



IN THE INDUSTRIAL COURT OF SWAZILAND
JUDGMENT

CASE NO.

137/2007

In the matter between:-

KEVIN MANYISA

APPLICANT

And

STANDARD BANK SWAZILAND LTD.

RESPONDENT

Neutral citation: Kevin Manyisa V Standard Bank Swaziland Ltd
(137/2007) [2012] SZIC 33 (12th December
2012)

CORAM:

D. MAZIBUKO

(Sitting with A. Nkambule & M.T.E. Mtetwa)
(Members of the Court)

Heard:

10th October 2012

Delivered:

12th December 2012

Summary: *Labour: Supervisor placed in charge of a bank - deliberately fails to follow procedure which was designed to prevent loss of money and bank assets. Loss of money and assets occur as a result. Supervisor's conduct reveals dishonesty in executing duties. Breach of procedure unjustifiable. Dismissal justified.*

1. The Applicant Mr Kevin Manyisa is a former employee of the Respondent. The Applicant joined the Respondent on the 28th November 2000 as a Statement Clerk. He was promoted to the position of Teller in 2002 based at Mbabane branch. He was further promoted to the position of Agency Teller in 2003 based at Ezulwini town. Between the period 2003 and 2006 the Applicant briefly and intermittently acted in a senior position especially at the Mbabane branch.
2. The Respondent is Standard Bank Swaziland Ltd, a public company with limited liability, registered and incorporated in Swaziland. The Respondent operates a bank and has several branches within the kingdom of Swaziland.
3. On the 18th March 2006 the Applicant was assigned to work at Mbabane branch for the day, particularly as Team Leader Tellers as well as Treasury Custodian. In the position of Treasury Custodian the Applicant worked in conjunction with a fellow employee named Mxolisi Shabangu (also known as Mcolisi). Through out the trial this

officer (Mr Mxolisi Shabangu) and a few other bank officers were referred to by their first names.

For the purposes of consistency the Court will continue to refer to these officers in the same manner. This particular reference resonates with the evidence. The Court does not mean disrespect by so doing.

4. According to the Applicant it was his first time to work as Team Leader Tellers. He had served the Respondent as Treasury Custodian about four or five times before this particular day. However in all those instances he was working under supervision from an officer senior to him. The position of Team Leader Tellers is senior to that of Agency Teller.
5. The substantive Team Leader Tellers and the Treasury Custodians were away that day on a team building exercise. The Applicant was heading the Mbabane branch for the day. As Team Leader Tellers the Applicant was the most senior officer at the Mbabane branch that day. Effectively he was overall supervisor. The Applicant stated that he had never attended any supervisor's course to equip him for that position. He mentioned that the substantive supervisors were trained by the Respondent.
6. According to the Applicant the duties of a Team Leader Tellers include the following:
 - 6.1 Receiving excess money from the tellers who have exceeded their cash – holding limits.

- 6.2 To supervise and attend to problems that officers come across as they execute their duties.
 - 6.3 If there is a demand by a customer for cash in excess of the teller's limit, the teller refers to the Team Leader Tellers in order to meet that demand.
 - 6.4 To lock the strongroom and physically examine every teller's cubicle to ensure that there is no money or bank documents that are left behind which should be in the strongroom.
7. The duties of the Treasury Custodian include the following:
 - 7.1 To assist the Team Leader Tellers in counting money and have it locked inside the strongroom,
 - 7.2 To assist the Team Leader Tellers in physically locking the strongroom.
8. At the close of business on the 18th March 2006, after the door to the banking hall was closed, the Applicant became occupied with counting money which had been declared to him by the tellers. It was standard practice for the tellers to declare money in their possession to the supervisor for safe keeping and accountability.

- 9 One of the Respondent's officers who worked as a foreign exchange teller named Dumsile Dlamini also brought her bag to the Applicant about the same time as the other tellers. According to the Applicant, Dumsile's bag had some money in it, though he did not inform the Court how much money there was. The Applicant received the bag from Dumsile and signed the register acknowledging receipt thereof. There was a register kept nearby which a supervisor had to sign whenever he received money, assets and items from the tellers and vice versa. The Applicant kept the bag.
10. The bag was sealed at the time it was delivered to the Applicant by Dumsile. It was therefore not possible to add money or items into or subtract from the bag without breaking the seal.
11. According to the Applicant the bag and its contents fell under his custody from the time he received it. The purpose of taking delivery of the bag from Dumsile was to deposit it in the strongroom since it contained money. The Applicant added that he clearly remembered that bag since it was the only bag that was delivered into his custody that day i.e. 18th March 2006.
12. The Applicant added that he was alone at the time he took delivery of the bag from Dumsile. The co-Treasury Custodian (Mxolisi) had left the work station that had been reserved for Treasury Custodians. Instead Mxolisi had gone to assist a customer somewhere within the banking hall.

13. The Applicant stated that about a few minutes later Dumsile returned to inform him (Applicant) that there was a certain sum of money that she forgot to put inside the bag. Dumsile then took the bag and went with it in order to collect the outstanding sum of money. When examined in chief the Applicant stated that Dumsile did not return the bag to him, meaning for the second time.

14. The Applicant continued with his duties. In particular he continued to count the money that had been declared by the other tellers. That money had been kept on a trolley. Upon finishing counting, the Applicant together with Mxolisi took the money which was on the trolley into a basket. They pushed the trolley into the strongroom, they both made certain that the money which they took into the strongroom balanced with the records. They both locked the strongroom, signed the register and left for the day. The Applicant was adamant that Dumsile's bag and the money that was inside had not been taken into the strongroom.

15. The following working day being Monday the 20th March 2006, the Applicant reported for duty at the Mbabane branch. He had to formally hand over - work to the substantive Team Leader Tellers and the co-Treasury Custodian. The supervisors counted the money which the Applicant and Mxolisi had locked inside the strongroom and it balanced with the records. About that time Dumsile appeared in order to collect her bag. It was then discovered that Dumsile's bag was missing. A detailed search was made for the bag, but to no avail.

16. The disappearance of Dumsile's bag was investigated by the internal audit unit of the Respondent. The Applicant as well as other officers were instructed to submit written reports detailing the circumstances under which the bag was lost. In compliance therewith the Applicant submitted three (3) reports on different dates regarding the matter. Thereafter these three (3) officers namely the Applicant, Dumsile and Mxolisi were suspended from work pending finalization of the matter.
17. The Applicant was called to a disciplinary hearing concerning the loss of the bag. The details of the charges are discussed later in this judgment. The Applicant was found guilty at the hearing. Thereafter the Applicant was dismissed from work. The Respondent held separate disciplinary hearings for Dumsile and Mxolisi. They were also found guilty at the hearings which they attended. Dumsile was also dismissed from work. Mxolisi was given a final written warning and he returned to work.
18. During the trial, a report was introduced by the Respondent's counsel which the Court marked exhibit **R1**. This was the first written report which the Applicant submitted to the Respondent in order to explain the circumstances under which Dumsile's bag went missing. This report together with two others featured prominently in the trial. When writing this report (**R1**) the Applicant was guided by written questions which the Respondent had pre-recorded on the document.
19. The heading on exhibit **R1** reads thus; INCIDENT INVESTIGATION FORM.

The questions have been reproduced in bold italic print while the Applicant's answers are in simple italic print. The Applicant's report has further been itemized and numbered by the Court from sentence 2.1 to 2.9 for ease of reference. Otherwise the Applicant's report in exhibit **R1** is written in one long paragraph which makes for difficult reading.

20. Exhibit **R1** reads as follows (subject to the additions made by Court which are mentioned in the preceding paragraph).

INCIDENT INVESTIGATION FORM

1. *Please provide details, according to your knowledge, of the events and/or circumstances surrounding the following (Business Unit to complete):-*

Please give us details of events that took place on Saturday 18.03.06, explaining the processes followed when collecting/clearing cash to treasury, explaining anything you know about the missing seal [sealed] bag with Dumsile's cash holding for 18/03.

2. *I Kevin Manyisa hereby submit the following details regarding the above matter, which are presented to the best of my recollection and knowledge. (Explanation should include, but not be limited to, the date of the occurrence and the report by the customer or persons involved) (Staff member to complete):-*

“[2.1] On Saturday 18 March 2006 I was acting Team Leader Tellers and co-Treasury Custodian with Mxolisi Shabangu.

[2.2] *I was running money in the note counter when Dumsile Dlamini who was the foreign exchange teller on that day brought her seal [sealed] bag which I signed for.*

[2.3] *She came back minutes later to take it because she had forgotten to put some money in it.*

[2.4] *She brought it back the second time and put it on the trolley where the treasury was.*

[2.5] *It was the only seal [sealed] bag on the [that] day.*

[2.6] *We finished counting the treasury and all the money was in the treasury basket which I was putting the money into after running it.*

[2.7] *We then took the basket together with some conis [coins] into the strong room.*

[2.8] *We counted the money in the strong room and locked it away.*

[2.9] *We then locked the strong room living [leaving] the trolley at the bulk area where we were counting and signed off for the day together with Mxolisi*

Signature of employee

21/03/06

cc: Human Resources Department - Head Office”.

21. During cross examination the Applicant's attention was drawn to sentence [2.4] in exhibit **R1** in which the Applicant stated that Dumsile returned the bag to him for the second time and she put it on the trolley. The Applicant conceded that this is the same trolley where the treasury was kept before being deposited into the strongroom by the Applicant and Mxolisi.
22. The Respondent thereafter introduced another report which was marked exhibit **R2**. Exhibit **R2** is a letter written by the Applicant to the Respondent dated 30th March 2006 and it serves as a second report which the Applicant submitted to the Respondent, regarding the loss of Dumsile's bag. As the case was in exhibit **R1**, exhibit **R2** was written in one long paragraph. The Court has itemized and numbered the sentences in exhibit **R2** from 1 to 13 solely for ease of reference.
23. Exhibit **R2** reads as follows with the features that have been added by Court;

*The Managing Director
StandardBank Swaziland
P.O. Box A294
Swazi Plaza
MBABANE*

30th March 2006

Dear Sir,

[1] On the 18th March 2006 I was acting Treasury Custodian/Team Leader Tellers.

- [2] *Most of the staff was junior on that day because Team Leaders and Managers had gone to a team building exercise.*
- [3] *At the end of that day when the door to the banking hall was closed, I started collecting the treasury using a trolley.*
- [4] *I then went into the bulk area to run the money on the note counter.*
- [5] *The other custodian was still busy with a customer at that time.*
- [6] *While I was running the money Dumsile who was the only forex teller on that day came with her bag which I signed for.*
- [7] *Minutes later she came back saying she had forgotten to put some money inside.*
- [8] *She took her seal [sealed] bag and went away with it.*
- [9] *She came back again carrying it with a sub of Rand Hundreds [a stack of Hundred Rand notes] on the other hand she put [it] on the trolley.*
- [10] *She opened the seal and then she took [it to] the other side (Team Leader's Desk) and then she altered the book.*
- [11] *I am not 100% sure if she came back with the seal [sealed bag] the third time.*
- [12] *We then balanced up the cash together with Mxolisi and put [it] in the basket.*

[13] *After that we carried the money with the basket into the strongroom living [leaving] the trolley behind.*

[14] *We balanced up the cash in the strong room and put in the tellers [teller's] trolley and locked away.*

[15] *We left the building together with Mxolisi and Nathi the business banker.*

Signature

24. The Applicant's attention was again drawn to sentence number [9] in exhibit **R2** in which the Applicant stated that Dumsile returned carrying a certain sum of money which she put on the trolley. The money was in a stack of one hundred rand notes (South African currency viz ZAR). During the trial the Applicant added that Dumsile waived the bank notes in order to show the Applicant that the money she said she forgot to put inside the bag has now been recovered.
25. In his evidence the Applicant went on to state that Dumsile proceeded to the Team Leader's desk while carrying the bag and the money. On arrival at the Team Leader's desk Dumsile broke the seal on the bag. Thereafter Dumsile altered an entry in the register. She then went away with the bag and the money. All this took place in the Applicant's full view.

26. In exhibit **R2** the Applicant stated that he was not 100% sure whether or not Dumsile returned for the third occasion. It was brought to the Applicant's attention that his oral evidence as read with the written evidence particularly exhibit **R2** is contradictory.
27. In his evidence in chief the Applicant testified that Dumsile did not return the bag to him, that is after Dumsile had fetched the bag allegedly to recover the money which she had forgotten. In exhibit **R2** the Applicant stated that Dumsile did return the bag on the aforementioned instance. This was the time when Dumsile waived a stack of bank notes at the Applicant. When comparing the Applicant's oral evidence to his written evidence the Respondent came to a conclusion that these two versions are contradictory.
28. The Applicant conceded that there are certain contradictions in his evidence. He tried to explain that the reason he stated in his evidence in chief that Dumsile did not return the bag the second time was because he (Applicant) did not sign for it in the register when Dumsile returned it. As far as the Applicant was concerned the bag was not in his custody even after Dumsile had returned it because he did not acknowledge receipt thereof in the register.
29. The Respondent then introduced exhibit **R3**. This is a third statement that was written by the Applicant regarding the disappearance of the bag and money. Exhibit **R3** is dated 31st March 2006.

As the case was with the two previous exhibits **R1** and **R2**, the Court has again reproduced exhibit **R3** below in an itemized and numbered form.

30. Exhibit **R3** reads as follows;

*The Managing Director
StandardBank Swaziland
P.O. Box A 296
MBABANE
31st March 2006*

Dear Sir

[1] On the 18th March 2006 I was Acting Treasury Custodian with Mxolisi.

[2] These are the procedures that I didn't follow:

[3] I started taking the treasury from the tellers alone without the other custodian.

[4] I then went to count it still without the other custodian.

[5] I also received a seal [sealed] bag from the forex [foreign exchange] teller without the other custodian.

[6] When she [Dumsile] came and asked for it again I didn't make her sign for taking it.

[7] At the end of the day me and Mxolisi didn't check if all which was supposed to be in the strong room was locked away properly.

[8] *We also didn't check the forex cubicle if everything was locked away properly.*

Signed

31. According to the Applicant he had been directed by the Respondent to state in writing the procedures which he failed to follow when he executed his duties on the 18th March 2006. Under cross examination the Applicant admitted and confirmed the following facts;

31.1 The reason the Respondent imposed procedures at work is to ensure a smooth running of the business of the bank. The procedures serve as a guide to bank officers to enable them to discharge their duties in a manner that is skilful, cautious and prudent.

31.2 The Respondent as a bank has a duty to collect financial deposits from its customers, manage that money efficiently and safeguard its storage.

31.3 The Applicant breached all six procedures that are listed on exhibit **R3**.

31.4 The breach of procedure aforementioned resulted in the loss of Dumsile's bag together with its contents and the additional money which accompanied the bag.

- 31.5 On the 18th March 2006 the Respondent appointed the Applicant and Mxolisi as joint Treasury Custodians particularly for that day.
- 31.6 The reason the Respondent appointed two (2) officers instead of one (1) in the office of Treasury Custodian was to ensure that they work together, jointly and oversee each other in the execution of duty. The rationale was to eliminate or minimize the risk of loss of money, assets and items which are entrusted in their possession or control.
- 31.7 The Applicant was aware that he was placing himself and the bank (Respondent) at risk by working alone in certain instances, in particular when receiving money or other items from the tellers without the assistance of and being overseen by Mxolisi (co-Treasury Custodian).
- 31.8 When the Applicant joined the bank he was trained inter alia, in banking procedure and the risk or consequences that invariably follow if procedure is not followed. Though the Applicant was not sent to a training institution to attend a course the Respondent offered him hands - on training in the line of duty.
- 31.9 The Applicant has acquired more than five (5) years banking experience while working for the Respondent. The Applicant had also served the Respondent on an acting basis about four (4) or five (5) times prior to the 18th March 2006 as

co -Treasury Custodian, working under supervision of a senior bank officer. In the course of time the Applicant became experienced in bank procedures. The Applicant knew his job well.

31.10 The Applicant was aware of his duties and the procedures which he was required to follow on the day in question both as the Team Leader Tellers and Treasury Custodian.

31.11 On the 18th March 2006, the Applicant was not only Treasury Custodian but was also the Team Leader Tellers and therefore overall supervisor at the bank, and definitely senior to Mxolisi and Dumsile.

31.12 The procedures that the Applicant breached on the 18th March 2006, were those related to his duties as Treasury Custodian.

31.13 When a Team Leader and/or a Treasury Custodian receives money or an item from a bank teller or officer and signs the register acknowledging receipt thereof, that money or item falls under his custody.

32. The Applicant admitted that he breached the bank procedures. However he offered an explanation regarding the circumstances under which he breached those procedures.

32.1 Firstly, the Applicant shifted the blame to the Respondent. He argued that the Respondent was the first person to breach the procedure in that she entrusted the responsibility of managing the Mbabane branch of the bank into the hands of two (2) junior officers, namely Mxolisi and himself.

32.2 The Applicant however pointed out that he did not object when the Respondent appointed him Team Leader Tellers and Treasury Custodian for the 18th March 2006.

32.3 Secondly, the Applicant blamed Mxolisi as the cause for the breach of procedure. He argued that Mxolisi failed to stay in the work station which was reserved for the Treasury Custodians. The Applicant stated that he faithfully remained in this workstation. As a result he was alone when the bank tellers- including Dumsile arrived to declare the money and items that were in their possession.

32.4 Thirdly, the Applicant also blamed Dumsile. According to the Applicant Dumsile was negligent in various ways in the manner she carried out her duties that day as demonstrated herein below.

32.4.1 Dumsile declared her bag before the Applicant with insufficient money in it. A sum of R10,000-00 (Ten Thousand Rands) had not been accounted for.

Had Dumsile acted diligently in executing her duty the loss of bag would not have occurred.

32.4.2 When Dumsile discovered her mistake of declaring insufficient cash, she uplifted her bag from the Applicant's custody without signing for it. This was contrary to established bank procedure.

32.4.3 When Dumsile returned with the bag and the stack of One Hundred Rand notes amounting to R10,000-00 (Ten Thousand Rands) she did not approach the Applicant to declare that money as required by procedure. Instead, she put the money on the treasury trolley. Again Dumsile did not sign the register to reflect the latest position regarding the bag.

33. The Applicant further added that though he was alone in the custodians' workstation at the material time, he could not resist the tellers who had come to declare money and other items in their possession. The tellers were entitled to approach him to make that declaration. He found himself compelled by the circumstances to work alone in the absence of his co-custodian. Had he refused to entertain the tellers when they approached him for declaration, that could have delayed the process. An undue delay in the declaration process could have resulted in the tellers staying longer at work than was necessary. As a result the tellers would be entitled to claim payment for working overtime.

A claim by the tellers for overtime payment would have put him (Applicant) in a bad light before the supervisors. For that reason the Applicant decided to work alone though the bank procedure provided otherwise, and despite the risk involved.

34. The Applicant conceded that Dumsile's bag disappeared while in his custody . He also acknowledged that he had a duty to ensure that all the money and items that were entrusted in his custody were safely locked inside the strongroom. He forgot about Dumsile's bag. As a result he did not notice that the bag was missing when he locked the strongroom.
35. The Applicant added that human error on his part caused by stress and fatigue also contributed to the loss of Dumsile's bag. He was under extreme pressure to perform that day. The bank was understaffed. Also the amount of money he had to count was more than he had anticipated. The 18th March 2006 was a busy day. These factors cumulatively caused him to forget about Dumsile's bag. The same factors led him to disregard certain work procedures as stated in exhibit **R3**.
36. The Applicant conceded further that had he paid attention to the bag it would not have been lost. He would have quickly noticed its disappearance, and would have mounted a thorough search for it. He was certain that he would have recovered it within the bank premises the same day.

The Applicant further agreed that it was his duty to examine the strongroom in order to verify that the bag as well as the money was inside, before locking.

37. It is common cause that the Applicant was charged under the Respondent's Disciplinary Code in particular number 5.2.1.1 which reads as follows;

“Guilty of or confessed to theft, bribery , fraud , dishonesty, forgery or defalcation of any nature”.

The Applicant attended the disciplinary hearing. He was assisted by a trade union representative. The Applicant was found guilty of dishonesty. He was subsequently dismissed from work on the 9th May 2006.

38. In his particulars of claim the Applicant alleges to have been dismissed on the 9th May 2005. This date was confirmed by the Respondent in their defence (Reply). However that is probably a mistake on the attorneys for each of the parties since the offence which led to the dismissal took place on the 18th March 2006.
39. The Applicant challenged the dismissal on the basis that it was procedurally and substantively unfair. He reported a dispute with CMAC for resolution. By CMAC is meant the Conciliation, Mediation and Arbitration Commission established in terms of section 62 (1) as read with 64 (1) (b) and (c) of the Industrial Relations

Act No.1 of 2000 as amended. CMAC failed to resolve the dispute. Thereafter the Applicant referred the matter to Court for adjudication.

40. Although the Applicant challenged both the procedural and the substantive elements of the dismissal, at the trial he focused solely on substantive unfairness. His argument is that he should not have been found guilty of the offence with which he was charged. Alternatively, if he is guilty he should not have been dismissed. The Applicant has accordingly claimed relief for an unfair dismissal. The Respondent has opposed the application. The Respondent defended the verdict as well as the sentence.
41. It is not in dispute that on the 18th March 2006, a bag containing money and an additional sum of Ten Thousand Rands were lost within the Respondent's workplace particularly within the banking hall of the Mbabane branch. The bag as well as the money was the property of the Respondent. What is in dispute is, who should be blamed for the loss of the bag and the money?
42. It is common cause that the Applicant was appointed Team Leader Tellers for the Mbabane branch for the 18th March 2006. Some of the duties of the Team Leader Tellers are listed in paragraph 6.1 to 6.4 above. The Court has identified three (3) of those duties as being particularly relevant in this case and they are repeated herein below:

- 42.1 To physically examine every teller's cubicle in order to ensure that there is no money, bank assets or items that remain there, yet should be in the strongroom.
- 42.2 To supervise the tellers and other employees and ensure that they discharge their duties in accordance with procedure or the rules.
- 42.3 To examine the strongroom before locking it in order to verify that all the money, assets and items that ought to be kept inside the strongroom are actually in.

