IN THE INDUSTRIAL COURT OF SWAZILAND

NTOMBI DLAMINI
Appellant

vs

SWAZILAND BUILDING SOCIETY
Respondent

Civ. Appeal No. 8/2001

Coram	Sapire, JP Matsebula, JA Maphalala, JA
For Appellant	P.R. DUNSEITH
For Respondent	P. FLYNN

JUDGMENT
(08/04/2002)

Appellant was the applicant in proceedings before the Industrial Court of Swaziland. The respondent in the court *a quo* is the respondent in the present appeal.

In the court *a quo* the applicant sought an order directing the respondent to reinstate her or alternatively to pay her maximum compensation for unfair dismissal, terminal benefits and her severance allowance. The respondent employed the applicant in October 1990 as a teller. She remained in a continuous employment of the respondent until the 24th June, 1999 when her services were terminated. The termination was on the grounds that she had failed to follow the operative procedures prescribed for tellers as a result of which the respondent incurred a loss of E1 000.00. The appellant claim that her dismissal was unfair and she referred to a number of procedural matters, which she said, invalidated the dismissal.

Appeals to this court can only be made on questions of law. As the court *a quo* found against the appellant it is for her to indicate a question of law in which the court *a quo* is said to have erred.

The first ground of appeal is that the court *a quo* erred in law in finding that the respondent was entitled to rely on a written warning given to the appellant after she committed the offence for which she was dismissed.

If this is a question of law it is our view that the court *a quo* did not err in this respect. An employer and the court *a quo* is certainly entitled to take into account the conduct of an employee even after the commission of the offence for which she is charged. This is certainly a surrounding circumstance of the case for which a court is to have regard in terms of Section 42 of the Employment act.

The second ground of appeal was that the court *a quo* erred in law in finding that the appellant was fairly dismissed notwithstanding that the appellant was charged with stage 1 disciplinary offence and called to appear before a stage 1 disciplinary tribunal. A stage 1 enquiry is provided for in the code adopted by the employers and employees in this particular enterprise. The maximum penalty which could have been suffered as a result of such an enquiry would have been a written warning and indeed the enquiry after finding the appellant guilty of the offence with which she was charged went on to recommend a final warning on the basis that this was the appellant's first offence. As it turns out, however, she had been previously warned for the same misdemeanours and indeed she had repeated her errors even after the instance for which she was charged.

The court *a quo* found that the procedures adopted were in accordance with substantial justice and that the code as itself proclaims is a guideline for fairness. The employer does however retain an overriding discretion. The Chairman of the enquiry had indeed recommended that the Appellant should receive a final warning but did so on the basis that the Appellant's was a sole and first offence. The management with the knowledge of Appellant's repeated errors of the same type as that with which she had been charged in its discretion decided to dismiss her. In so doing it was within its rights in terms of the code

The court *a quo* found that indeed the procedures were fair and in particular that the respondent had had ample opportunity of being advised of the charges against her and

answering the same. In fact her response was a plea of guilty. We cannot find that there is anyway that the court *a quo* has erred and we find ourselves in agreement with the judgment of that court.

The appeal accordingly fails and is dismissed. The judgment and order of the court a quo is confirmed

SAPIRE, JP

MATSEBULA, JA

MAPHALALA, JA