

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 229/2001

In the matter between:

THULANI F. SIKHONDZE

APPLICANT

and

CIVIL SERVICE BOARD

RESPONDENT

CORAM:

PRESIDENT

: NDERI NDUMA

MEMBER

: JOSIAH YENDE

MEMBER

: NICHOLAS MANANA

FOR APPLICANT

: X. HLATSHWAYO

FOR RESPONDENT

: N. P. MKHWANAZI

JUDGEMENT

14 OCTOBER 2003

The Applicant was until his dismissal on the 12th December 2000, a clerical officer in the Ministry of Public Service and Information. At the time of such dismissal he earned a gross salary of E1,500 per month.

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According to evidence that is common caused the Applicant was dismissed after being brought before a disciplinary hearing conducted by the Civil Service Board for various charges of misconduct articulated in annexure "A" to the Application as follows:

COUNT 1 - Absence from work without leave and or/lawful excuse in contravention of General Order No. A1000 (4) and paragraph 6 of the contract of service between himself and the government for a total number of 184 days.

COUNT 2 - knocking off from work before time without authority.

COUNT 3 - false misrepresentation that on June 23rd and 24th 1998 he did not report for duty because he was detained at the Mbabane Police Station.

COUNT 4 - False misrepresentation of a sick sheet purporting it to have been issued by Dr. E.A. Ezeougu a medical

practitioner recommending that he be placed on sick leave from 2nd February 1998 to 6th February 1998. and

COUNT 5 - Fraudulent misrepresentation by obtaining a false sick leave from Dr. Maswazi Dlamini for the days My 28th, 29th' 30th and 31st August and 3rd, 4th and 5th September 1998.

The Applicant appeared before the disciplinary tribunal on the 30th August 2000 to face the aforesaid charges,

The disciplinary tribunal of the Civil Service Board found the Applicant guilty of all the charges preferred against him and he was summarily dismissed from the Civil Service with loss of benefits with effect from the 6th December 2000.

The Applicant being aggrieved with the decision of the Civil Service Board reported a dispute to the Labour Commissioner on the 17th April 2002, in terms of Section 41 of the employment Act No. 5 of 1980. He demanded reinstatement and transfer, repayment of deducted salary for the 183 days he was absent, notice pay, severance allowance, additional notice, leave pay, gratuity/pension and maximum compensation for unfair dismissal.

The dispute was declared unresolved and a full report was issued by the Commissioner of Labour in terms of Section 4 thereof.

In court the Respondent called Kimberly Masuku to testify in support of the decision to dismiss the Applicant. He was the Acting Personnel Officer at the time and was the supervisor of the Applicant before the dismissal.

He told the court that the Applicant was a clerical officer at the Registry of the Ministry of Public Service and Information under direct supervision of a Senior Clerical Officer by the name of Obed Dlamini. Between Obed Dlamini and the witness was an Assistant personnel Officer. The Applicant

joined the Ministry in 1997 upon a transfer from the Income Tax department.

His duties included receiving mail and distributing same to all the officers in the Ministry, recording incoming and outgoing mail, opening and closing of files and listing the same, and retrieving and returning the same as and when required.

The witness explained that the nature of the Applicant's work was such that if absent, he would be missed immediately as the service he rendered was required at all times.

In the beginning the Applicant attended work regularly and had a good working relationship with the witness and other officers. He soon started absenting himself from work, coming late and leaving early. As a result the work at the registry was suffering immensely and a report was made by the senior clerical officer to that effect to his superior.

The Applicant notwithstanding being talked to continued with the bad habits until he was called upon in writing to explain his conduct. He gave reasons such as transport problem, family misunderstanding or simply kept quiet but continued to be absent.

The witness reported the matter to the Principal Personnel Officer Mrs. Musi who summoned the Applicant to explain his conduct. He tendered apologies for his misconduct but continued to absent himself, leave early and come

late. He was absent for a period of 183 days between May 1997 to February 1998.

The witness narrated how the applicant presented false sick sheets from Dr. Ezeougu and Dr. Maswazi. He also produced a fraudulent Police Report from Mbabane Police Station at one time to explain his

absence. All this evidence was relied upon to find him guilty at the disciplinary hearing and he offered no reasonable explanation for his conduct. As time progressed, he became violent towards Mrs. Musi whenever he was questioned about his conduct. He started reporting to work drunk and would be problematic to the entire staff at the department. When Police were called to conduct a breathalyzer test, he would refuse and become violent.

The evidence of Kimberly Masuku was fully collaborated by Mrs. Mumly Musi who is currently the project manager in charge of a new government system at the Ministry of Public Service and Information.

She narrated at times with animated emotion, the tribulations she suffered at the hands of the Applicant. She told the court that the misconduct of the Applicant was brought to her attention by RW1. At the time she served as Principal Personnel Officer.

Her duties included supervising the staff and attending board meetings amongst other administrative duties.

She told the court that she received the report about the continued misconduct of the Applicant when the same had gotten out of the control of

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his immediate supervisor and other personnel officers below her who included RW1.

The witness summoned the Applicant to find out what his problem was with a view to help him to rehabilitate. The Applicant was evasive, did not give a clear explanation as to why he continued to absent himself from work, reported late and left early. The problem continued until she referred it to the Principal Secretary of the Ministry.

A preliminary investigation was conducted at the Ministry level and she was one of the witnesses called before the panel. The committee felt that the continued absence of the Applicant was inordinate, out of the ordinary, and wanted an explanation from her as to why the problem had not been arrested sooner that then. She told the court that the panel accused her of siding with the Applicant hence his absence for such a long time. A ruling was made by the panel that she was to be surcharged for all the salary the Applicant had received whilst he did not work.

The report was forwarded to the Civil Service Board who constituted a disciplinary hearing that found the Applicant guilty and recommended summary dismissal.

The witness Mrs. Mumly Musi had from the time she had received the report of the Applicant's misconduct from RW1, acted promptly and with diligence to arrest the situation.

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She initially focused on rehabilitating the Applicant rather than punishing him but she received a rude reward from both ends. The Applicant became rude and violent towards her to a point where she had to lock herself in the office whenever the Applicant came to work under the influence of alcohol. Attempts to arrest the situation by bringing in the help of the Police did not save her from further embarrassment by the Applicant and eventual rebuke by the investigating panel.

From the evidence presented to court, Musi did not fail in her duties to deal with the Applicant as soon as the matter was brought to her attention and the recommendation (though not implemented) to surcharge her was unjustified in the circumstances of the case.

It must be said however that the problem posted by the Applicant took too long to be brought to the attention of the Senior Ministry Officers including Mrs. Musi herself and the Principal Secretary.

Perhaps everyone took relief in the prolonged absence of the Applicant because he had clearly become a burden to all the officers in the Ministry, hence the problem protracted for such a long period. It was wrong for the panel to pass the buck to a single officer for a problem that should have been dealt with resolutely from day one.

The Applicant in his testimony before court did not proffer any reasonable explanation for the prolonged absence and for the various false reports he presented to justify his absence. He was unremorseful for his violent conduct towards other officers especially Mrs. Musi.

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His testimony was jumbled up, full of inconsistencies and clearly incapable of belief. His demeanor in court was one of a person with a lot to hide. He displayed his rudeness even to counsel before court.

The Respondent has demonstrated that the dismissal of the Applicant was for a fair reason and was just and reasonable in all the circumstances of the case. Though the provisions of Part V of the Employment Act are not applicable to civil servants, the Act and the court precedents pursuant thereto serve as a useful guide as to what is fair and reasonable in dismissing a servant in Swaziland in terms of government Civil Service regulations and general orders.

Indeed the onus is on the civil servant who has been dismissed (without the protection of the Employment Act) to prove on a preponderance of probability that the dismissal was not fair and reasonable in the circumstances. It is for the Respondent to rebut such evidence by the Applicant. The applicant completely failed to make a prima facie case of unfair dismissal to warrant evidential rebuttal by the Respondent. RW1 and RW2 have clearly demonstrated that the applicant ought to have been dismissed much earlier than had happened.

Consequently the application must fail in its entirety with no order as to costs.

The members agree.

Nderi Ndua

Judge President - Industrial Court

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