THE INDUSTRIAL COURT OF SWAZILAND

In the matter of	CASE NO. 19/83
ABRAHAM DLAMINI	Applicant
vs.	
METRO CASH & CARRY (MBABANE BRANCH)	Respondent

FOR APPLICANT MR. DLAMINI - LABOUR DEPARTMENT.

FOR RESPONDENT MR. P. DODDS - SWAZILAND FEDERATION OF EMPLOYERS

Issue in Dispute - Wrongful dismissal.

AWARD

The Applicant was employed by the Respondent Company on 18/10/75 and continued to work with them till he was dismissed from service on 4/5/82. He first started at Manzini as End Controller and later was promoted to Floor Manager in 1979. His supposed duties were -

(1) to keep the premises clean.

(2) to supervise the workmen

(3) to check on the purchases of the customers

(4) to physically search the staff members when they left the premises.

Since the applicant was arriving late to work, he was transferred to the Mbabane Branch in January 1982 as End Controller, his salary and duties were that of the Floor Ma ager. He received E500 per month as salary. It emerged in evidence that although the applicant had disciplinary control over the workmen, he had no powers to take any action against them, except to report to the Branch Manager who personally had overall disciplinary control over the staff.

Mr. Coelo, the Regional Manager of the Respondent Company said that the applicant was never informed of his duties in writing but was only verbally told by the Branch Manager. He was also not given any training in his job. I consider this as a pre-requisite for the appointment to the middle management. Therefore in my opinion the Applicant was not a staff member as contemplated in Sec. 2 of Act No. 4 of 1980.

It also transpired in Mr. Coelo's evidence that he personally witnessed certain workmen leaving the premises unsearched, but said that he could not remember the date when this happened. He did not personally warn the applicant on this matter but did so through the Branch Manager. The applicant however denied this allegation. In fact the Branch Manager should have been called to give evidence on this. Mr. Coelo also said that on 4/5/82, he once again noticed the applicant allowing workmen to leave the premises unsearched. He summoned the applicant to his office and straightaway dismissed him from service. The applicant was given a sum of E1730.80 as terminal benefits, which he refused to accept, as he maintained that he was unjustly dismissed. The applicant felt that the relationship between himself and Mr. Coelo was strained from the time Mr. Coelo assumed duties at the Respondent Company. Mr. Coelo alleged that this was because he found that the applicant was conducting his own business which he said conflicted with his duties as End Controller. The applicant however denied this.

Mr. Coelo was also not very happy when he found that the applicant was the Chairman of the Workers Committee. In my view I feel that the misunderstanding between these two stemmed directely from the fact that the applicant was made the Chairman of the workers Committee.

Mr. Coelo's main reason for applicant's dismissal was that he failed to search the employees when they left the business premises. Therefore the relevant section under which he could have been dismissed, in my view, is Sec. 3&(a) of the Employment Act No. 5 of 1980, which reads as follows -

It shall be fair for an employer to terminate the services of an employee for any of the following reason

"(c) because the conduct or work performance of the employee has after written warning, been such that the employer cannot reasonably be expected to continue to employ him.

The other sections that are not relevant to this matter has been ommitted.

Under this Section it is a requirement that the employee be given a written warning of his poor work performance; but in this case no such warning was given to the applicant.

Poor performance of work may be a valid reason for dismissal and the failure of a servant to provide the skill which by accepting employment, he has held himself out as possessing, is a breach of duty entitling the employer to discharge him. However this depends on the gravity of the offence and the type of work.

Except in cases of grave misconduct, which normally results in the employee's summary dismissal; in all other cases it is but fair the Management gives the employee a chance of improving himself by issuing him a warning letter in order to bring about the desired improvement in the workers performance. The procedure adopted in some of the Developing Countries is to issue 3 warning letters before steps are taken to terminate their services.

However I would like to stress that this Court would not like to interfere with the employers right to hire and fire his employees except in cases where such hiring and firing amounts to unfair labour practice.

Assuming that the Applicant in this case failed to search the workmen when they left the premises after work, this does not in any way warrant a summary dismissal which according to Mr. Coelo himself was very harsh. A written warning would have sufficed in this particular instance.

3ut taking the evidence as a whole, I am of the opinion that the Applicant was summarily dismissed not because he failed to search the worken but because of his involvement in the workers committee. Therefore I am satisfied that the dismissal of the applicant was wrongful.

Before I come to the question of reinstatement, I would like to stress that where an employer proposes to take action against an employee for misconduct, it would be advisable to hold a domestic enquiry after due notice to the employee, before contemplating such an action. However holding a bona -fide enquiry does not preclude an employee from tendering evidence before this Court, and the Court, cannot refuse to entertain

such evidence and act instead on the domestic enquiry proceedings.

Though a domestic enquiry is not a legal requirement in Swaziland, such an enquiry is always desirable since the principles of natural justice require that a person must be informed of the charges against him and an opportunity be given to him to meet them. An enquiry helps to establish the bona fides of the employer, and dismissal without an enquiry may sometimes be indicative that the employer has acted arbitrarily.

On the question of reinstatement this Court has unfettered discretion under Sec. 13(1) of Act No. 4 of 1980, to do what it considers to be right and fair.

In making a just and equitable order, one must consider, not only the interest of the employers, but also the interest of the employees, and the wider interest of the country, for the object of social legislation is, to have not only contended employers but also contended employees.

In a finding where a termination is unjustified, and the employee feels that the Court has no alternative, but to order his reinstatement; I consider this as an error of law, since the Act permits the Court to order compensation in lieu of re-instatement.

Having considered all the facts in this case, I order the Respondent Company to pay the applicant a sum of E3000 being 6 months wages as compensation in lieu of re-instatement for his wrongful dismissal, which order I consider just and equitable. The applicant will also receive the sum of E1370.80 from the Respondent Company being his terminal benefits.

JUDGE PRESIDENT

20/10/83

I Agree:

ASSESSOR.