In this instance the duties of the Team Leader Tellers overlapped with those of the Treasury Custodian.

- 43. The Team Leader Tellers had an additional responsibility of being overall branch supervisor. Every employee of the Respondent in the Mbabane branch reported to the Applicant that day and was subject to his orders.
- 44. The duty of the co-Treasury Custodian was to assist the Team Leader Tellers in the execution of his duty. When handing over to, or receiving from the tellers - money or other items, the Team Leader Tellers and the co-Treasury Custodian were directed by procedure to invariably work in conjunction with each other. Any one of the two was not supposed to work without co-operation from the other. Admittedly, the Applicant was aware of this directive.

45. The Applicant understood his role and extent of authority as Team Leader Tellers and Treasury Custodian. He knew that he was the most senior employee of the Respondent and therefore in full control of the Mbabane branch on the 18th March 2006. The Applicant also knew that his ultimate goal as supervisor was to protect the interests of the Respondent and her customers. This fact is confirmed by the Applicant in his evidence when he states the following;

“JUDGE: So among the junior staff Mcolisi [Mxolisi] was one of those you were supposed to supervise.

A: My Lord almost everything on that day even in other departments, everything was under me. Even the money that was going to the ATM’s was fetched from me on that particular day.

JUDGE: So it’s fair to say on the 18th March [2006] you were the most senior boss in the bank, that day.

A: Yes that is the truth, in the branch my Lord.

JUDGE: So you were the most senior in the branch that day.

A: I confirm that my Lord.”

(Record pages 91-92)

46. One of the crucial areas in the business of the bank is the ability to receive deposits of money from customers , manage that money efficiently, protect it against loss and be able to account to the customer on demand or on due date. In order to carry out this mandate the bank will require a committed workforce, that will strictly follow the procedures and ethics at the workplace keeping in mind the best interest of bank and its customers.

47. The Applicant's argument is that though he was appointed and actually served as branch supervisor on the 18th March 2006, he had never attended any supervisor's course yet the substantive supervisor had been trained. The Applicant's evidence reads as follows;

“AC: Prior to taking that acting position, were you given any kind of training to equip you for that position.

A: No my Lord I had never attended any supervisor's course.

AC: What about the substantive holder of that position, was he ever given any training.

A: Yes, my Lord he was trained ”

(Record page 6)

The Applicant denied that he was given any kind of training to equip him for the position of Team Leader Tellers as well as Treasury Custodian.

48. The Applicant does not state which supervisor attended a course, which course, when and where? This information is relevant to enable the Court to compare the position of the Applicant to that of the substantive supervisor. The missing information was also relevant to the Respondent to enable her to investigate the matter and be in a position to either deny or admit the allegation. The Applicant's allegation is not supported by evidence, it is therefore baseless and is accordingly rejected.
49. The Applicant admitted in his oral evidence as well as in exhibit **R3** that he breached certain crucial procedures at work on the 18th March 2006. He further confirmed that he was aware of those procedures as they formed part of his duties. The breach of procedure was therefore not a result of ignorance on the Applicant's part.

The Applicant clarifies the position as follows:

“RC: These procedures which you never followed, which you related to us, are they not part of the duties of a Treasury Custodian.

A: They are the duties my Lord.

RC: Was it the first [time] you were Treasury Custodian.

A: No my Lord it wasn't but it was the first time that I was made a Team Leader ”.

(Record page 44)

50 The Applicant confirmed further that when he joined the Respondent he was trained in banking work and procedure as a result of which he became familiar with that procedure. The Applicant explains this part as follows in his evidence;

“RC: So you are aware [that] by doing whatever you were doing without the co-custodian , you were placing both yourself and the bank at a risk.

A: Yes I confirm that my Lord.

RC: Mr Manyisa when you joined the bank you were trained, is that correct.

A: Yes my Lord I was trained.

RC: And the importance of the training was to make you aware that if you don't follow procedures you are placing the bank at a risk.

A: I confirm that my Lord.

RC: How long have you been working at the bank, by the way.

A: More than 5 years my Lord.

RC: So you were quite familiar with these procedures.

A: Yes my Lord I was familiar with them.

(Record pages 37-38)

51. The evidence of the Applicant clearly indicates that the training which he admittedly received from the Respondent was aimed at and was sufficient for teaching him inter alia, the importance of following procedure at work. The training further emphasized the risk involved in failing to follow procedure.
52. The Applicant joined the Respondent on the 28th November 2000 as a Statement Clerk. In 2002 the Applicant was promoted to Bank Teller. In 2003 the Applicant was again promoted to Bank Agency Teller. From 2003 to 2006 he was further appointed to act intermittently as co-Treasury Custodian about four or five times, working under the supervision of a senior bank officer. These promotional steps taken by the Applicant indicated the confidence which the Respondent had on the Applicant as a human asset in the bank. It was also an indication that the Applicant was making career progress as an employee, which meant that the training programme was effective.
53. As the Applicant was climbing the upper echelons in the banking hierarchy he faced new challenges and responsibilities. He also acquired more experience and expertise in his work.

That was practical training given by the Respondent to an officer who was being prepared for a future and more demanding assignment. The Applicant was being trained and prepared to occupy the position of Treasury Custodian and Team Leader Tellers. The 18th March 2006 was the Applicant's debut in this position. It is not clear therefore what the Applicant meant when he stated that he never attended any supervisor's course.

54. A course is; *“a series of lectures or lessons in a particular subject”*.

Concise Oxford English Dictionary, 11th edition.

See also; Oxford Advanced Learner's Dictionary, 7th edition.

The in-house training that the Applicant received from the Respondent as well as the exposure to work in the banking environment at a senior level (co-Treasury Custodian) amounts to a series of lectures or lessons in the subject of banking and risk management for bankers. A course therefore is the training that is being supplied to the trainee irrespective of the premises from which it is being administered.

55. The Respondent's first witness Mrs Maria Masher told the Court that all the employees of the Respondent upon employment are taken through an in-house training programme. The training is on a continuous basis for employees at all levels. The purpose of this training programme is to equip the Respondent's employees with, and further maintain a high degree of competency at work.

She added that she is one of those who administered the training to the Respondent's officers both at junior and senior level. When administering the training the trainers use the same module which has been designed specially for bank officers. The Applicant did not challenge the Respondent's evidence on the training programme as stated by Mrs Masher.

56. When the Applicant was offered the opportunity and privilege to act as Team Leader Tellers for the 18th March 2006, he did not raise any objection. If the Applicant felt that he was incompetent or lacked confidence to act in this senior position of Team Leader Tellers and Treasury Custodian he should have mentioned his weakness and meekness to the Respondent. The Applicant's conduct in accepting this assignment without demur indicates that he was willing and ready for the challenge. The suggestion by the Applicant that he had not been properly trained for the senior position is an afterthought. It is accordingly rejected by the Court. It is noted, that the Applicant did not state what was lacking in the training which he had received from the Respondent from the 28th November 2000 (date of engagement) to the 17th March 2006 (eve of the debut).
57. The Applicant further blamed Mxolisi, his co-Treasury Custodian for the loss of the bag and the money. According to the Applicant, Mxolisi breached procedure when he left the workstation which had been reserved for Treasury Custodians and went to talk to a customer within the banking hall.

This was the time when Dumsile declared her sealed or money bag to the Applicant and the events that followed thereafter regarding the bag and the Ten Thousand Rands. Both Mxolisi and Dumsile did not testify in this trial. The Court therefore does not have the benefit of their respective versions. If the Applicant's statement is correct, that would mean that there are other incidents of breach of procedure which took place than those which the Applicant has admitted in exhibit **R3**.

58. According to Mrs Masher, the bank procedure requires the two Treasury Custodians to wait until the bank is closed for business and all the customers have left the banking hall, before they start collecting the money from the tellers. The Treasury Custodians are required to work in conjunction with each other, at all times as they move from one teller's cubicle to another to collect the money and also search the cubicles. If one custodian needs to be excused, the other has to wait until his return before work resumes. At no stage should one custodian work in the absence of the other. This evidence was not challenged by the Applicant. It is therefore accepted as being factually correct.
59. The Applicant acted in breach of procedure by allowing Dumsile to leave her cubicle in order for her to declare money in her possession to the Applicant. At that time the Applicant was in the bulk area of the banking hall. The Applicant as Team Leader Tellers (and supervisor) could and should have directed Dumsile to remain in her cubicle and await the arrival of the two custodians (Applicant and Mxolisi).

That directive could also have given the custodians a chance to search Dumsile's cubicle . The amount of R10,000.00 (Ten Thousand Rands) which Dumsile allegedly forgot to declare to the Applicant most likely would have been noticed and recovered there and then.

60. The Applicant acted in further breach of procedure when he let Mxolisi talk to a customer inside the banking hall at a time when the bank was closed and all the customers were supposed to have left the hall. As aforesaid, Mxolisi did not testify in this trial. He was therefore denied a chance to admit or deny this and other allegations made concerning him. The Applicant as Team Leader Tellers had the power and duty to reprimand Mxolisi for his daring breach of procedure. Alternatively, the Applicant was the one in breach of procedure for accepting a declaration of money before time, especially before the banking hall was closed . The presence of a customer in the banking hall indicated that it was not yet time for the custodians to collect the money.

61. According to the Applicant, he was in the bulk area when he was approached by Dumsile who had come to declare her money bag. Dumsile signed the register and left the bag in the Applicant's custody. Dumsile returned shortly thereafter and informed the Applicant that she was in possession of a certain sum of money which she forgot to insert in the money bag. The Applicant as Team Leader Tellers and Treasury Custodian should have realized at that stage that certain irregularity has taken place.

In particular, a certain sum of money which should be in the custody of the Treasury Custodians had not been accounted for by Dumsile.

The Applicant should have exercised caution as a bank supervisor when he realized that he had received a bag from Dumsile which - to his surprise contained an incorrect sum of money. The Applicant did not pay attention to this glaring irregularity and the risk involved.

62. With the Applicant's permission Dumsile took the bag in order to insert the money which she allegedly forgot to declare. Both the Applicant and Dumsile omitted to sign the register in order to record the latest movement of the bag. The Applicant did not explain the reason he omitted this crucial detail in the execution of his duty. The Applicant admitted though, that the exercise of recording the movement of the bag - in the register, was compulsory and vital in protecting the bag and its contents.
63. Dumsile came back with the bag. She was also carrying money in a stack of One Hundred Rand notes which, according to the Applicant amounted to R10,000.00 (Ten Thousand Rands). This was the money which Dumsile allegedly forgot to insert in the money bag. As Dumsile approached the Applicant she waived the money in the air in order for the Applicant to see it. The detail of what transpired thereafter depends on which of the two versions given by the Applicant is correct as will be seen in the following paragraphs.

