

HAPPISON SIGAUKE
v
FALCON GOLD ZIMBABWE LIMITED

SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, BHUNU JA & UCHENA JA
HARARE, NOVEMBER 7, 2016

R Mabwe, for the appellant

T Mpofu, for the respondent

ZIYAMBI JA:

[1] The appellant was employed by the respondent as the Chief Assayer from 1996. It was accepted that as Chief Assayer his duty was to keep bullion gold in a safe in respect of which he was the sole custodian of the key. It is common cause that throughout the period of his employment there was a missing spare key to the safe, however the appellant had done nothing to correct that position.

[2] On or about 10 May 2012, the safe was opened by the appellant in the presence of two of the respondent's officers who wished to collect certain samples from the safe. It was then discovered that 9 bars of gold bullion were missing from the safe.

[3] Despite this discovery, the appellant did not report the matter to his employers. On 11 May 2012, he attended a Head of Department meeting with his superiors but failed to report the matter even when asked if he had anything to report.

[4] After leaving the meeting, the appellant was called back and asked about the missing bullion samples. Only then did he confirm that they were missing and expressed the view that they were probably stolen.

[5] The appellant was asked to write a report and was subsequently charged with two counts of misconduct. The first charge alleged conduct inconsistent with the fulfilment of the express or implied conditions of his employment. The second alleged substantial neglect of his duties. He was convicted on both counts and dismissed.

[6] The matter eventually ended up before an arbitrator who found the dismissal to be substantively fair.

[7] Aggrieved by this decision the appellant appealed, again unsuccessfully, to the Labour Court.

[8] In his appeal before us, the appellant raised two issues. Firstly, the finding that the appellant was guilty on the first charge was the result of a factual misdirection by the arbitrator and the Labour Court was wrong to uphold it.

Secondly, the charge of substantial neglect of duties was improper as the conduct prescribed by the Statutory Instrument is one of habitual and substantial neglect. Not only was the charge improper but habitual neglect of duties had not been proved.

Both charges warrant the penalty of dismissal.

[9] Regarding the first charge it is plain that the appellant, by failing to secure the gold samples was in breach of a fundamental term of his contract of employment.

[10] His argument that his sole duty was merely to keep the key is nonsensical. Indeed it was conceded by Mrs *Mabwe* that his duty was to keep the gold samples and that involved

checking the safe from time to time. The appellant had last checked the safe in January 2012, some four months or so before the samples were found missing.

[11] When questioned by the Senior Security Officer, the appellant admitted to keeping the key in a drawer from which he suspected it might have been retrieved in order to steal the samples.

[12] As to the second charge, the spare key had been missing throughout the period of the appellant's employment which spanned 17 years. The consistent failure by the appellant over this period to take any measure to secure the safe whether by replacement of locks or otherwise can only amount to habitual and substantial neglect of his duties.

[13] Although in formulating the charge the word "habitual" was not used by the Disciplinary Committee, it is clear from the established facts that the appellant's conduct amounts to habitual and substantial neglect of his duties.

[14] Accordingly the appeal is dismissed with costs.

BHUNU JA: I agree

UCHENA JA: I agree

Matsikidze & Mucheche, appellant's legal practitioners

Messers Gill, Godlonton & Gerrans, respondents' legal practitioners