

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO.128/2014
ARISING FROM HCT-CS- 119/2012

NDYAHEBWA GODFREY

..... CLAIMANT

VERSUS

HIMA CEMENT

..... RESPONDENT

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
 - 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**
- PANELISTS**

1.MS. HARRIET MUGAMBWA NGANZI

2. MR. EBYAU FIDEL

3. MR. F.X MUBUKE

AWARD

BRIEF FACTS

On 21/7/2008 the Respondent employed the Claimant as Laboratory Analyst subject to a probationary period of 6 months, effective 1/08/2008. On completion of the probationary period he was confirmed on 23/2/2009. On 29/11/2011, he was subjected to disciplinary proceedings on grounds that he falsified documents to indicate that 2 coffee husks lorries UAN 839 Z and UAN 685 X, had delivered alternative fuel to the respondent, whereas not. The disciplinary committee found him in breach of his employment contract and he was subsequently summarily dismissed. According to the Respondent the Claimant exercised his right of appeal, the appeal was determined against him.

ISSUES

- 1. Whether the Claimant's summary dismissal by the Respondent was unfair?**
- 2. Remedies available to the parties?**

REPRESENTATIONS

Mr. John Kaddu of M/S Kaddu & Partners Advocates, represented the Claimant and Mr. Ferdinand Musimenta of M/S Sebalu and Lule Advocates represented the Respondents

SUBMISSIONS

According to Counsel for the Claimant, the Claimant worked diligently and without any blemish until he was accused of falsifying documents relating to 2 coffee husks delivery trucks. Counsel contended that the Claimant's dismissal was unfair because it was not premised on a fundamental breach of his terms and conditions as Quality Analyst but largely on the discrepancy between the quality inspection tickets, weigh Bridge Report and GPS Reports.

He insisted that according to the Claimant's testimony, the 2 trucks, UAN 839Z and UAN658 X were at the Respondent's plant on the fateful day, 16/10/2011 and he admitted he had issued them Inspection tickets, therefore he did not fail in his duties as quality analyst and no loss was occasioned to the company. He further contended that evidence was led to indicate that the weigh bridge report also showed that the stated Vehicle number plates were recorded at the weigh bridge. According to him, the respondent did not investigate the discrepancy. In his opinion the unexplainable discrepancy between the record at the weigh bridge and the GPS was intended to implicate the Claimant and cause him loss of his job.

He argued that the claimant was not given opportunity to attend the appeal hearing because he did not receive the invitation for the hearing therefore the minutes indicating that he attended are fabricated, therefore the dismissal was unlawful.

In reply, citing section 73(2) of the employment Act 2006, which provides that the labour officer should consider the procedures adopted by the employer before terminating the employee were fair and **Robert Mukembo vs Ecolab East Africa Ltd CS No. 54/2007**, which is to the same effect, stated the position under the Employment Act, to the effect that an employee must be given a reason for his or her dismissal before the dismissal and the reason must be justified. Counsel or the Respondent submitted that section.

Counsel contended that in the instant case the Claimant was dismissed for "*falsifying documents which showed that 2 coffee husks trucks had delivered alternative fuel for which the Respondent was liable to pay.*" According to him this was a justifiable reason because it was a fundamental breach of the contract of employment.

It was his submission that the evidence led in court showed that whereas the claimant recorded Vehicles UAN 839Z and UAN 685X as being at the plant in Kasese on 16/10/2011, the GPS recording showed that the UAN 839Z was in Kampala and the UAN 685 X was in Nairobi on the said date. He further contended that an investigation into the matter also found that the said trucks were not at the plant on the said date. Counsel insisted that the Claimant Knew the guidelines which governed the process of receiving such vehicles but he did not follow them hence causing financial loss to the Respondent. According to him, the Claimant fundamentally breached his contract of service with the Respondent, therefore, his dismissal was justified.

He refuted the assertion that the weigh bridge the report regarding the trucks, corresponded with that of the Claimant, because the person at the weigh bridge relied on the information recorded on the ticket and insisted that given that the GPS reports which showed that he trucks were not at the station, are computer generated and in PDF format therefore they not be manipulated or changed.

He cited **Milly K. Juuko Vs Opportunity Uganda Limited HCCS No.327/2012**, which according to him properly cited section 68(1) to justify the summary dismissal of an employee who had fundamentally broken the contract of service. (We believe counsel meant Section 69(3). He also cited **Laws vs London Chronicles (1959) WLR 698** and **Bwengye Herbert vs Eco Bank LD No. 135/2015** which are to the same effect.

Counsel also submitted that the dismissal was handled in accordance with the section 66 of the Employment Act, 2006. Citing **Grace Matovu Vs Umeme** and which cited with approval, **General medical Council of Medical Education and Registration of the United Kingdom vs Spackman(1943) ALLER 340**, **Caroline Kariisa vs Hima Cement HCCS No. 84 of 2012**, he submitted that disciplinary proceedings do not demand strict adherence to the procedures applied in the court of law and what was required was for an employee appearing before a disciplinary committee or tribunal to have been notified about the infractions leveled against him or her, to be given an opportunity to defend him or herself and for the employer to prove the infractions on a balance of probabilities and not beyond reasonable doubt.

It was his submission that in the instant case, the Claimant was notified about the allegations leveled against him, he was given an opportunity to respond to them which he did, and he

was invited for a disciplinary meeting and subsequently dismissed on 5/12/2011. He notified the Respondent about his intention to appeal on 14/12/2011. According to Counsel it was the claimant's testimony that he was notified about the hearing of the appeal via telephone on 21/12/2011 and the date stated on the minutes of the appeal was a typographic error, meaning that he actually attended the hearing. He emphasized that what was required was for the employer to show that there was a wrong committed and the wrong either fundamentally breached the terms and conditions of the contract of employment or the wrong breached the trust and confidence in the employee to warrant a dismissal or termination which was the case in the instant case. He insisted that the tenets of a fair hearing were all observed and satisfied therefore his dismissal was lawful.

DECISION OF COURT

According to Section 2 of the Employment Act 2006, dismissal from employment is the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct. Section 66 of the same Act, provides that before dismissing the employee the employer must explain to him or her the reasons for the dismissal and give the employee an opportunity to respond to the reasons. In addition, Section 68 of the same Act, provides that the employer must prove the reasons for dismissal and the reasons must be justifiable. Therefore, before an employer to terminates or dismisses an employee, the employee in issue is entitled to be given the reasons for the termination or dismissal and the reasons must be justifiable.

The contention in the instant case is that the Claimant's dismissal was unfair because it was not premised on a fundamental breach of his terms and conditions as Quality Analyst but largely on the discrepancy between the quality inspection tickets, weigh Bridge Report and GPS Reports.

It was the Claimant's testimony that as Quality analyst, he was responsible for

“...physically looking at the materials and complete quality inspection tickets, taking down the truck number... ensuring quality requirements ...”

According to his letter of termination, he was terminated because,

“...On 16th October 2011 while on duty as Laboratory Analyst, you falsely claimed to have inspected and thereof filled quality tickets for two(2) coffee trucks registration numbers UAN 839Z and UAN635X as having entered the plant and offloaded a total of 47.97(forty seven point nine seven) Tones of coffee husks whereas not.

... This was a serious breach of your obligations such as to warrant dismissal without notice and without any warning. ...”

In view of the Claimant's testimony we respectfully do not agree with the assertion that his dismissal was not premised on a breach of his duty as laboratory analyst, given that it was one of his duties to physically look at the materials and complete quality inspection tickets, and his dismissal was premised on the grounds that he falsified the inspection tickets to the detriment of the Respondent.

What remains is to determine whether the dismissal was unfair or not?

It is not disputed that the Claimant was notified about the infractions leveled against him and he was invited for a hearing, which he attended. It is also not disputed that the hearing established that according to a GPS recording, on 16/10/2011, the trucks in issue were not in Kasese as purported, because one UAN 839Z was in Kampala and the other one UAN685X was in Nairobi on the fateful day. It is clear from the record that the reading at weigh bridge and the readings which the Claimant recordings for that date contradicted the GPS report.

It was peculiar that the weigh bridge records depended on the Quality analysts recording, given that it was done for different purposes. However, his was the only explanation why the claimant's reading and that of the weigh bridge were the same. The GPS recording in issue was intended to benefit the owners of the trucks to the detriment of the Respondent so in our considered view it would be in their interest to assert the fact that they delivered the said coffee husks on the 16/10/2011 as claimed. Instead they sent GPS reports which indicated that they had nothing to do with the Kasese plant on the fateful day. Further the assertion that the GPS readings were retrieved from the owners of the trucks was not controverted by the Claimant. We find no plausible reason why the Truck owners would choose to forfeit payment for supplies they made to the Respondent. It is highly probable that the Claimant connived with the weigh bridge manager to have the same recordings as a cover up because the claimant

believed it would not be discovered. In cross examination he stated that “... *I am not aware that there were reconciliations about what was recorded and ... I was not aware of GPS tracking... I was not aware of the comparison between received and actual...*” We are of the considered opinion that the Claimant falsified the recordings well knowing that he would not be caught. We therefore have no reasons to disagree with the Respondent that his termination for such conduct was a justifiable.

With regard to his right to a fair hearing, the Claimant contended that he was denied a fair hearing because he did not attend the appeal hearing. It is already established that disciplinary proceedings do not have to conform the strict procedure as applied in a court of law, conversely an administrative appellate system should not require the appearance and taking of evidence from the complainant and any other witnesses. In our considered An administrative appeal in our view is a review of the disciplinary committee’s minutes/findings to ensure that it conformed to the law and the principles of natural justice. Witnesses would only be called in very exceptional circumstances. To allow the hearing of parties at this stage in our view, would be to create a rehearing of the matter. Therefore, the argument that the claimant was denied a fair hearing only because he did not attend the appeal meeting in our view is not tenable.

It is our finding therefore, that the Respondent had a justifiable reason to dismiss the Claimant, and he was a fair hearing, therefore his dismissal was not unfair.

2. Remedies available to the parties?

Having found that the Claimant’s dismissal was not unfair, he is not entitled to any remedies. In conclusion the Claim fails and it is dismissed.

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MS. HARRIET MUGAMBWA NGANZI

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DATE.....12/06/2020

