IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 382/2004**

In the matter between:

ALPHEUS THOBELA DLAMINI **Applicant**

and

DALCRUE AGRICULTURAL HOLDINGS (PTY) LTD **Respondent**

CORAM:

P. R. DUNSEITH	**:**	**PRESIDENT**
JOSIAH YENDE	**:**	**MEMBER**
NICHOLAS MANANA	**:**	**MEMBER**
FOR APPLICANT	**:**	**M. MKHWANAZI**
FOR RESPONDENT	**:**	**M. SIBANDZE**

JUDGEMENT - 12/03/2008

---

1. The Applicant has applied to court claiming payment of terminal benefits, maximum compensation for unfair dismissal and pension contributions. He alleges that his services were unfairly and unreasonably terminated on the 7th October 2004.

2. It is common cause that the Applicant was employed by the

Respondent as a Ranch Manager on 15th January 2002 and that he is an employee to whom section 35 of the Employment Act 1980 applies.

3. In its Reply, the Respondent denies that it terminated the Applicant's services and avers that the Applicant terminated his own services by abandoning his employment. In the alternative the Respondent pleads that it terminated the Applicant's services on the 7th October 2004 for the reason that the Applicant repudiated his contract of employment by absenting himself from work from the end of June to the 7th October 2004. The Respondent avers that such termination was in terms of section 36(f) of the Employment Act, and that it was procedurally and substantively fair and reasonable in all the circumstances.

4. As Ranch Manager, the Applicant was in charge of the Respondent's ranches, namely Mvangatini Ranch at Siphofaneni and Kubuta Ranch. His duties included supervising the headmen on the ranches, accounting for the livestock, maintaining the ranches, their fences, buildings and grazing, and attending to the medication, dipping and vaccination of livestock. He was also required to submit monthly time sheets for the ranch employees and weekly stock reports.

5. The Applicant was a roving employee. He was supposed to spend about eighty per cent of his working time at the ranches, otherwise he was expected to be either dealing with suppliers or at the company head office at Malkerns attending meetings, delivering

reports, and preparing budgets. He reported to the Livestock Manager, who is based at head office.

6. Since his job involved a considerable amount of travelling from his residence at Manzini to the ranches and head office, the Respondent paid the Applicant a fixed vehicle allowance to cover the cost of financing the purchase or lease of a vehicle (including comprehensive insurance) and a variable allowance to finance the use of the vehicle. Payment of these transport allowances was governed by the terms of the Respondent's Motor Vehicle Scheme.

7. The Respondent has a number of fuel depots at its farms and undertakings in Swaziland, including at Mvangati and Kubuta Ranches. The Applicant was permitted to fill his vehicle with fuel from any of the Respondent's depots on credit. The cost of the fuel would then be deducted from the Applicant's monthly remuneration.

8. The Respondent alleges that the Applicant absented himself from work and failed to attend to his duties as Ranch Manager from the end of June 2004 to the date his employment terminated, namely 7th October 2004. The Applicant was called upon in writing to give an explanation for his failure to attend to the performance of his duties. When he failed to respond, the Respondent drew the inference that he had absconded from work and stopped payment of his remuneration. The employment relationship thereupon terminated.

9. The former acting headman of the Respondent's Kubuta Ranch, Sicelo Masilela, testified that the Applicant used to visit the ranch

once or twice a week, but he last saw him at the end of June 2004. Thereafter the Applicant never came to the ranch or contacted him on his cellphone. He was obliged to travel to Malkerns head office by bus to carry out the Applicant's duty of submitting the monthly time sheets.

10. It was put to Masilela in cross-examination that the Applicant visited the Kubuta Ranch in his absence at the end of July 2004 to check whether there were sufficient dipping chemicals. Masilela denied all knowledge of such a visit. He also denied the suggestion that he had telephoned the Applicant in August 2004 to request chemicals and that the Applicant delivered the chemicals two days later. He further denied calling the Applicant to report the death of a cow, or that Applicant came to Kubuta to discuss a repaired differential for a trailer. Not one of these allegations which were suggested to Masilela in cross-examination was mentioned by the Applicant in his own testimony. On the contrary, when it was expressly put to the Applicant that Masilela would come and testify that Applicant never came to Kubuta Ranch after June 2004 and he did not know where the Applicant was, the Applicant responded: "I will not dispute that."

11. With regard to Mvangatini Ranch, the Respondent called the headman Sipho Hlatshwayo as a witness. He testified that he normally saw the Applicant at the ranch once or twice a week, but after June 2004 the Applicant came to the ranch on only one occasion, namely on 16th July 2004 when he came to load certain cattle. Hlatshwayo said that he signed and submitted the time sheets for July, August and September 2004 because the Applicant failed to attend to this duty. He also had to deliver the weekly stock

reports to head office, although this was normally the Applicant's duty. He said that he tried to call the Applicant on a number of occasions to requisition medication and dipping chemicals, but the Applicant could not be reached on his cellphone.

12. In cross-examination, Hlatswayo denied that the Applicant came to the ranch in early August 2004 to discuss a criminal charge laid by a certain Nceka Dlamini with regard to monies paid for the purchase of sheep. Hlatshwayo said he only discussed this issue with the Applicant when they attended a meeting at the Respondent's head office on 2nd September 2004. Hlatshwayo also denied that the Applicant once came to the ranch to bring dipping chemicals. He agreed that Applicant may have come to Mvangitini Ranch to fill in petrol on a few occasions, but he said he never saw the Applicant on these occasions and the Applicant never carried out any of his duties after 16th July 2004.

13. The evidence of the Applicant regarding the performance of his duties at Mvangatini Ranch was inconsistent. He was asked in chief what evidence he could produce that he had not absented himself from work between the end of June and 7th October 2004. He referred to his attendance at the meeting on 2nd September 2004 to discuss the sheep purchased by Nceka Dlamini, and subsequent correspondence between himself and the Livestock Manager regarding his alleged misconduct with regard to the sale of sheep. He also referred to a letter he wrote to the Livestock Manager on the 19th July 2004 in connection with some minor construction work at

Mvangatini Ranch. He made no reference to any other duties he had performed during the period in question. He repeatedly explained that he could not report for duty as normal because his vehicle had broken down and he had no form of reliable transport.

14. Under cross-examination, it was put to the Applicant that Sipho Hlatshwayo would come and testify that he had to sign the monthly returns because the Applicant never came to the ranch and he was nowhere to be found. The Applicant responded: “I will not dispute that. I was not reporting to him (Hlatshwayo). He was not my boss.”

15. Later under cross-examination the Applicant changed his evidence to say that he sometimes visited the Kubuta and Mvangatini Ranches when Masilela and Hlatshwayo were not there, or that the headmen did not see him “by coincidence”. Shortly after, he changed again to say that sometimes he found the headmen there, other times they were absent. In re-examination, he said he met with the headmen and gave them instructions. Finally, after a question was put to him by the court, he became adamant that he had not only been to the ranches on half the days of each month during the period of his alleged absence but on these occasions he had given the headmen instructions and planned their days with them.

16. Hearing the Applicant’s testimony was to experience the genesis of a false version. By incremental additions his story evolved to suit the exigencies of the case. There were other instances also where his evidence was most unsatisfactory, for instance when he was questioned about the amount of a loan he requested from the

Respondent for the repair of his vehicle. We find that he was not a witness whose credibility could be relied on. We prefer the evidence of the two headmen, Masilela and Hlatshwayo. Both these witnesses gave clear, consistent accounts of events during the period in question. Their demeanour was forthright and honest. The credibility of their version was not at all disturbed in cross-examination. We also regard both headmen as independent witnesses with no reason to exaggerate the Applicant's absence from duty. The Applicant suggested that Hlatshwayo might bear him a grudge due to some prior disagreement, but this suggestion was never put to Hlatshwayo and we give it no credence.

17. Both Masilela and Hlatshwayo said that they reported the Applicant's persistent absence to the Livestock Manager and complained that they were obliged to perform the Applicant's duties in his absence. The Livestock Manager Liphi Nsibande confirmed receiving such reports. He was sufficiently concerned by the Applicant's neglect of his employment duties that he wrote a letter to the Applicant on the 22nd September 2004. The letter refers to the Applicant's work absenteeism and failure to attend to his duties. The letter alleges that the Applicant is no longer visiting his block of ranches, and states that "*the staff (Induna) at Mvangatini ranch has been unable to find and communicate with you for ranch requirements. They have been coming and bringing returns to the office on your behalf because you are no longer available*." The letter concludes by calling upon the Applicant to respond in writing by 24th September 2004 "*proving this office otherwise before management is requested to stop your salary*."

18. It is common cause that this letter was hand delivered at the Applicant's residence in Manzini and received by him. The Applicant never replied to the allegations. He says he did not do so because he was confused. We consider that his failure to deny the allegations constitutes additional corroboration of the evidence of Masilela and Hlatshwayo.

19. We find it proved that the Applicant absented himself and failed to attend to his duties at Kubuta Ranch after the end of June 2004.

20. With regard to Mvangatini Ranch, we find it proved that the Applicant last reported at the ranch on 16th July 2004. Thereafter he wrote to the Livestock Manager on 19th July 2004 regarding the quote for construction work. He also dealt with the issue of the sale of sheep to Nceka Dlamini during September 2004, attending a meeting and writing a letter on the 19th September 2004. The issue of the sheep was a work-related matter, but it appears from the evidence that the Applicant's main interest in the matter was to ward off allegations of theft and misconduct made against him by Nceka Dlamini and the Respondent. We are unable to find any evidence that the Applicant performed any of his normal duties after 19th July 2004.

21. There is evidence by way of fuel invoices that the Applicant filled fuel into his vehicle from the Respondent's depots on various dates between the end of June to 21st September 2004. These invoices

show that the Applicant continued using the Respondent's fuel facilities, but – as he himself conceded – they do not show that he was attending to his duties. Worse for him, the invoices recording his fuel purchases show that he was highly mobile. In September 2004 alone he purchased 373,60 litres of fuel on credit, sufficient to enable him to travel at least 2500kms at the most conservative of estimates. This is quite a lot of travelling for a man who claims to have been unable to attend to his duties because he had no transport.

22. It is common cause between the parties that the Applicant's employment terminated after the Respondent's managing director wrote to him on 7th October 2004 in the following terms:

"*RE: ABSCONDING FROM WORK*

It has been noted with concern that you have not been attending to your work at both Mvangatini and Kubuta since June 2004 to this day.

The company has been writing letters and delivering such letters to your residence, requesting you to come and explain your continued absence from work, but you chose not to respond.

It is further noted that you neither sought nor obtained permission from the office to be away from work for such a long time. Under the circumstances, the only inference that can be drawn is that you have absconded from work and thus resigning from the company.

The company has no any other alternative but to stop your remuneration with immediate effect.

You are requested to hand over any company property that may be in your permission."

23. The Applicant construes this letter as a letter of dismissal. The Respondent on the other hand argues that it is the Applicant who repudiated his employment contract by absconding from work, and the letter simply accepts the repudiation, thereby bringing the employment contract to an end.

24. Absenteeism differs from absconding or, as it is more often described, desertion from work. Absenteeism is merely an unexplained and unauthorized absence from work, whereas desertion means an unauthorized absence *with the intention never to return*. Both absenteeism and desertion are breaches of the contract of employment, but desertion is a repudiation of the contract. In other words, the employee's desertion manifests his intention no longer to be bound by his contract of employment. This repudiation does not by itself bring the employment to an end. The employer has an election whether to accept the repudiation and bring the contract to an end, or to hold the employee to the contract. From this perspective, it is not the act of desertion which terminates the contract of employment, but the act of the employer who elects to terminate the employment by accepting the repudiation.

See **Stewart Wrightson (Pty) Ltd v Thorpe 1977 (2) SA 943 (A) at 953E;**

SA Broadcasting Corporation v CCMA and others (2001) 22 ILJ 487 (LC) at 493.

(In this regard, desertion must be distinguished from resignation, which is a unilateral act of termination – see the discussion in **SA Broadcasting Corporation (supra) at 492-3**)

25. Whether or not absenteeism amounts to desertion is a matter of fact, the critical question being whether the employee has absented himself with the intention never to return. His intention must be determined from all the surrounding circumstances. The test is objective and is the same as that which applies to all alleged repudiations of a contract, namely *does the conduct of the employee, fairly interpreted, exhibit a deliberate and unequivocal intention no longer to be bound by the employment contract.*

Street v Dublin 1961 (2) SA 4 (W) at 10 Christie: The Law of Contract (4th Ed) at 601

26. Since absenteeism constitutes misconduct, an employer is entitled to take disciplinary action against the offending employee. Section 36 of the Employment Act 1980 provides that it shall be fair for an employer to terminate the services of an employee because the employee has absented himself from work for more than a total of three working days in any period of thirty days without either the permission of the employer or a certificate signed by a medical practitioner. In normal circumstances, the employer will convene a disciplinary enquiry and the employee will be given the opportunity to tender an explanation for his absenteeism.

27. Where the absenteeism of the employee amounts to a desertion – in other words, where the employee's conduct exhibits a deliberate and unequivocal intention never to return to work – there is no need for the employer to hold an enquiry. It may simply accept the employee's desertion as a repudiation of the employment contract, and thereby terminate the contract. There is however an intrinsic risk for an employer that decides to terminate the contract on this basis rather than charge the employee with absenteeism. If it is subsequently found that the employee did not intend to desert his employment, or more particularly that his conduct did not "*exhibit a deliberate and unequivocal intention no longer to be bound by the employment contract*", then the failure to hold a disciplinary hearing may render the termination of the employment on grounds of absenteeism procedurally unfair.

28. There may be occasions when it is obvious that an employee has deserted, for instance when he takes up employment elsewhere, or expressly communicates that he has no intention of returning to work. When his intention is not so unequivocally manifested, a wise employer would do well to adopt a cautious approach and convene a hearing. If the employee has in fact absconded with no intention of returning, he will not appear at the hearing and the employer may then safely terminate the employment contract.

29. In the matter before court, the Respondent construed the absenteeism of the Applicant as desertion. It did not charge him with misconduct or convene a disciplinary hearing. It drew the inference that the Applicant had "*absconded from work and thus resigning*

from the company." The court must decide whether it was justified in drawing this inference.

30. We have found that the Applicant was not attending to his normal duties after 19th July 2004. He did not however simply disappear from view. Its common cause that he informed the Respondent about the mechanical problems he was experiencing with his vehicle and he requested the supply of an alternate vehicle. This request was refused. On 24th August 2004 he wrote to the Senior Human Resources Officer requesting a loan of E25000-00 to pay for vehicle repairs. In this letter he stated that the breakdown of his vehicle "*is hindering a lot of things as I am not able to perform my duties efficiently and thus resulting in my late submission of important information to the office. It is mainly for that reason that I am requesting the office to come to my rescue*." This request for a loan was refused by the Respondent's managing director, who went further to direct that payment of the Applicant's fixed vehicle allowance be stopped pending a mechanical status report from the vehicle dealer.

31. The Applicant's Livestock Manager Liphi Nsibande said that he was in contact with the Applicant by telephone during July and August 2004, but after that the Applicant could not be reached on his cellphone. Nsibande said that on a number of occasions when he telephoned the Applicant to enquire why he was not at work the Applicant made the excuse that he was waiting to meet with the King to discuss certain financial claims. Nsibande said that he knew about these claims and he had given the Applicant permission to

take time off work to attend to them.

32. From this evidence it appears that although the Applicant was absent from his duty stations and seriously neglecting his responsibilities during July and August 2004, he had advanced certain excuses for this conduct to his immediate supervisor and the Senior Human Resources Officer. Whatever the validity of these excuses, it must have been clear to the Respondent at this stage that the Applicant had not abandoned his job and he still regarded himself as an employee of the Respondent.

33. In September 2004 the Livestock Manager had to deal with the complaints of Nceka Dlamini about sheep he had bought at Mvangatini Ranch. The Applicant attended a meeting at head office to discuss the issue. There can be no doubt that he attended that meeting in his capacity as Ranch Manager of the Respondent. On 13th September 2004 Nsibande wrote to the Applicant about the sheep, addressing the letter to the Ranch Manager - Mvangatini and threatening disciplinary action. The Applicant replied to the letter on 17th September 2004, requesting that certain persons be present at the disciplinary hearing. At this stage also, it is clear that both the Applicant and his supervisor had no doubts regarding the continued subsistence of an employment relationship between the parties.

34. Matters came to a head when the Applicant continued to absent himself from duty and failed to respond to the letter of 22nd September 2004 demanding an explanation for his continued absenteeism. The Livestock Manager decided that enough was

enough, and after consulting with the Senior Human Resources Officer he wrote to the managing director for guidance. In his letter to the managing director the Livestock Manager proposed and recommended that the Applicant be charged with absenteeism from work. He also stated that a last effort was being made to send a driver to fetch the Applicant to answer for his failure to respond.

35. The managing director called Nsibande and told him not to send a driver to fetch the Applicant. He said the Applicant would be treated as having absconded from work. There is no evidence of any new facts or circumstances which arose after 17th September 2004 entitling the Respondent to infer that the Applicant had now absconded from work, apart from the Applicant's failure to respond to the letter of 22nd September. In these circumstances, it is singular that the managing director stopped the Livestock Manager from finding out why the Applicant had not responded. It is also remarkable that the managing director disregarded Nsibande's recommendation that the Applicant be charged with absenteeism. If the Applicant's own supervisor did not regard him as a deserter, it is difficult to understand why the managing director should do so. The Applicant had never expressly communicated any intention to leave the Respondent's employ. On the contrary, he had communicated various excuses for not attending to his duties. He had recently entered into correspondence regarding the issue of the sheep. It appears to the court that the managing director made an executive decision for the sake of expediency, and not because there was any convincing reason for him to infer that the Applicant had, as a matter of fact, "*a deliberate and unequivocal intention no longer to be*

bound by the employment contract". In our view the Applicant should have been charged with absenteeism and given the opportunity to have the allegations of absenteeism and the validity of his excuses considered at a properly constituted disciplinary hearing.

36. The Applicant has had the opportunity to place his excuses before the Industrial Court for consideration. In our view he has dismally failed to justify his absenteeism. In terms of the Respondent's motor vehicle policy, it was the Applicant's duty to ensure that he had transport to attend to his work duties and responsibilities. He was paid a motor vehicle allowance for that very purpose. The variable vehicle allowance specifically catered for vehicle maintenance and repairs. If the Applicant spent this allowance and made no provision for contingencies, the Respondent had no obligation to bail him out. The Applicant failed to produce a status report on the mechanical defects when he was asked to do so. The Applicant tried to lay the blame for his vehicle problems on the Respondent, alleging that the fuel in the bowser at Mvangatini was contaminated with soil. Sipho Hlatshwayo denied this allegation. We have already said that we prefer Hlatshwayo's evidence to that of the Applicant, and the Applicant moreover adduced no proof that his mechanical problems were attributable to contaminated fuel. Applicant has failed to show that the Respondent had any legal duty to provide him with a loan or alternative means of transport. In all the circumstances the Applicant's lack of transport does not constitute a reasonable excuse for his absence. Even when the Applicant had transport, he failed to attend to his duties. Instead he travelled all over Swaziland

attending to his own personal errands.

37. Although the Applicant apparently had permission to seek audience with His Majesty to discuss his claims, we are unable to accept this as a reasonable excuse for his total absence from the ranches over a period of months.

38. The Applicant absented himself from work for a period substantially in excess of the three working days provided in section 36(f), and it is common cause that this was without the permission of the Respondent and without any medical certificate. We find that he had no reasonable excuse for his absenteeism, and that the Respondent had fair reason to terminate his services. Considering the extent of the absenteeism and the Applicant's cavalier attitude towards his responsibilities as a manager, we also find that the decision to terminate his services was reasonable in all the circumstances.

39. In the premises the Respondent has proved that the dismissal of the Applicant was substantively fair. However, it is our view that the failure of the Respondent to hold a disciplinary hearing rendered the dismissal procedurally unfair. As already stated, the Applicant should have been given the opportunity at a properly constituted disciplinary hearing to contest the allegations of absenteeism and to advance his excuses, inadequate as we have found them to be.

40. Section 35(2) of the Employment Act 1980 provides that "*no employer shall terminate the services of an employee unfairly*." It is well-established in our labour law that this prohibition against unfair termination refers to both substantive and procedural unfairness.

Nevertheless it is not an immutable law that there should always be a hearing before an employee is dismissed. There may be exceptions to the general requirement that an employee be given a fair hearing. The Industrial Court is enjoined by the Industrial Relations Act 2000 to ensure adherence to international labour standards (see section 4(2) of the Act as read with sections 4(1)(j) and 8(4)). Article 7 of the ILO Termination of Employment Convention (1982) states inter alia that:

"*The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided with an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity"* (emphasis added).

41. Mr. Sibandze, who appeared on behalf of the Respondent, has argued that this is one of the cases where the employer could not reasonably be expected to provide the employee with the opportunity to defend himself. We disagree. The Applicant had not by his conduct abandoned or waived his right to a hearing. The Respondent knew where the Applicant resided. It had served other correspondence upon him at this address. There was no practical reason why it could not invite the Applicant to a hearing, and there was no urgency, or potential prejudice to the Respondent, which called for the general rule to be dispensed with.

42. In the case of **Nkosinathi Ndzimandze and another v Ubombo Sugar Limited (IC Case No. 476/2005)** this court made the following observation: **"***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."

