

IN THE INDUSTRIAL COURT OF SWAZILAND

CASE NO.44/85

In the matter between:

SIMON NXUMALO

Applicant

and

EDWORKS (1936 )LIMITED

t/a PICK - A - PAIR

Respondent

CORAM:

MR J. A.

HASSANALI

President

MR

SIMELANE for

Applicant

MR P.

FLYN for

Resoondent

MESSRS B. STEPHEN AND A. N. MATSEBULA ASSESSORS

AWARD

Delivered on 16/01/87

Hassanali, President

This is an application by the applicant claiming compensation from the Respondent far his unfair dismissal.

The applicant was appointed Branch Manager of Pick-A-Pair Mbabane by letter dated 19/9/83 (Ex. A) on a monthly salary of E50D. Two trainee Managers Mrs Doreen Rayan and Eric Mazibuko also worked there. The applicant however maintained that he was also a trainee Manager although he was engaged as Manager. Mrs Rayan was paid E550. as salary per month and being in overall charge of the shop, maintained the books and records. When need arose, she ordered and received goods. She also prepared progress reports and despatched them to Headquarters.

He further stated that while in employment, there were a number of stock takings. The first of these was on 17/7/84 where a stock loss of E6,862.00 was revealed. The second one on 12/9/84 showed

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a shortage of E2,742.00. The third stack taking was carried out on 24/10/84 and this also showed a loss of E737.00. However he was he was never informed about these shortages.

Continuing he said that on 26/2/85, he received a letter from the office of the Prime Minister to attend a meeting there on that same day. Since there was a stock taking on that day, he phoned Head-quarters and spoke to one Mr Mackay. Mr Mackay told him that his presence was not necessary and that he could attend to it with the help of Mrs Rayan. When he came back from the meeting he was told by Mr Mackey that the stock taking had been done and ha was asked to sign the stock sheet, which he did. Thereafter he went on leave but he was suddenly recalled and served with Notice of termination dated 6/3/85. He said that on 4/3/85, Mr Mackay tried to give him an undated letter (Ex. D) which he refused to accept. He denied that he received any verbal warnings from the Company as regards to the shortages.

In cross-examination he admitted to his on stock sheet relating to stock taking on 17/7/84. He said that he had seen computer run sheets in the shop but was not conversant with the contents. He denied that Mr Mackay had asked him to check the stock sheet on 26/2/85 after he returned from the meeting.

I now turn to the evidence of Mr Mackay, the Area Manager of the Respondent Company. He said that he supervised the general running of the business in Swaziland and also took stocks from time to time. The Applicant was the Branch Manager while Mrs Rayan was a trainee Manager. He further said that stock sheet, Ex. J was signed by the applicant and sent to Johannesburg, the results of which appeared later in computer print outs. He did not know as to what the shortages were. When he came to Mbabane on 26/2/85 to take stocks the applicant mentioned to him that he was going away

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for a meeting at the Prime Minister's office. So he carried out the stock taking with the help of Mrs Rayan. When the applicant returned from the meeting, he signed the stock sheet. He further stated that he had discussed the shortages with the applicant and when he was made aware of the stock loss amounting to E6,862.00 he said that he was unaware as to how it could have happened. He also stated that Mrs Rayan kept books for the Branch.

He went on to say that the applicant was warned verbally re these shortages but said that he was not aware as to how the shortages of E2,742.39 came about since he did not do the stock taking. A warning letter was given to the applicant sometime in January or February 1985 but he refused to accept it (Ex. D). Applicant was dismissed from service as a result of the stock taking in February.

In cross-examination he admitted that Mrs Rayan was paid more than the applicant, but denied that letter (Ex. D) was given the day the applicant was dismissed.

The next witness for the Respondent Company Mr. Paul Sartorius stated that he was Security and Administrative Manager of the Company. The applicant was recruited as a trainee Manager and later became Manager. During the applicant's term of office, the Branch experienced shortages and these were due to certain control problems. The applicant was never in the shop and as a result other staff signed and received stocks. He however stated that the signature on the stock sheet of 25/2/85 was that of the applicant and that stock taking revealed a stock loss of E5,675.14. He issued a verbal warning to him on 9/11/85 (Ex. D). The shortages he said could have been due to administrative irregularities and were not physical shortages.

In cross examination he said that Exs. R1 to R5 had been prepared

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by the Record Department in Port Elizabeth. He said that he was not aware as to who checked and discovered all the shortages. He admitted that Exs. R7 to R11 were signed by Mrs Rayan.

On this evidence, I am asked by the applicant to render his dismissal as unfair.

First of all I shall deal with the circumstances that led up to his dismissal.

According to the evidence the applicant was appointed Branch Manager of the Respondent Company at Mbabane and received E500 per month as salary. The applicant maintained that though he was engaged as Branch Manager, he worked as a trainee Manager, and that Mrs Rayan the other trainee Manageress was in overall charge of the shop. She kept records and books placed orders for goods and received them, and prepared and submitted progress reports to the Head office in Johannesburg. She received a higher salary than the applicant. This could be true in view of applicant's poor understanding of Management functions and responsibilities. This was very clearly spelt out by the Respondent in his answer, which reads as follows "applicant failed to discharge his obligations in that he failed to

understand the book keeping functions expected of him and he failed to keep stock shrinkages at acceptable levels. Because of applicants lack of appreciation and understanding of his Managerial functions and responsibilities, the officers of the Respondent Company who visited the shop from Head office had to deal with one Mrs Rayan who was then a trainee Manageress/Cashier". This in my view suggests that the applicant was only a Manager in name and all business was carried out by Mrs Rayan.

The applicant admitted that there were stock takings on 17/7/84, 12/9/84, 24/10/84 and 26/2/85, but denied that he was ever informed of any shortages. The Respondent on the other hand maintained that he

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was informed verbally. The stock takings on 17/7/84 and 12/09/84 revealed stock losses of E6,862.00 and E2,742.00 respectively but I am surprised that the Company did not think fit to view these stock losses seriously so as to warrant his dismissal or at least a stern warning in writing. Their failure to do so, has created a certain amount of doubt as to whether these shortages were actually physical or shortages resulting from irregular entries in the books. Therefore I am inclined to accept the applicant's evidence that he was never informed about these shortages.

Coming to the third shortage arising from the stock taking of 24/10/84, the company took up the point that he was verbally warned and was also told that a written warning would follow. Accordingly Ex. D was handed over to applicant by Mr Mackay which letter applicant refused to accept. Mr Mackay however was not sure as to whether it was handed out before or after 26/2/85. Ex. D speaks of a warning on 19/11/84 but applicant has denied receiving any such warning. He admitted that Ex. D was given to him on 4/3/85 but he refused to accept it. Since this letter was undated, the respondent made no attempt to prove the date of delivery. This could have been done by noticing the Commissioner of Labour to produce his copy which would have sincerely had the date of receipt stamp on it. Therefore I am of the view that this undated letter was given to the applicant on 4/3/85, presumably to justify the Respondent's subsequent conduct re forwarding their letter of termination to the applicant.

The last stock taking which resulted in the stock loss of E5,675.00 was done on the same day the applicant attended the meeting at the Prime Minister's office. There is no doubt that the Management was very angry with him for having given preference to the meeting over the stock taking. This is well illustrated in the following paragraph of the Respondent's answer - " It is submitted on behalf of

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Respondent that the conduct of applicant to prefer to attend a meeting in preference of stock taking was manifestation of his neglect of his duties as Manager".

Therefore it appears to me that the dispute between the applicant and the Respondent stemmed not from the verbal warning issued to him on 19/11/84 as alleged by the Respondent but from the meeting he attended at the Prime Minister's office. I am of the view that the applicant was dismissed because he attended that meeting.

Furthermore Mr Mackay in his evidence stated that the applicant was dismissed of the stock loss resulting from the stock take in February, 1985. I am afraid I cannot accept this. According to the letter of termination he was dismissed as a result of the discussion that took place in November, 1984. It is clear from the evidence that no domestic inquiry was ever held so as to find out whether the applicant was really responsible for the shortages. On the question of holding a domestic inquiry, it is not a legal requirement in this country, but such an inquiry is always desirable especially in cases of this nature since the principles of natural justice require that a person must be informed of the charge against him and an opportunity be given to meet them. An inquiry helps to establish the bona fide of the employer and dismissal without an inquiry may sometimes be indicative that the employer acted arbitrarily.

It is also important that in a case of this nature, the Management gives the employee a written warning.

However the evidence does not show that this had been adhered to except in Ex. D which I have rejected.

There is evidence that these stock losses could have been caused as a result of certain discrepancies in the XXX

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Therefore it is possible that the Company did not suffer any physical losses.

In the circumstances, I have reached the following conclusions -

1) that though the applicant was appointed Manager of the Mbabane Branch, he was never in-charge as such and it was Mrs Rayan who was in overall charge. Therefore it is quite likely that she could have inadvertently made certain false entries in the books, thus causing the stock losses.

2) The stock takes done on 17/7/84 and 12/9/84 revealed heavy stock losses but surprisingly the Company did not view these losses in a serious light. Had the applicant been responsible for these as alleged by the Company, I would have certainly thought that the Company would have terminated his services immediately or at least given a letter of warning. I hold that no warning, verbal or written was ever given to the applicant. I reject the letter Ex .D since it is undated and this in my view could have been fabricated to give credence to the Notice of termination dated 6/3/85, and also to show Sec. 36 (a) of the Employment Act No.5 of 1980 had been complied with. Taking these into consideration, I agree with the applicant that Ex. D was only given to him on 11/3/85.

3) According to the letter of termination, the applicant's services were terminated as a result of the warning given to him on 19/11/84. Therefore Mr Mackay's evidence that the applicant was dismissed as a result of stock taking losses arising from the stock take on 26/2/85 does not sound right. I hold that the applicant was dismissed not as the result of the alleged warning given on 19/11/84 re-short ages, but because he attended the meeting at the Prime Minister's office thereby giving preference to it over the stock taking on

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26/2/85. In my view the applicant should have been warned without resorting to his dismissal.

4) No domestic inquiry was ever held so as to give a chance to the applicant to state his case. Taking all these into consideration I have come to the conclusion that the applicant was unfairly dismissed.

After having considered all the factors relevant to compensation, I order the Respondent Company to pay the applicant a sum of E1,000. being 2 months wages as compensation in lieu of re-instatement for his unfair dismissal, which order I consider just and equitable.

My Assessors agree with my decision.

J. A. HASSANALI

PRESIDENT