guilt of employees, it is still obliged to ensure that fair disciplinary process is observed. The disciplinary process is not merely a means to enable management to establish the facts and impose an appropriate disciplinary sanction. It is also essential as a means to achieve fair and equitable labour relations. Irrespective of the merits of the disciplinary charges, the requirement of a fair disciplinary hearing is an end in its own right.

(See Rycroft: SA Labour Law (2nd Ed.) at p. 205)

66. The court has decided that the respondent's procedural

failures merit sanction by an award of compensation in favour of the applicants equal to payment of three (3) months wages.

67. On the question of costs, at least half the trial was taken up with evidence and argument regarding the substantive fairness of the dismissal. Notwithstanding that the applicants have succeeded in obtaining judgement on a substantial part of their claim, it would not in our view be fair to mulct the respondent in the full costs of the trial.

68. We make the following order:-

Judgement is entered against the respondent for payment to the applicants as follows:-

First Applicant

Notice and Additional Notice	**2048.48**	
3 months wages		**2772.12**

TOTAL **E4820.96**

Second Applicant

Notice and
Additional Notice **3388.24**
3 months wages **2994.12**
TOTAL **E6382.36**

The respondent is to pay half of the costs of the applicants.

The members agree.

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PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT