

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 159/03

In the matter between:

GLADMAN NHLEKO

APPLICANT

And

PEP STORES (PROPRIETARY) LIMITED

RESPONDENT

CORAM:

NKOSINATHINKONYANE :

JUDGE

DAN MANGO :

MEMBER

GILBERT NDZINISA :

MEMBER

FOR APPLICANT :

N. MTHETHWA

FOR RESPONDENT :

S. MDLADLA

JUDGEMENT 29.08.07

[1] The applicant served as the respondent's employee for about twenty-one years as Store Manager. He was based at the Hlathikulu Branch of the respondent at the time of his dismissal in February 2003.

[2] He claims that his termination by the respondent was both procedurally and substantively unfair. He also claims his termination was unlawful and unreasonable in all the circumstances.

[3] At the time of his dismissal the applicant was earning a monthly salary of E4,950:00. He wants the court to make an order that the respondent pays him the following terminal benefits:

3.1. Notice pay	E4,950:00
3.2. Additional Notice	E19,800:00
3.3. Severance Allowance	E49,500:00

He is also claiming maximum compensation for unfair dismissal in the sum of E59,400:00

[4] After his dismissal the applicant reported a dispute to the Conciliation, Mediation and Arbitration Commission ("CMAC"). At CMAC the respondent argued that the applicant was fairly dismissed both substantively and procedurally. The respondent however offered to pay the applicant two months' salary. The applicant declined the offer, as he

believed that he had been unfairly dismissed. The dispute was thus certified by the CMAC Commissioner as unresolved and a certificate of unresolved dispute was thus issued and is attached to the application.

[5] The facts of this case are simple. An amount of E492:40 went unaccounted for at the respondent's place where the applicant was the Store Manager. It was not in dispute that the applicant was liable to account for the money as the person in charge of the store.

[6] The applicant said he did not know how the shortage came about. He discovered the shortage during the Christmas season in 2002. He said he reported the matter to a certain Siphon Clifford Dlamini and asked him to tell RW1 Esau Ntshalintshali, the Stock Controller and Auditor. It transpired that that information never reached Esau. There was no evidence as to who was this Siphon Clifford Dlamini. The applicant closed his case without calling him to testify in court.

[7] The applicant when asked during cross-examination as to why he did not make a report immediately about the shortage was unable to come out clearly. He offered many explanations namely that: -

7.1. He did not have time, as it was a busy December period.

7.2. He was too busy until Esau went on leave.

7.3. He had lost his brother at that time and schools were about to open.

7.4. He once paid a sum of E289:00 and it was later discovered that in fact there was no shortage and he was never refunded his money.

7.5. He did not know to whom was he supposed to report.

7.6. There were no rules stating as to when must one report a shortage.

[8] The applicant also told the court during cross-examination that at his store there were two types of float. It was the bank float and the store float. He said it was the store float that had the shortage.

[9] RW1, Esau Ntshalintshali told the court that he has worked for the respondent for thirty years. He said he was the respondent's Stock Controller and Auditor and that he has been the Stock Controller for eleven years. He said he first went to the applicant's duty station at Hlathikulu on 25 January 2003. He went back again on 27 January 2003 and did the stock taking until 29 January 2003. He said the applicant reported to him about the shortage when he had already started to do his job of stock taking and auditing.

[10] During cross-examination RW1 said the applicant should have reported the shortage to the Area Manager Mr. Titus Dlamini. He said the conduct of the applicant of failing to report the shortage for such a period of time amounted to dishonesty and rolling over. He also said the shortage was in the money to be banked and not the store float.

[11] RW2, Titus Dlamini told the court that he is the Area Manager and that he was the applicant's supervisor. He said the applicant never reported the shortage to him. He also told the court that the employment guide under which the applicant was charged marked "R1" started to be operational in 2002 replacing the one that was in place and had stated to be in operation in 1996. He said it was him who personally distributed these documents in Swaziland. During cross-examination he revealed that he personally

delivered the documents by hand.

[12] It was not clear what the defence of the applicant was in this case. He seemed to have contented himself with the argument that there was a dispute as to which float was the shortage discovered between the spare float and the cash to be banked. Whether the shortage was in the spare float or the cash to be banked was of no consequence. The applicant had no right or authority to appropriate the respondent's money and if it was not him who caused the shortage, he failed in his duties to make a report to the appropriate person.

[13] During the disciplinary hearing the applicant did not dispute the evidence of Esau Ntshalintshali, which was similar to what he also told the court. From the record of the disciplinary hearing

Exhibit "A1", the applicant when given the chance to call his witnesses and to present his case he said,

"All that have been said by Esau is correct and I would be wasting time to go back and say the same thing. "

[14] If the applicant did not know that he was supposed to report the shortage, why did he do so to RW1 when he had come to his workstation to do the stocktaking and audit? The conduct of the applicant of making the report to RW1 when he had commenced the stocktaking clearly shows that he knew that he was supposed to report and he was afraid that the shortage would soon to be discovered by RW1. The applicant's defence that he did not know that he was supposed to report the shortage is accordingly rejected by the court as an afterthought.

[15] The evidence also revealed that the applicant did offer to pay back the money to RW1. RW1 refused to accept the payment and said he wanted to consult first. The applicant however did eventually pay back the money to the respondent through its General Manager Piet Rossouw on 17 February 2003.

[16] From the evidence led before the court, it is clear that the applicant was dishonest in the way that he conducted himself regarding the shortage of the money that was entrusted to his control by his employer.

[17] There was no evidence that the applicant's dismissal was procedurally defective. The Stock Controller, RW1 or the General Manager had the power in terms of the disciplinary code and guide to conduct the investigation and charge the applicant. The applicant was represented by another Store Manager by the name of Themba Ntshalintshali.

[18] The applicant was a Store Manager. He was in charge of other employees below his rank. There was therefore a greater degree of trustworthiness expected from him. The misconduct that the applicant committed was aggravated by the seniority of his position.

(SEE: JD GROUP LTD V. DE BEER (1996) 17 ILJ 1103 (LAC).

[19] Trust goes to the root of the employer-employee relationship. The erosion of this

element of the relationship clearly justifies the employer to sever the employment relationship.

[20] Taking into account all the evidence before the court, the court comes to the conclusion that the respondent has proved on a balance of probabilities that the termination of the applicant's service was substantively and procedurally fair and that it was reasonable in the circumstances of the case.

[21] The application is accordingly dismissed with no order as to costs.

The members agree.

NKOSINATHI NKONYANE
JUDGE - INDUSTRIAL COURT