IN THE SUPREME COURT OF ZAMBIA — Appeal No. 37 of 1993

HOLDEN AT LUSAKA.

(Civil jurisdiction)

MUMBA SAXON MWANSA — Appellant

Vs

ZAMBIA RAILWAYS LIMITED — Respondent

Coram: Sakala, Chaila and Muzyamba, JJJ.S

23rd September and 13th Dec ....1993.

The Appellant in person.

Mr. N. Munaku, Counsel, Zambia Railways, for the respondent.

JUDGMENT

Sakala, JS., delivered the judgment of the court.

This is an appeal against a judgment of a High Court dismissing the appellant's claim for a declaration that his dismissal by the respondent was wrongful and contrary to the rules of natural justice and the Zambia Railways Worker's Union Collective Agreement and Disciplinary Code and for damages for loss of employment earnings, promotion prospects, gratuity, pension, inconveniences and embarrassment suffered and for damages incidental to the alleged wrongful termination of employment.

The appellant was until 13th September 1988 employed by the respondent as a Clerk at the respondent's new company workshop in Kabwe. According to the evidence which was not rejected by the learned trial judge, the appellant before proceeding on leave obtained authorised and approved requisition to order materials from the respondent's Store Room. There was also evidence that while the appellant was on leave he collected the materials. Among these materials were 30 reams of A4 duplicating papers. There was evidence that 10 of the reams were accounted for in that they were taken to the top office and left in the printing room and that one of them was to be used there while the remaining 9 were taken to the new workshop. The learned trial judge accepted that the appellant hired a

taxi driver, namely DW3, to deliver the reams to their respective places. According to DW3 no reams were delivered at the new workshop.

The case for the respondent was that while 10 reams were accounted for, the company found that 20 were not accounted for. Consequently, on 13th September 1988, the respondent terminated the appellant's employment with the company on the allegation that he stole the 20 reams of A4 duplicating papers which was an act in violation of the respondent company's workers union collective agreement general regulation No. 2.43. The contention of the appellant was that the termination of the employment was wrongful.

There is documentary evidence on record that following the allegation agai the appellant, a charge sheet was on 28th December 1987 preferred against the appellant alleging that on 21st December 1987 the Railway Police had arrested him for stealing 20 reams of A4 duplicating paper. On the same day the appellant was suspended from duty. There is further documentary evidence that on 15th August 1988, 8 months later, another charge sheet was preferred against the appellant, this time the allegation was misuse of company property, namely 20 reams of A4 duplicating paper. By his letter dated 16th August, 1988, the appellant again denied the charge and complained of management's indecision over the case and the time lapse.

It is common cause that on 13th September, 1988 the then Managing Directo Mr. Emmanuel Hachipuka wrote the appellant a letter of dismissal. In the letter of dismissal the Managing Director explained that the appellant ha failed to exonerate himself before the Discipline Appraisal Meeting. The appellant appealed on 29th September 1988 and the appeal was dismissed. It is also common cause that on 10th May 1989 the appellant lodged a second appeal against his dismissal. This second appeal was also dismis on 18th May 1989. It is also on record that on 5th July, 1989 the appel wrote what he described as a final appeal. This was equally dismissed o 2nd November, 1990.

There is also evidence on record showing that after the appellant's seco

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unsuccessful appeal, a Mr. S[illegible]. Bwalya, Assistant Chief Mechanical and Electrical Engineer in the respondent's employment wrote to the Disciplinary Appeal Committee on 20th July, 1990 that he had been approached by the appellant in his former capacity as immediate supervisor to comment or shed light on the allegations and disciplinary case against the appellant. In this letter the appellant's former immediate supervisor confirmed writing and handing over a suspension letter to the appellant in December 1987 and that since that time he had not been asked to submit any evidence in support for or against. He pointed out in that letter that the duplicating papers as collected from the Stores by the appellant had been shown to the police investigating officer at the workshop and later used by an in-coming clerk.

It is significant to note that the appellant's former immediate supervisor gave evidence in court on behalf of the appellant in which he stated that the appellant was his administrative clerk responsible for upkeep and issue of stationery. He explained that as regard the appellant's case he had received a telex message from the police through the General Manager to suspend the appellant in order to facilitate the investigations. He stated that he acted accordingly and suspended the appellant and subsequently issued him with a charge sheet which required his explanation. Thereafter, he was transferred from the workshop. He never heard of the case but only learnt that the appellant had lost his two appeals and asked for his input in the case. This witness explained that the procedure was that, after investigations had been concluded an appraisal meeting is held chaired by an immediate supervisor of the person against whom the investigation had been carried out. According to this witness, this was not done because he had left the workshop before the investigations had been concluded.

