



Under cross examination the First Applicant said she did not know the contents of the two warning letters and there was no one she could find out from. She said MR. UTLEY told her that there were warning letters. After receiving the first warning letter the Applicant continued working. The first

3

Applicant stated that after receiving her warning letter she improved her standard of work. The First Applicant took the letter to MRS. XABA who was their supervisor who explained the contents to her. The First Applicant took the second warning letter to MRS. XABA who explained it to her. As a result of receiving the two warning letters the First Applicant continued with her routine duties. She improved her standard of work. The First Applicant denied ever receiving verbal warnings. The First Applicant stated that she was dismissed on the 18th November. The First Applicant stated that she was paid for whole of November and received her December pay as well and leave days.

The Second Applicant testified that she is 27 years of age. She is not married. She has children. They are schooling. Second Applicant stated that the Respondent is ESTEL HOUSE (PTY) LIMITED. She was employed by MR. UTLEY of ESTEL HOUSE. She was employed in 1990 as a cleaner. She was earning E325 per month. Her employment was verbal. She was dismissed on the 18th November, 1993. Her dismissal was in writing. The Second Applicant stated that prior to her dismissal there was no hearing. She was served with two written warnings before she was dismissed. She did not know the contents of the warning letters as MR. UTLEY did not explain them to her. She was dismissed by MR. UTLEY together with the First Applicant. She regards her dismissal as unfair.

The Second Applicant stated that she was employed by ESTEL (PTY) LTD. She does not know why the warning letters are on the letter head of Executive Consultants. The Second Applicant seeks additional notice, severance allowance in the sum of E248.60 and compensation for 6 months in the sum of E1940.56.

Under cross examination the Second Applicant stated that she was dismissed in writing and received a letter of dismissal.

3

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4

She received her salary for November, 1993, her salary for December, 1993 in lieu of notice. She received leave pay of E264. She received a total payment of E894.64. She was dismissed on the 18th November, 1993. The Second Applicant stated that she took the warning letters to MRS. XABA who was placed as their supervisor but MRS. XABA was not an employee of the Respondent. MRS. XABA explained the contents of the letters. After receiving the written warnings the Second Applicant continued working.

The Respondent then lead the evidence of DW1 DAVID BOOTH UTLEY who stated that he is a Director of Executive Consultants Proprietary Limited. DW1 stated that Executive Consultants were appointed by ESTEL (PTY) LIMITED as their Property Managers. They managed ESTEL HOUSE in Manzini on behalf of ESTEL (PTY) LIMITED. Executive Consultants were appointed to manage ESTEL HOUSE on the 12th June, 1992. DW1 did not maintain an office in ESTEL HOUSE. DW1 is based in Mbabane. MRS. XABA is employed by TYRE AND BATTERY (PTY) LIMITED. This company occupies the property next to ESTEL HOUSE and MRS. XABA was asked to keep an eye on the cleaning of ESTEL HOUSE as DW 1 is not always in Manzini.

DW 1 stated that the Applicants were employed by TATE AND LYLE ENGINEERING. DW1 stated that the Applicants came to be employed by ESTEL (PTY) LIMITED because TATE AND LYLE ENGINEERING were doing property management until he took over. TATE AND LYLE ENGINEERING were not a proprietary company. DW1 stated that the Applicants were employed as cleaners. Their job description was the general cleaning of the building inside including the mopping of the floors, cleaning of the carpets and removal of any rubbish in the public areas. The cleaning of the toilets came within their responsibilities.

5

DW1 stated that he received a number of complaints from the tenants regarding the cleanliness of the premises. DW1 stated that as a result of a complaint dated 26th October, 1993 from Union Sank he sent a letter to the Applicants on the 1st November, 1993. DW1 stated that on 7th October, 1993 he did send a written complaint to the Applicants. DW1 stated that he received a complaint from ROYAL BLUE ACQUA WORLD LTD. As a result of this letter DW1 went to the Manzini Labour Office. As a result of his visit to the Labour Office DW1 issued letters of dismissal. He attached the letter from ROYAL BLUE ACQUA WORLD LTD to the letters of dismissal. DW1 stated that he paid the Applicants for the month of November, one month's notice for the month of December and calculated their leave pay.

Under cross examination DW1 said he is not the proprietor of ESTEL HOUSE (PTY) LIMITED. DW1 said the Applicants were employed before he took over the running of ESTEL HOUSE. He does not know when they were employed. DW1 said the Applicants were employed by ESTEL (PTY) LTD. DW1 said MR. DIJS supervised the Applicants and reported to him. DW1 went on to say that he had two people to assist him in Manzini, MRS. XABA and MR. DIJS. These people worked for DW1, the responsibility was his. DW1 said MR. DIJS still works for him. When DW1 first took over the building MR. DIJS came around the building with him and subsequently MR. DIJS asked MRS. XABA to assist him with the day to day running . DW1 did not ask MRS. XABA. MRS. XABA was working for TYRE AND BATTERY (PTY) LTD. DW1 said ESTEL (PTY) LTD and TYRE AND BATTERY (PTY) LTD are independent companies. DW1 further said that he acted on behalf of ESTEL (PTY) LTD.

DW 1 was asked why the letters to the Applicants were on the letter heads of Executive Consultants (Pty) Ltd. His reply was that Executive Consultants were appointed to run ESTEL HOUSE and Executive Consultants appointed him to

6

act as Property manager of ESTEL HOUSE. DW1 said before exhibit P3 the letter of dismissal was issued there was no notice given to the Applicants. Before exhibit P3 was issued to the Applicants DW1 did not hold any inquiry or disciplinary hearing. DW1 said MRS. XABA was employed by a neighbouring company and her duties for ESTEL HOUSE were to try and provide some day to day help and supervision so that the work was properly done.

DW1 said he did not at any stage receive any written report about the conduct of the Applicants from

MRS. XABA. DW1 said he did not hold any inquiry before dismissing the Applicants. He did not hold any inquiry before issuing warning letters. DW1 said he dismissed the Applicants for poor work performance.

Responding to questions from the Court, DW1 was asked if after receiving the letter dated 15th November, 1993 he did investigate the allegation that the toilets were permanently dirty. His reply was that as a man it is not easy to check the ladies toilet but they did have a problem with the general cleanliness of the building. DW1 was asked if he did investigate the second allegation in the letter dated 15th November, 1993 and he said he had no personal knowledge of it. DW1 was asked about the allegation that the toilets were used for bathing and he said he never saw that happen with the staff.

He was asked about the fifth allegation that electric power had been switched off by his staff members for no specific reason, his response was that he had no personal knowledge. He was asked about the fourth allegation that the staff have on occasions locked customers using the toilets in the toilets, his response was that he had no personal knowledge. DW1 was asked about the allegation that the staff were absent most

7

of the time and he said he had some personal knowledge. There were occasions when he simply could not find the cleaners in the building.

On the letter dated 29th September, 1993 from Union Bank DW1 said there was a problem with this letter. It was only received by him 6 weeks after it was written and had already been superseded by the Union Bank letter of 26th October, 1993. The Union Bank letter of 26th October, 1993 was the basis of a warning letter. DW1 felt it would be unreasonable to use the letter dated 29th September, 1993 and write another warning. He did however speak to the Applicants and hand them copies of the Union Bank letter of the 29th September, 1993.

DW 1 said before the Applicants were dismissed there was no disciplinary charge preferred against them. No disciplinary inquiry was held. DW1 was asked whether he got in touch with MRS. XABA to find out the truth as she was the one supervising the Applicants before terminating the services of the Applicants. DW1 said MRS. XABA was not involved on this matter at all. The attention of DW1 was drawn to the fact that the evidence that is before Court is by two tenants of ESTEL HOUSE only. Before DW1 terminated the services of the Applicants, were the other tenants consulted to find out about the truth of the allegations made by these two tenants. DW1 said he did not think it was right to take this letter dated 15th November, 1993 to the other tenants. DW1 said he had verbal complaints on numerous occasions from the other tenants and he had discussions with the cleaning staff about these complaints.

This was the case before Court. Our duty is to evaluate the evidence that was placed before the Respondent during the disciplinary hearing if it did conduct any. The evidence of DW1. is that no charges were preferred against the Applicants. No disciplinary hearing or inquiry was held by the Respondent before terminating the services of the Applicants. In the

8

evidence of DW1 the Applicants were employed by ESTEL (PTY) LTD and dismissed by ESTEL (PTY) LTD. Executive Consultants (Pty) Ltd were not the Applicants employer. Executive Consultants could not issue a warning letter to the Applicants for alleged poor work performance because the Applicants were not its employees. The Respondent did not at any stage raise a charge against the Applicants until they were dismissed.

The allegation of poor work performance contained in a letter dated 15th November, 1993 from ROYAL BLUE ACQUA WORLD (PTY) LTD attached to the Applicants letter terminating their services was not investigated by DW1 to find out whether the allegations were true. DW1 said he did not have personal knowledge of the items raised in the letter except for the complaint that the Applicants were absent most of the time. The complaint referred to in the letter terminating the Applicants services which was allegedly made by MR PRUST the Managing Director of ESTEL (PTY) LTD from Holland

was not placed before Court. There is no evidence showing that the allegations of MR. PRUST were the subject of a charge against the Applicants. There is no evidence that the allegations of MR. PRUST were the subject of a disciplinary hearing conducted by the Respondent.

DW1 stated that the letter dated 29th September, 1993, from Union Bank was not acted on because it was superseded by a letter dated 26th October, 1993 from the same Bank which was a basis of a warning letter. The alleged warning letter is dated 1st November, 1993 from Executive Consultants (Pty) Ltd to the Applicants. We have already ruled that Executive Consultants (Pty) Ltd was a stranger to the contract of employment between the Applicants and ESTEL (PTY) LTD and that Executive Consultants (Pty) Ltd could not issue a written warning to the Applicants for alleged poor work performance because it was not their employer.

9

The Respondent in this case is saying that it terminated the services of the Applicants after two warning letters in terms of Section 36 of the Employment Act. The Respondent has not lead evidence showing the two warning letters. The Respondent has not shown through evidence that it charged the Applicants with any offence, conducting a hearing arising out of those charges, and after the hearing issued warning letters to the Applicants. This evidence is not before Court. In its reply filed in Court the Respondent indicated that it would give evidence regarding the conduct of the Applicants. Before the Court the Respondent did not lead any such evidence. The Respondent indicated that it would give evidence about warnings issued to the Applicants. Before Court no tangible evidence of two written warnings issued to the Applicants was tendered. DW1 who was called to support the Respondent's case does not have any personal knowledge of the Applicants conduct which allegedly justified the termination of the Applicants services. Both MRS. XABA and MR. DIJS were not called by the Respondent to support its case.

The Respondent did not lead any evidence to show that the conduct of the Applicants justified it to terminate their services. The Applicants during their period of service with the Respondent were not the subject of a disciplinary charge or disciplinary hearing. The Respondent has not lead any evidence touching on the conduct of the Applicants which could justify it to dismiss the Applicants. The Respondent has not shown through evidence that it took the Applicants circumstances into account and that having taken their circumstances into account it was reasonable to terminate their services. Such evidence is not before Court.

The Respondent has lamentably failed to justify the dismissal of the Applicants on the evidence before Court. It is therefore our decision that on the evidence before Court

10

the Respondent wrongfully, unlawfully and unfairly terminated the services of the Applicants. We order that the Respondent do pay to the First Applicant 12 days Additional Notice in the sum of E149.16 and 30 days Severance Allowance in the sum of E372.90. We order that the Respondent do pay to the Second Applicant 8 days Additional Notice in the sum of E99.50 and 20 days Severance Allowance in the sum of E248.60.

On compensation, we are satisfied that both the First and Second Applicants have complied with Section 13 (3) of the Industrial Relations Act of 1980. It is ordered that the Respondent do pay to the First Applicant 6 months salary by way of compensation in the sum of E1940.56. It is ordered that the Respondent do pay to the Second Applicant 6 months salary by way of compensation in the sum of E1940.56.

The members have concurred.

MARTIN SAMSON BANDA PRESIDENT

INDUSTRIAL COURT-