



When a cash sale is transacted, the cashier received the money and the invoice for such sale is prepared in three copies. The Cashier retains one copy and the other two are given to the customer who keeps one for himself and the other he hands over to the Security guard at the time he checks his grinds out from the premises. The cash sales for the Day are recorded in a register maintained by the cashier. At the end of the day the monies are collected by the Manager or his appointee and deposited in the Bank on the following day.

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In January, 1983, the main office at Mbnbane discovered that the cash receipts did not tally with the day's sales. On an investigation conducted at Matsapa it came to light that some cash receipts of a certain day were carried over to the following day, thereby creating a deficiency for that day. This went on for several days and eventually it was discovered that there was a shortage of about E3 000. Thereafter all seven applicants were questioned by Mr. Taft. The Cashier Miss Teresa Mashele, admitted to him that the Manager Mr. Halman had taken the monies. Mr. Taft, however not being satisfied with the explanations given by the applicants terminated their services despite the fact that Mr. Holman himself admitted to taking the monies.

Obert Maziya stated that he joined the Respondent Company in 1975 as an issuing Clerk and received E125. as salary per month. In May, 1983, his services were verbally terminated on the grounds that he was a party to the said theft. Mr. Taft maintained that he was not dismissed but that he kept away from work when he found that the others had been sacked. The Applicant however denied this, He said that he never handled any monies of the Company and was unaware that monies had been stolen. He further said that Mr. Taft at one stage offered him E375. as a settlement of his claim, but he decided not to accept it as he realised that the amount was unreasonable, Ntombikayise Dlamini, the other applicant stated that she

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joined the Respondent Company on 2/5/03 as an invoice Clerk, According to her, she did not handle any of the Company's money, neither was she aware that Mr. Holman had been converting the money for his own personal use.

Teresa Mashele, the third applicant said that, she joined the Company in February 1975 as a Cashier. During the period in question Mr. Holman was the Branch Manager and he used to draw money from her on various occasions. She maintained an account of the monies taken, the sum of which amounted to E2,825.50. However she did not net any receipts from him for these monies. Mr. Taft felt that Teresa, being the Cashier should have brought all this to his notice and had she done so the Company would not have incurred this loss. However, the applicant maintained that she had acted correctly since she had been authorised to give the monies to the Manager.

Considering the evidence in this case the only conclusion that I could come to is that none of the applicants took the monies for themselves nor were they aware that Mr. Holman was robbing the Company. At the later stages however, they came to know that he was drawing money but still did not suspect that anything was amiss., Mr. Dodds appearing for the Employer said that the failure of the applicants to report to Mr. Taft about the conduct of Mr. Holman amounted to a dishonest act under Sec. 36.(b) of the Employment Act No.5 of 1980 and therefore Mr. Taft was entitled to dismiss them.

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Sec. 36 states as follows -

It shall be fair for an employer to terminate the services of an employee for any one of the following reasons:

(Reasons not relevant to this matter have been omitted) b) because the employer is guilty of a dishonest

act, violence, threats or ill treatment towards his employer or towards any member of the employer's family or any other employees of the undertaking in which he is employed.

Dishonest in this section must be construed in its ordinary sense, that is to say, there must be an element of fraud. It is held in number of cases that non disclosure or concealment may constitute the crime of fraud. Voet says that if anyone with evil interest suppresses or conceals the truth by which means he leads another into error is guilty of falsum.

In this matter Teresa Mashele, the Cashier categorically denied that she gave the monies to Mr. Holman with the knowledge that he was converting them to his own use. According to her she was authorised by the Company to hand over the monies to the Manager or to his appointee, which instructions she faithfully carried out. It should not be overlooked that Mr. Holman himself had admitted to Mr. Taft that he had taken these monies. Therefore it appears to me that these three applicants were dismissed on the mere suspicion that they were a party to the theft. It was the duty of the applicants to have informed Mr. Taft about the conduct of the Manager.

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Failure to do so must be condemned, but I feel that their silence did not mean they had any intention of defrauding the Company. At most I would say that they acted foolishly. There -fare in my view the respondent has failed to prove that the applicants had acted dishonestly towards him.

Mr. Dodds also raised another point that if an employer entertained suspicion amounting to a belief as to the guilt of an employee, he could dismiss him. In this matter he pointed out that Mr. Taft did entertain suspicion that all seven applicants were involved in the defalcation of the Company money and he/ entitled to terminate their services. He referred me to case British Home Store Ltd, Vs. Burchele (1978) 1 RLR 379 (1980) 1 CR 303,

In this case Arnold J set down the following standards as regards the termination of an employee on the ground of suspicion amounting to a belief in the guilt of the Employee:-

- a) there must be established by the employer the fact of that belief, that the employer did believe it.
- b) the employer had in his mind reasonable grounds upon which to sustain that belief.
- c) the employer at the stage at which he formed that belief.

on those grounds had carried out as much investigation into the matter as was reasonable in all the circumstances of the Case.

As I stated earlier none of the applicants had either

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directly or indirectly acted dishonestly against Mr. Taft. In the course of his inquiry, Mr. Taft became aware that the monies had been taken and misused by his own Manager, Mr. Holman and therefore his suspicions on the applicants were unfounded and erroneous. Further more, Mr. Taft did not state any reasonable grounds upon which he sustained this belief, Hence none of the above standards have been satisfied. In view of this, I reject this submission.

Therefore taking all the facts into consideration, I conclude that the termination of the three applicants are unfair. In the circumstances I hereby make the following order which I consider just and equitable in the circumstances taking into consideration the part played by each applicant.

Mr. Obert Maziya

1. Compensation in the sum of E250
2. Severance allowance calculated from the date of appointment to the date of termination.

Miss Ntombikayise Dlamini

1. Compensation in the sum of E210.
2. Severance allowance calculated from the date of appointment to the date of termination.

Miss Teresa Mashele

1. Severance allowance from the date of appointment to the date of termination.

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I direct that the payment of severance allowance should be calculated by an officer of the Labour Department.

My Assessors agree with my Award.

This Order is made as an Award of this Court.

PRESIDENT