

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 310/2000

In the matter between:

ISAAC MATSENJWA

LICANT

and

U. S. A DISTILLERS (PTY) LTD

SPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR APPLICANT:

R. MAMOGOBO

FOR RESPONDENT:

K. MOTSA

JUDGEMENT

24/07/02

The Applicant seeks unconditional reinstatement and alternatively payment of a total sum of E29,920.97 as compensation for unfair dismissal. The application for unresolved dispute was brought in terms of Section 65 (1) of the Industrial Relations Act No. 1 of 1996. Conciliation of the dispute had failed and the Commissioner of Labour issued a certificate of unresolved dispute.

The Applicant's case in a nutshell is that he was employed in July 1998 as a builder by the Respondent company, USA Distillers (Pty) Ltd. It is common cause that at the time of dismissal the Applicant earned E587.13 per fortnight and that he had served for 1 year and 7 months.

It is not in dispute that the Respondent was in its formative stage in that it was constructing its distilling premises and that the employees that existed were engaged for that purpose. There was an option however to continue.

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It is also not disputed that the employees were aware of a company policy to disallow drinking at the work place.

The Applicant's case is that on the material date he got permission to attend hospital as he suffered a headache. That he proceeded home first to get some money and then on his way to hospital passed through Riverside Motel to buy a drink to quench thirst. It is common cause that he bought a beer from the bar at the motel and that he was found at the motel by the director after he had bought the beer.

What is in dispute is whether Mr. Louis Borragerio the company director found him seated at the bar drinking or outside the bar whilst the Applicant was carrying the can of beer.

The Applicant insists that the latter version is true while the director told the court that he found the Applicant seated and sipping his beer.

It is also not in dispute that once an employee was given permission to attend hospital, he was deemed to be at work, unless and until he was given days off by the doctor depending on his condition.

At the time when the Applicant was found in possession of beer, he had not visited the clinic but told the court that he was on his way there.

Mr. Borragerio told the court that he was in the company of the chairman of the Respondent at about 12.30p.m. on the material day when they found the Applicant sipping beer seated on a stool at the Riverside Motel. They had gone for lunch there.

Mr. Borragerio said he was very embarrassed by the incident and he reported it to Mr. Constantino who was the head of the building department. He later on signed the letter dismissing the Applicant.

Upon a careful analysis of the facts of the case, the Respondent has established on a balance of probabilities that the Applicant had committed a dishonest act in that he had sought permission to attend clinic but instead was found drinking beer at the Riverside Motel at about 12.30p.m.

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That this was a dismissible offence in terms of Section 36 (b) of the Employment Act.

The Applicant admitted that he had bought beer to quench his thirst whereas he was supposed to be attending hospital. It was immaterial whether he had opened the beer can or not but the intention was manifest.

He was deemed to be at work unless he was given a sick off by the doctor.

In view of the fact that he was caught red handed as it were, and that he had admitted the offence, it was not necessary to hold a hearing in the circumstances.

The Applicant in fact did not attend hospital on the material day but did so on the following day according to a medical card he produced before court.

The Respondent has satisfied the requirements of Section 42 (2) (a) and (b) in that it has shown that it dismissed the Applicant for a reason permitted by Section 36 (b) of the Act and that it was reasonable taking all the circumstances of the case to dismiss him.

There will be no order as to cost.

The Members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT

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