After a critical examination of the oral and documentary evidence, the learned trial judge observed that the crux of the matter in the case was the missing 20 reams of duplicating papers. He found that at the

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workshop where the 30 reams were requested for, only 9 were received from the printing room while 1 was used at the printing room. The learned trial judge noted that while the appellant contended that he delivered the other 20 reams to the workshop this was categorically denied by DW3, a taxi driver, hired by the appellant to deliver the reams in question. The court found that there was no evidence supporting the appellant that he took 20 reams to the workshop. The learned trial judge observed that nobody saw the appellant at the workshop bringing the reams in question during the working period. According to the learned trial judge the appellant did not testify as to the person whom he handed the reams as he was on leave or to which officer he left them for custody. The learned trial judge observed that merely to state that he took the reams to the workshop was not sufficient exculpatory statement. The learned trial judge also observed that the appellant relied heavily on the letter he solicited from PW2, his former immediate supervisor, which letter was written three years after the incident. The learned trial judge accepted the submissions by counsel for the respondent that PW2's evidence was a contradiction. According to the learned trial judge he failed to understand why PW2 did not tell the investigating officer and the management that the 20 reams were received by the workshop and that they were used by an in-coming clerk. The learned trial judge rejected PW2's letter as a blantant lie. He found that the appellant had lamentally failed to prove his case on a balance of probabilities and dismissed his claims.

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At this stage we wish to observe that we found the letter of PW2 and his evidence in court most surprising if not baffling. PW2 was the immediate supervisor of the appellant. He preferred the disciplinary charge against the appellant based on the missing 20 reams. He wrote the letter suspending the appellant on the allegations of the missing 20 reams. Three years after the suspension of the appellant and after the appellant's dismissal after all the disciplinary proceedings had been completed he writes a letter to the respondent company (his employer) to exonorate the appellant. He was willing to testify on behalf of the appellant to the effect that the appellant did not steal or misuse the 20 reams, the company' property. Three years later he wanted management and the court to treat him as a credible witness. We agree with the trial judge that PW2's letter to management and his evidence in court were blantant lies and properly rejected. The appellant argued that the disciplinary proceedings against him were unfair on the ground that PW2, his former immediate supervisor, did not chair the disciplinary appraisal meeting as required by the disciplinary code. This argument in our view overlooks the evidence. According to PW2 he had been transferred from the workshop to another department before the investigations were concluded. Obviously at the end of the investigations this witness was no longer the appellant's immediate supervisor and therefore could not have chaired the meeting.

Before this court the appellant argued his own appeal. He filed very detailed written heads of argument based on twelve grounds of appeal and filed detailed written submissions.

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We have very carefully considered the evidence on record and the judgment of the learned trial judge. We have also considered the detailed submission and arguments of the appellant as well as those by the learned counsel for the respondent. We must observe that the appellant though not a lawyer ably and forcefully presented his case. On account of the view we take of this appeal we find it unnecessary to review all the submissions and arguments put before us based on the 12 grounds.

The brief material facts which were common cause were that the appellant while on leave using an authorised requisition obtained 30 reams of duplicating paper. It is common ground that 10 were accounted for. While the appellant contends that he accounted for all of them, the respondent company refutes this.

It is common cause that the appellant was initially charged with the offence of theft of the 20 reams which he refuted and later charged with misuse of 20 reams which he also refuted.

The appellant has attacked all the findings of fact as found by the learned trial judge. He has also contended that the rules of natural justice were not adhered to.

According to the appellant the disciplinary tribunal that heard his case did not find him guilty of the theft of 20 reams and yet his dismissal was based on a substituted charge of misuse of property. We have considered the evidence on record. Mr. Muneku on behalf of the respondent concedes that the disciplinary charge of the theft earlier preferred against the appellant was amended by the substitution with one alleging misuse of company property. Counsel contends that even for this substituted charge the appellant was asked to exonorate himself which he did.

The record and the evidence are quite clear. Although the reasons for the substitution are not clear on record we are satisfied even for the earlier charges preferred against the appellant that he was given an

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opportunity to defend himself and appeared before a disciplinary tribunal. We accept from the evidence and this is conceded that no disciplinary tribunal was convened for the substituted charge of misuse of company property. But there is ample evidence that the appellant submitted an exculpatory statement refuting the allegations. The respondent company did not accept his defence. In our view the fact that the appellant was given an opportunity to exculpate himself amounted to a hearing. After appellant's dismissal he made three appeals to management. All were unsuccessful. The gist of the submission on behalf of the respondent was that the appellant was lawfully dismissed for failure to account for the 20 reams of the duplicating papers. The learned trial judge accepted the evidence that the 20 reams were misappropriated and dismissed the claims. We agree with him. Perhaps for the reason of not being a trained lawyer, the appellant raised a number of issues which in our view were not relevant. Among these issues are the contentions that the charge against him was not specified and the place of arrest not mentioned in the charge. These issues in our view were irrelevant for the purposes of determining whether the dismissal was wrongful or not.

For the reasons stated, this appeal is dismissed. The learned trial judge found it fit not to order costs. We also make no order as to costs.

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E.L. Sakala,
SUPREME COURT JUDGE.

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M.S. Chaila,
SUPREME COURT JUDGE.

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W.M. Muzyamba,
SUPREME COURT JUDGE