64. In exhibit **R1** line 2.4 the Applicant stated that Dumsile returned the money bag for the second time and she put it on the trolley where treasury was. That means that as far as this piece of evidence is concerned the bag remained on the trolley. This was the trolley that was used by the Treasury Custodians for storing money and transporting it into the strongroom. The Applicant continued working from the same trolley until all the money which was on that trolley was locked inside the strongroom save for Dumsile's bag and the Ten Thousand Rands. The Applicant did not state what eventually became of the bag and the Ten Thousand Rands after he had cleared the trolley of all its contents. However, the Applicant stated that he left the empty trolley in the bulk area. That means that the Applicant retained control of the trolley up to the time he completed his work and left for the day.
65. The Applicant admitted that he did not search the strongroom in order to verify that all the money and the items that were supposed to be kept therein were accounted for. He admitted though that it was his duty to do so. The Applicant failed to explain the reason he omitted this crucial detail in his work schedule. The Applicant admitted further that had he followed procedure, the loss of the bag and the Ten Thousand Rands would have been revealed. The Applicant's failure to search the strongroom was therefore a deliberate omission.
66. According to the Applicant he and Mxolisi signed a register thereby confirming that they had locked away everything which they were

supposed to, inside the strongroom. According to Mrs Masher, the bank procedure required the treasury custodians to ensure that all the money and items that were supposed to be in the strongroom are actually accounted for before they sign the register. When the Applicant signed the register with Mxolisi he knew that his signature in particular, was a misrepresentation of fact because he could not account for the bag and the Ten Thousand Rands. The Applicant could not sincerely sign the register without verifying the contents of the strongroom. The Applicant's signature on the register was therefore dishonest.

67. The Applicant testified that he forgot about the bag. He did not state whether or not he also forgot about the Ten Thousand Rands. In the version that the Applicant gave in exhibit **R1**, it is not stated whether Dumsile deposited the Ten Thousand Rands direct onto the trolley or it was contained in the bag.

68. The Applicant stated in his oral evidence which supplemented exhibit **R1** that the bag and the Ten Thousand Rands remained in his custody. That means that the Applicant failed to take the bag and the Ten Thousand Rands into the strongroom. As a result the bag and the Ten Thousand Rands were lost. The Applicant has failed to give the Court an explanation as to how these items were lost while in his custody and control. The Applicant was the Respondent's watchdog. His primary duty inter alia, was to protect the Respondent's assets against loss or mis-appropriation. The Applicant's evidence reads as follows;

“RC: When you eventually locked the safe, did you notice that there was a bag missing.

A: No my Lord I had forgotten about the bag.

RC: You had forgotten about the bag which had money and which was in your custody.

A: Yes my Lord.”

(Record page 47)

69. The contents of exhibit **R2** as supplemented by the Applicant’s oral evidence changed materially from those in exhibit **R1**. In exhibit **R2** the Applicant reiterates that Dumsile came back the second time carrying the bag and the sum of Ten Thousand Rands. She placed these items on the trolley. She opened the seal on the bag. The seal is a locking devise which is used at the bank. She went to the Team Leader’s desk (Applicant’s desk) where she made certain alteration on the register. Thereafter the Applicant took the bag and the Ten Thousand Rands and went away. The Applicant carried the bag on the one hand and the Ten Thousand Rands on the other hand. The Applicant stated in exhibit **R2** that he was not 100% sure whether Dumsile returned the bag on the third occasion or not.
70. However in his oral evidence the Applicant repeatedly stated that he was 100% sure that Dumsile did not return on the third occasion.

The implication is that Dumsile took the bag and Ten Thousand Rands with her and did not return to the Applicant at all. This contradiction and several others in the Applicant's case make it difficult for the Court to believe the Applicant. An honest statement or defence should not have contradictions. The contradictions in the Applicant's case indicate an element of dishonesty.

71. The Applicant witnessed Dumsile's aforementioned actions. The Applicant saw Dumsile carrying the bag which admittedly contained money in it, on the one hand. The Applicant further saw Dumsile carrying a sum of Ten Thousand Rands on the other hand. At that time Dumsile was walking away from the Respondent and she had both her hands full. The Applicant could and should have intervened at that stage in order to prevent Dumsile from walking away with the Respondent's bag and money, but did not. A timely intervention by the Applicant could have averted the loss. The Applicant clearly abdicated his responsibility as supervisor. In particular, he failed to protect the Respondent's money and other assets against loss. There are various steps that the Applicant could have taken which had the effect of preventing the loss, including those stated below.

- 71.1 The Applicant should inter alia, have taken the necessary steps to verify that the sum of Ten Thousand Rands which Dumsile allegedly recovered was the correct amount that was then outstanding.

- 71.2 The Applicant should have investigated Dumsile's work and searched her cubicle in order to verify that there is no other breach of procedure which has occurred than that which she had admitted.
- 71.3 The Applicant should have examined the circumstances which led Dumsile to omit a sum of Ten Thousand Rands in the money that she declared.
72. Since Dumsile had recovered the Ten Thousand Rands which she allegedly forgot to insert in the bag, there was no point in her again taking the bag and money into her custody. The Applicant watched Dumsile disappear with the bag and the Ten Thousand Rands. The Applicant had the power, authority and responsibility to direct Dumsile to leave the Ten Thousand Rands and the bag behind. Furthermore, the Applicant had the ability as supervisor to enforce his directive on Dumsile, if it became necessary. He did not do so. There was clear inaction on the part of the Applicant at the critical moment. The Applicant has failed to explain the reason he failed to take the necessary action when he had an obligation and opportunity to act.
73. The Applicant's conduct assisted Dumsile in taking the bag and the Ten Thousand Rands with her. The Applicant was required by duty, logic and commonsense to act immediately. Instead he turned a blind eye to theft alternatively defalcation.

The Applicant cannot say that he forgot about the bag, because at that time he was looking at both the bag and Ten Thousand Rands as Dumsile walked away carrying both items in her hands. The Ten Thousand Rands and the bag were never recovered.

74. Taking into account the contents of exhibit **R2** and the Applicant's oral evidence, the conclusion is inescapable that the Applicant colluded with Dumsile in the manner the bag and the Ten Thousand Rands disappeared from the bank. There was an element of dishonesty in the manner the bag and the Ten Thousand Rands disappeared. These items were stolen or misappropriated.
75. During the trial the Applicant admitted his liability for the loss. The Applicant stated the following in his evidence.

“RC . . . we have no doubt that the said bag disappeared.

A: Yes my Lord.

RC: And there is also no doubt that you were the Team Leader on that day, you were custodian, were you not.

A: Yes my Lord.

RC: So Mr Manyisa this money disappeared in your custody.

A: Yes my Lord

(Record Page 61)

76. These two (2) exhibits **R1** and **R2**, both of which were admittedly written by the Applicant, are contradictory and irreconcilable. Either one or both of these statements **R1** and **R2** is incorrect and was intended to mislead the Respondent and the Court. If there was a mistake in any one of these exhibits the Applicant could have openly conceded the error and directed the Court to the version which he deemed correct .
77. Irrespective of which of the two(2) versions is considered by the Court, the manner in which the bag and the Ten Thousand Rands disappeared is consistent with dishonesty, in particular theft alternatively defalcation (embezzlement of funds). In both cases dishonesty plays a major role. The Applicant was correctly convicted as charged.
78. The evidence clearly indicates that Mxolisi was not involved in the depositing and uplifting of the bag and the Ten Thousand Rands. The Applicant stated that at the material time when the bag moved back and forth between the Applicant and Dumsile, Mxolisi was busy with a customer in another part of the banking hall. The Applicant's argument therefore, that Mxolisi is also liable for the loss of the bag and the money is unfounded and is accordingly rejected. The evidence indicated that Mxolisi was tried for his own breach of procedure for which he was found guilty and sentenced.
79. The Applicant's oral evidence as read with exhibit **R2** indicates that the bag and the Ten Thousand Rands were stolen by Dumsile.

As aforementioned, Dumsile was not given a chance to admit or deny the allegations made against her in this trial. Taking this particular evidence into account the Court is satisfied that the Applicant is guilty of theft as an accomplice. Alternatively the Applicant is guilty of a dishonest act which facilitated the theft - by deliberately and dishonestly failing to prevent a theft which took place in his presence.

80. The Applicant's oral evidence as read with exhibit **R1** indicates that the bag and the Ten Thousand Rands were lost while in his care and custody. These items were lost through a series of intentional breach of procedure or rules committed by the Applicant as supervisor. The Applicant either committed the theft himself or dishonestly refrained from taking the necessary steps to protect these items against theft.
81. The position of the employee who is in deliberate breach of procedure or rules at the workplace is captured by the learned author John Grogan as follows;

“In SACCAWU v Cashbuild the industrial court upheld the dismissal of the entire staff of a store from the manageress down, for failing to comply with the company's loss control procedures. Similarly, in CWIU & another v Total SA (Pty) Ltd the driver of a petrol truck from which 4000 litres of fuel had disappeared was held by the Labour Appeal Court to have been fairly dismissed for the disciplinary offence of 'failure to care for company products' even though theft or fraud on his part could not be proved.”

82. In this case the Applicant is liable for theft of the bag and the Ten Thousand Rands either as the culprit or accomplice. Alternatively, the Applicant is guilty of dishonest conduct which led to the loss of the bag and the Ten Thousand Rands. The Applicant deliberately failed to comply with procedures which were introduced by the Respondent to prevent loss. In addition, the Applicant failed to take care of the employer's (Respondent's) assets which were under his care and custody, as a result of which they were lost. The Respondent's decision to dismiss the Applicant was fair and is supported by the two cases referred to above.
83. The learned author John Grogan (*supra*) has given an instructive comment on dishonesty at the workplace as follows;

“Dishonesty in the employment context can take various forms, including theft , fraud and other forms of underhand conduct.”

at page 211

“Dismissal is generally justified in all cases of serious dishonesty, ...”

at page 212

“Supervisors who turn a blind eye to theft by their subordinates are as guilty as the thieves.”

at page 212 – 213.

84. Dishonesty as well as theft is a dismissible offence. In terms of section 36 (b) of The Employment Act No. 5 of 1980 as amended, it is fair for an employer to dismiss an employee for a dishonest act. The Applicant acted dishonestly toward his employer while executing his duties on the 18th March 2006. The Applicant's dishonest conduct resulted in a loss to the employer (Respondent) of a bag that contained money and an additional Ten Thousand Rands.
85. A supervisor who witnesses a theft or misappropriation of the employer's money or asset which is under his care and custody, and deliberately fails to take the necessary action to prevent the theft or misappropriation, or steals these items himself, is thereby acting dishonestly toward his employer.
86. The Applicant's dishonest conduct aforementioned, was not a trivial and isolated incident. Instead it involved a series of interrelated acts of deliberate breach of procedure and abdication of duty which cumulatively resulted in a substantial loss to the employer (Respondent). The procedures were introduced by the employer (Respondent) to control loss through theft or other dishonest acts. Had the Applicant complied with those procedures, which were mandatory, the loss would have been prevented. The Applicant's dishonest conduct aforementioned has irreparably damaged the trust relationship which should exist between employer and employee. The Respondent cannot be expected to continue to trust the Applicant as a bank officer. The dismissal from work was accordingly justified.

87. The Court hereby makes the following order;

- (a) The application is dismissed.
- (b) Each party is to pay his /her costs.

Members agree.

D. MAZIBUKO
INDUSTRIAL COURT JUDGE

For Applicant Mr. M. Mkhwanazi
 Mkhwanazi & Associates:

For Respondent Mr. S. Mdladla
 S. V. Mdladla & Associates