

IN THE INDUSTRIAL COURT OF SWAZILAND

CASE No 1/85

In the matter between:

NIMROD KHUMALD

APPLICANT

AND

TRACAR LTD

RESPONDENT

PRESIDENT:

J. A.

HASSANALI

FDR APPLICANT:

MR. S.

MOTSA

FOR RESPONDENT:

MR. P.

DODDS

ASSESSORS:

MESSRS. J.

OLIVER AND A. N. MATSEBULA

ISSUE IN DESPUTE:

UNFAIR

DISMISSAL

AWARD

(Delivered on 19-09-85)

HASSANALI, J.

In this case the applicant is claiming re-instatement or in the alternative compensation for his unfair dismissal.

The Respondent Company acting under Sec 36(a) of the Employment Act No.5 of 1980 summarily dismissed the applicant on 7/6/83 on the ground that he had committed theft in the sum of E1,145.00 belonging to the Company. The matter was reported to the Police who after due investigation decided to close the docket as the evidence was insufficient to prosecute him.

The applicant was originally employed by Auto Swazi in 1979 with whom he worked till its business was brought over by the Respondent Company on 14/4/1981. Thereafter he continued to work

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with the present Company as a petrol attendant until his services were terminated.

Besides being a petrol attendant he was also in charge of the cash collections from the other attendants. The daily routine was to put the days' collections in an envelope and deposit it in the safe. Every morning, Mrs. Moliefe, the Cashier, who kept the key to the safe, opened it in the presence of either the applicant or the other money boy attendant Mkhonta. The monies were then counted and checked. On the evening of 3rd June, 1983, the applicant as usual put the day's sales into an envelope and deposited it in the safe. The following morning, however, the safe was not opened and when the cashier was questioned about it she said that she was busy and had no time to do so. The applicant was again on duty on Sunday, the 5th June and as usual in the evening, he put the envelope containing the Day's collection into the safe. The next morning the safe was opened by Mrs. Moliefe, but neither of the money bag attendants were informed about it. She opened it in the presence of one Miss Phindile Shongwe, a petrol attendant. Hlophe the Supervisor said that it was an unusual practice for an ordinary attendant to be present when the safe was opened. Phindile Shongwe herself admitted that it was first time that the cashier had asked her to be present. C. Sonnekus, the Manager, of the Company, on the other hand took up the position that

the safe was ordinarily opened by the cashier in the presence of one Mrs. Goosen. Therefore I fail to understand as to why the cashier departed from her usual practice and this has created a certain amount of doubt in my mind as to the credibility of the respondent's witnesses.

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It appears to me that the Company has not laid down any procedure as regard to the deposit and counting of the monies deposited in the safe. In fact I consider this a rather serious lapse on the part of the Company which lapse in my view could have led to this theft, as anyone from the applicant upwards could have had the reasonable opportunity of meddling with the cash.

According to the applicant, he discovered that an envelope containing cash and cheque were not with the other envelopes which had been taken from the safe. He also found that one of the envelopes had been tampered with. Had the Company maintained a strict record of the sales, this theft could have been avoided.

Mrs. Moliefe in her evidence said that all petrol attendants had their own money bags and at the end of the day they deposited their collections into the safe. This was denied by Phindile Shongwe, Hlophe and the applicant. Therefore it appears to me that the Company officials were unaware as to what was actually happening at their petrol station. It is also surprising as to why only one official should have been entrusted with the key to the safe.

Sonnekus stated that the petrol attendants maintained a register in which they recorded the days collection, but this register was not made available to the court.

In my view of the procedure followed by the Respondent Company officials on 6/6/83, I am rather hesitant to place any blame on the applicant although there is room for some suspicion.

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Consequently I consider his dismissal unfair and make the following order.-

- 1) Payment of E225 being one month compensation
- 2) Payment of E174.40 being Severance allowance
- 3) Payment of E52.32 being 6 days wages (worked in June)
- 4) Payment of E279.04 being wages in lieu of notice.

My Assessors agree with my decision.

J. A. HASSANALI

PRESIDENT