43. To echo a phrase from criminal jurisprudence, fairness must not only be done, it must be seen to be done. An employee who is dismissed without a fair disciplinary process is likely to feel aggrieved, no matter how fair and reasonable the grounds may be for his dismissal. His fellow employees may perceive the dismissal as arbitrary. Such dismissals reinforce the perception of the subordination of labour to the whims of management. They create discontent and disharmony at the workplace, and spawn unnecessary labour disputes and litigation. That is why this court has observed that the requirement of a fair disciplinary hearing is an end in its own right, as a means to achieve fair and equitable labour relations.

44. Mr. Sibandze argues however that this approach does not correctly reflect the legal position in Swaziland, as laid down in the judgement of the Court of Appeal in the case of **Swaziland United Bakeries v Armstrong Dlamini (Appeal Case no. 117/1994**). In that case, the Court of Appeal found that it had been proved that Dlamini stole a sum of E40,000-00 from his employer and his dismissal was accordingly substantively fair and reasonable. On the question of procedural unfairness, the court found that the disciplinary

proceedings were procedurally and substantively unfair. The court characterised its enquiry (see page 9 of the judgement) as follows: *"The next question is whether, given the unfairness of the proceedings which led to the respondent's dismissal, it follows that the respondent was entitled to compensation as was so held by the court a quo."* After analysing all the facts and the law, the court came to the following conclusion:

"We do not disagree with what was said in [*NAAWU v Pretoria Precision Castings] that failure to conduct a fair hearing may amount to an unfair labour practice. I should add this. There may be cases where the absence of a hearing might be decisive against the employer but this is not such a case. In my judgement the appeal must be allowed and the judgement of the Industrial Court altered to one dismissing the claim."*

45. In our view there is nothing in this conclusion which contradicts the views expressed in the **Nkosinathi Ndzimandze** judgement (supra). The Court of Appeal merely held that the respondent was not entitled to compensation, notwithstanding that his dismissal was procedurally unfair. This is in line with section 16(4) of the Industrial Relations Act 2000 which provides: *"If a dismissal is unfair only because the employer did not follow a fair procedure, compensation payable may be varied as the court deems just and equitable and be calculated at the employee's rate of remuneration on the date of dismissal."*

46. In any event, the appeal in the **Armstrong Dlamini** matter was decided by the common law Court of Appeal, sitting as the final

court of appeal from a decision of the Industrial Court, in terms of the provisions of the Industrial Relations Act No. 4 of 1980. The 1980 Act has long been repealed and replaced, firstly with the 1996 Act and subsequently the current Industrial Relations Act 2000 (as amended). Our industrial relations law has developed since the **Armstrong Dlamini** judgement, as reflected in the new legislation and the interpretation of such legislation by the Industrial Court and the Industrial Court of Appeal. The Industrial Relations Act now makes it clear that the Industrial Court has a duty to interpret and enforce the Act so as to give meaning and effect to its objectives and purposes. Those objectives and purposes are defined to include the promotion of harmonious industrial relations, the promotion of fairness and equity in labour relations, and the stimulation of a self regulatory system of industrial and labour relations and self governance. This is the underlying rationale of the approach in **Nkosinathi Ndzimandze** (supra). Anything to the contrary which may be implied from the comments or reasoning in **Armstrong Dlamini** must be seen in the context of the law which applied at the time.

47. Having found the dismissal of the Applicant to be procedurally unfair, it remains for the court to determine what compensation, if any, to award to the Applicant. It is worth noting that after the Applicant was dismissed without a hearing, he engaged an attorney to write to the Respondent denying that he had absconded from his employment. When this letter produced no results, he brought an urgent application in the Industrial Court seeking an order setting aside his dismissal pending the holding of a disciplinary hearing. This application was unsuccessful, and the Applicant then reported

a dispute to CMAC and subsequently instituted the present proceedings. Some if not all of these proceedings would in all likelihood not have occurred if the Applicant had been given a pre-dismissal hearing. The hearing may not have altered the Respondent's decision to dismiss the Applicant, but we believe it would have materially influenced the Applicant's understanding and acceptance of the decision. In these circumstances we believe that a nominal compensation should be awarded, both to compensate the Applicant and to emphasise to the Respondent the importance of a fair disciplinary process.

48. We award the Applicant two (2) months salary in the total sum of E12,262-08 (twelve thousand two hundred and sixty two emalangeni eight cents) as compensation for his procedurally unfair dismissal.

There will be no order as to the costs of the application.

The members agree.

_____
PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT