

VHUKANI MAADZA v AIR ZIMBABWE (PRIVATE) LIMITED

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, SANDURA JA & MALABA JA
HARARE MAY 7 & JUNE 6, 2002

The appellant in person

D.M. Foroma, for the respondent

MALABA JA: The appellant was employed by the respondent as an accounting officer. On 30 September 1999 he got to work late at 8.30 am. The official time at which he should have got to work was 8 am. The respondent kept a register, at the security gate, in which employees who arrived at work late recorded their names and employment numbers. Instead of writing his true name and employment number 037515 in the register, the appellant wrote that a person by the name "V. Mhlanga" whose employment number was 039475 had got to work late.

The information the appellant wrote in the register was clearly false. His fraudulent conduct was discovered by a security guard later in the day. A report was made to the appellant's supervisor who caused him to submit a written

explanation on the conduct. The appellant submitted a report in which he admitted what he had done and said he was very sorry for it.

On 8 October he was brought before an investigation panel to answer a charge of having committed an offence under paragraph 4(a) of Part 5 of the Schedule to the respondent's employment Code of Conduct ("the Code"). The allegation was that he had committed the offence of falsification of information. The offences listed in paragraph 4(a) of Part 5 of the Code are:-

"... forgery or falsifying of any signature, document or information."

The appellant admitted committing the acts charged against him. He was given the opportunity to give reasons for what he did. He said he was under some mental depression. He did not say that he did not know what he was doing. The investigation panel found that the appellant had deliberately falsified the information he wrote in the register with the intention of misleading the employer into believing that he had got to work on time. They found that he had committed the offence charged, that is to say, falsification of information and recommended to the Disciplinary Committee that he be dismissed from work.

The appellant appeared before the Disciplinary Committee on 11 November and the charge of committing the offence of falsification of information was again put to him. Having admitted the acts charged against him and given the chance to explain his conduct, the appellant again said he was suffering from a mental depression. Members of the Disciplinary Committee investigated the matter much more closely but still found that he had deliberately falsified the information he wrote

in the register in order to mislead the employer into believing that he had not arrived late at work.

The Disciplinary Committee found that he had committed the offence charged. It looked into the question of whether there were circumstances that could persuade it to impose a penalty other than dismissal notwithstanding the fact that under the Code committing a Part 5 offence warranted termination of the contract of employment. The Disciplinary Committee found that the appellant's conduct was aggravated by dishonesty. It was gross misconduct inconsistent with the continuance of a contract of employment. He was dismissed from work.

The appeal to the General Manager of the respondent was unsuccessful. So was the appeal to the Labour Relations Tribunal ("the Tribunal"). Although one of the grounds of appeal to the Tribunal was that what the appellant was found by the Disciplinary Committee to have done was not covered by the offence he was charged with, it was not relied upon when the appeal was argued before the Tribunal. The Tribunal proceeded on the basis that the appellant acknowledged that he had been properly charged with the breach of paragraph 4(a) of Part 5 of the Code and found guilty.

The learned Chairman of the Tribunal said at p 2 of the judgment:-

"The appellant eventually acknowledged and admitted his guilt. He nevertheless argued that he was not liable to dismissal because there were strong mitigating factors in his case.

The mitigating factors which he advanced were that he had worked for the respondent for 15 years. He also said that he used to put in a lot of overtime work without being paid.

The mitigating factors advanced by the appellant do not, in my view, carry sufficient weight to avoid dismissal where one is facing an allegation of dishonesty. The longer an employee stays with one employer the more reliable he is expected to be ... On the basis of such observation, I come to the conclusion that there is absolutely no merit in this appeal.”

The appeal to the Tribunal was dismissed with no order as to costs.

The appellant brought the decision of the Tribunal on appeal to this Court on the frivolous ground that the conduct he was found to have committed was not covered by the offence of falsification of information under paragraph 4(a) of Part 5 of the Code. The appellant abandoned this submission as a ground of appeal to the Tribunal. He had accepted the fact that he had been correctly charged with the commission of the offence of falsification of information under paragraph 4(a) of Part 5 of the Code. The Tribunal did not have cause to consider the propriety or otherwise of the charge preferred against the appellant. Strictly speaking there was no ground of appeal against the decision of the Tribunal.

It is clear, however, that what the appellant did on 30 September 1999 constituted the offence of falsification of information. He deliberately wrote in the register false information about his identity as the respondent’s employee. He was falsifying information on the name and staff number by which he was known to his employer. He was, in my view, properly charged with the offence under paragraph 4(a) of Part 5 of the Code. The appeal is without merit.

The respondent indicated that it would not insist on an order of costs in its favour in the event of the appeal being dismissed.

The appeal is dismissed with no order as to costs.

CHIDYAUSIKU CJ: I agree

SANDURA JA: I agree

Sawyer & Mkushi, respondent's legal practitioners