

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 45/98

In the matter between:

MUSAA. SHABANGU

APPLICANT

and

X D. GROUP (PTY) LTD t/a

PRICE N' PRIDE

RESPONDENT

CORAM:

NDERI NDUMA

: PRESIDENT

JOSIAH YENDE

: MEMBER

NICHOLAS MANANA

: MEMBER

FOR APPLICANT

: S. SHABANGU

FOR RESPONDENT

: Z. JELE

JUDGEMENT

28/01/03

This is an application for determination of unresolved dispute brought in terms of Section 65 (1) of the Industrial Relations Act No. 1 of 1996.

The Applicant claims maximum compensation for unfair dismissal, notice pay and severance allowance being terminal benefits in terms of the Employment Act No. 5 of 1980. The claims for additional notice and reinstatement were not conciliated upon as may be observed from the certificate of unresolved dispute annexed to the application and marked "B". Consequently the court has no jurisdiction to deal with them.

1

The Applicant's case is as follows:

The Applicant was employed by the Respondent on the 1st October 1985. The contract of employment was evidenced in writing in a document annexed to the application marked "A".

It is also admitted by the Respondent that at the time of his dismissal, the Applicant earned E2,610.00 (Two Thousand Six Hundred and Ten Emalangen) per month. The Respondent however disputes that the Applicant was entitled to commission.

The Applicant was dismissed on the 18th September 1997 on allegations of absenteeism, insubordination and refusal to obey lawful instructions.

The Applicant told the court that he had requested for five (5) days leave to attend a meeting of the chief and help his children to get transport to school and fence his field. The leave was refused and he absented himself for three (3) days to attend to the problem.

The bus which transported the children to school approximately 18 kms away had broken down and he had to make arrangements with a neighbour to transport them.

As concerns the meetings, he said they were held on weekdays and he was under pressure from the community for failure to attend meetings. There was a complaint against him for failure to contribute welfare money to the community.

He told the court that he gave these reasons to his supervisor Augustin Mzimba upon his leave application. He still had leave days due to him but he was not granted leave since another co-worker had asked for leave before him. He waited for a while and then decided to go without permission.

2

Upon his return from unauthorized leave he explained to Mr. Mzimba and the shop steward Mr. Siphon Vilakati why he had gone without authority. He was given a form to fill and was informed to go home and come back for a disciplinary hearing. The meeting was chaired by the Branch Manager, Mbabane, Mr. Joshua Ntshalintshali. His branch manager attended the hearing and the shopsteward.

Upon conclusion of the hearing he was dismissed. He appealed the decision and the appeal was heard by Mr. Douglas who confirmed the dismissal. He reported the dispute to the Labour Commissioner. Conciliation of the dispute failed and a certificate of unresolved dispute was issued.

He told the court that he was 40 years old. He had a wife and five children all of whom depended on him. He had not obtained alternative work and had suffered financial loss and hardship.

Upon termination he was paid for days worked and for the period he was under suspension. He received his own contribution to the pension fund.

The Regional Manager re-employed him on a temporary basis but that did not last as the furniture outlet closed. He was paid 10% commission on his sales without a salary. This was in March 1999.

Under cross examination he said that he was absent on Tuesday, Wednesday and Thursday without permission. He had been at home the weekend prior, he explained that he could not solve the transport problem over the weekend as his neighbour Mr. Dlamini was not at home.

He said that he had written a letter asking to be exempted from working on Saturdays but this was refused. He denied that in spite of the refusal, he continued to absent himself from work. He admitted however that he had absented himself from work on several Saturdays after writing that letter. He said that he had to be at

3

home on Saturdays to take care of his children, livestock and mother as his wife was at school.

He accepted also that the chief held meetings at times over the weekends but the community complained that he was overworked, hence the failure to attend a meeting he had been summoned to.

He denied that he was called by the manager on Friday, upon his return to work but he had defied the summon to explain his absenteeism. He said that he did go to see the manager but the manager was busy hence they could not talk.

He also denied that he walked out of the disciplinary hearing. He denied he was absent for three Saturdays around the time he had absented himself for three continuous days and had received a final warning.

The Respondent called Andrew B. C. Douglas as RWI. He was the Regional Manager for Score furniture

and Price and Pride and covered Swaziland and Piet Retief area.

He upheld the dismissal of the Applicant. He told the court that he conducted the appeal hearing as a fresh hearing because the Applicant had walked out of the first hearing. He thus gave the Applicant opportunity to state his case and call witnesses.

He was charged for absenteeism for the period from 30th August 1997 to the 2nd September 1997 without any proper explanation. At the hearing just like before court, the Applicant did not deny the unauthorized absence. He also admitted absenting himself from work on several Saturdays. The grounds for appeal was that he had not received enough warnings for absenteeism, had requested to be allowed not to work on Saturdays, and had applied for five (5) days leave that was refused.

Mr. Douglas in deciding to dismiss the Applicant and after considering his long service to the Respondent took into account his work record. He found that the Applicant had received several warnings for

4

absenteeism, for example he had received a final written warning for absenting himself from the 14th August to the 16th August 1997. He still absented himself after the final written warning hence his dismissal on the 3rd September 1997.

The demeanor of the Applicant even in court was that of an intransigent and stubborn person. He evaded answering questions and did not offer convincing explanation for his persistent absenteeism.

The Respondent further called Augustin Mzimba the manager of the Applicant at Manzini. He explained that on the 2nd August 1997 and 14th August 1997 to the 16th August 1997 the Applicant did not report to work without permission and/ or reasonable excuse and after a hearing he was given a final warning.

On the 30th August 1997 to the 2nd September 1997 he again did not come to work. When he called him to explain his absence he refused. He called him to a disciplinary hearing for absenteeism and insubordination. He was found guilty and dismissed.

The evidence of Mr. Douglas and that of Mr. Mzimba is consistent and credible. No reasonable employer would allow persistent absence from work for such flimsy reasons as, has been offered by the Applicant.

Clearly he had ample opportunity to go home during off-days and Sundays to attend to his family problems like any other employee but demanded special exception when the nature of the Respondent's business demanded that its shops remained open on Saturdays.

The applicant did not respect his work nor his superiors and he is largely the author of his misfortune.

The Respondent has satisfied the requirements of Section 42 (2) (a) and (b) in showing firstly that it dismissed the Applicant for a reason permitted by Section 36 (f) in that he absented himself for more than a total of three working days in a period of 30 days without

5

permission or a certificate signed by a medical practitioner certifying he was unfit to work on those occasions.

Further, through the evidence of RW1 and RW2 the Respondent has demonstrated that it was fair and reasonable to dismiss the Applicant in the circumstances as his conduct was intolerable and detrimental to the proper operations of the Respondent's business.

Consequently, the Application is dismissed in its entirety. There will be no order as to costs. The Members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT