

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 13/98

In the matter between:

ALFRED THWALA

APPLICANT

and

ATTORNEY GENERAL

1ST RESPONDENT

MINISTRY OF JUSTICE

2ND RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MDUDUZI HLOPHE

FOR THE RESPONDENT:

MISS NKWANYANA

JUDGEMENT

31/08/2000

The Applicant has filed this application seeking reinstatement and in the alternative compensation for unfair dismissal from his employment by the 2nd Respondent on the 26th August, 1996.

Prior to the dismissal he had been suspended on 17th January, 1995 pending investigations for alleged abuse of government vehicles.

The Applicant was employed by the Respondent in march 1993 as a motor vehicle driver and was attached to the Ministry of Justice in terms of a contract of employment entered into by both parties at Mbabane.

In terms of the Agreement, the Applicant's employment was terminable on a month's notice by either party upon reasonable cause shown.

The Applicant contends that the termination of his employment was both substantively and procedurally unfair because he was not given a fair hearing prior to the dismissal, and the person who dismissed him had no authority to do so and therefore acted unlawfully.

2

He also added that the allegations of abuse of government vehicles were not proven against him and that he had not received a prior warning before the dismissal He claims notice pay, additional notice and severance allowance thereof.

The Applicant narrated to the court that at the time of his dismissal he was stationed at Hlathikhulu in the Ministry of Justice.

He concedes that on the 31st January 1995 while driving SG025 JU from Nhlanguano Central Transport Authority (CTA) where he had filled up petrol, he ran over two (2) children who had alighted from a bus at Madulini station.

The Applicant however denies that at the time of this accident he had no authority from his supervisor to drive the motor vehicle along that route.

He reported the accident to the police and the supervisor reported the accident to the District registrar at Nhlanguano.

The Applicant further told the court that he was charged with the offence of culpable homicide before a Magistrate Court and was acquitted.

He continued to work at Hlathikhulu as a driver.

On the 17th July 1995 the Applicant further admitted that while he was driving a government motor vehicle registration number SG018 JU from his homestead to Nhlanguano to park the car, the car overturned.

At the time of the accident, he told the court that it was at night and he had a passenger in the car.

He again stated that he had authority from Patricia Shabangu to drive the car to his home and later on park it at Nhlanguano regional Offices.

He reported the accident to the Police that night and to Patricia Shabangu the following morning. He claimed that he had been disturbed by horses when the government car overturned.

The Applicant was again charged for negligent driving before a Magistrate court and was found guilty and fined E250.00. He paid the fine.

3

He told the court that he received a letter of suspension after this incident and later on received a letter of dismissal.

The Applicant said that there was no hearing prior to the dismissal. On his personal details, he said that he was unemployed and had eight (8) children who had since dropped out of school. That he was 46 years old. He was earning E976.00 at the time of his dismissal. He pleaded for reinstatement and compensation in the alternative.

Patricia Kipa Shabangu testified for the Respondent as DW1. She told the court that she was Assistant District Registrar for Hlathikhulu- sub region and the Applicant was her subordinate. He used to drive the station car.

She told the court that on 31st January 1995 the Applicant phoned her from Nhlanguano where he had parked the station car SG 025JU the previous Friday. She instructed the Applicant to get authority from Mr. Thwala at the regional office to drive the car to Hlathikhulu. The Applicant ignored her instructions and drove to his homestead on his way to Hlathikhulu. He did not obtain any authority from Mr. Thwala. While on the route leading to his home he knocked down the children who died.

She reported the matter to Mr. Thwala the Registrar. The department arranged for the funeral of the two children and paid all expenses thereof.

After that accident no action was taken against the driver. She had done her part by reporting to the Registrar.

On the 17th July 1995 she told the court that the Applicant drove her to KaVeni and they came back to the Hlathikhulu station at around 5p.m. which was the knock off time. She asked the driver to drop a cleaner named Mathabela to Hlathikhulu town and park the car at the Regional office.

While she was in town, she saw the Applicant driving the car and had a lady passenger. She asked him to park the car.

A while later, the driver came to her and was still driving the car, she again asked him to go and park the car.

While she was at home, the Applicant came in the car and then asked the witness "sisi I don't hear you, what do you want me to do".

She again asked him to go and park the car.

4

He again came back saying that the nightwatchman had refused him to park the car at the Regional Offices. She insisted that he must go and park the car as he was not telling the truth. He thanked her and left.

Early in the morning at about 5a.m. the Applicant came to her house and told her that the car had overturned at Mtsambama. He told her that he had gone to fetch some fire wood with it. He was still driving the car though the entire roof had been damaged.

She asked him to go to the Police station and she followed him there.

At the station he changed the story and said that the accident occurred on his way home.

She informed Mr. Thwala, her supervisor about the accident. The Applicant was then asked to come to work and record a statement. He came the following day and she asked him to write a report to the District Registrar. He asked one of the junior clerical officers to help him write the report. He then submitted the report the same day signed by himself.

Miss Shabangu attached her own report to that of the Applicant and forwarded them to the District Registrar.

The letter dated 19th July 1995 and the annexed report is annexed to the respondent's reply and marked TP4.

In the report, the Applicant made the following admission :

"After you had instructed me to go and park the vehicle and rush for the bus, I left your house as though I would park as instructed but J did not. I just drove straight home since I had some items to take home which I would not be able to transport by bus ".

He also explains how he gave a lift to a neighbour but had this accident about 6.30p.m. The Applicant sought to repudiate tills admission stating that he did not understand English and alleged that the letter was brought to him by Miss Shabangu while he attended the trial at the Magistrate court where he signed it.

We note that in-chief the Applicant admitted driving the car to his homestead and taking up a passenger before the car overturned, well after office hours. He only tried to justify this action by stating that he had verbal authority from Miss Shabangu to use the car to take his shopping home.

5

He further stated that Miss Shabangu often used the government car for her own purposes hence she too reciprocated by allowing him to use the car for his personal errands.

DW2 was Ambrose Khumalo, Assistant Secretary in the Ministry of Justice, He told the court that the Principal Secretary is vested with authority to employ government employees in the category of cleaners, drivers and groundsmen.

He referred the court to a government circular to Heads of Departments vesting them with authority to employ drivers.

The Applicant was employed in terms of the said circular which is annexure TP5 to the respondent's reply. The same is headed: Civil Service Board Circular No. 1 of 1994. There is a list of established posts for which Heads of Departments may vary terms of employment and make new appointments.

Clearly, the appointing authority of the Applicant was the Principal Secretary, Ministry of Justice and he appointed him via annexure TP1 on the 1st March 1995.

The Principal Secretary in the Ministry of Justice on the 26th August 1996 terminated the employment of the Applicant after considering the allegations against him in particular the admission the applicant made on the 19th July, 1995.

We are satisfied that the admissions were voluntarily made by the Applicant. He has also admitted to the use of the government cars in circumstances which are clearly unauthorised.

He did not only take away life while in his personal florics but cost the government heavily. Todate his former duty station has found no replacement of the car he negligently caused to overturn under very suspicious circumstances.

We are convinced that the Applicant was not a truthful witness and accept the evidence of Miss Kipa Shabangu that on the two occasions when he had accidents with government motor vehicles, he had no authority to drive the motor vehicles.

In terms of the Interpretation Act No. 21 of 1970 and in particular Section 14 thereof, where a power to make an appointment is conferred by a law, then unless the contrary intention appears, the authority having such power shall also have the power to remove, suspend, dismiss, re-appoint or reinstate any person appointed by it in exercise of the power.

The power to appoint junior officers in the category of drivers is vested in the Principal Secretary. The legality of this circular was not placed in dispute. We in the

6

circumstances find that the Principal Secretary in the Ministry of Justice had authority to dismiss the Applicant.

Considering the evidence before us, the respondent has satisfied the requirements of Section 42 (2) (a) and (b) in that it dismissed the Applicant for a lawful reason and the decision taken was fair and reasonable in all the circumstances of the case.

The members agree,

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT