

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC 266 OF 2003

BETWEEN

MSONTHE.....APPLICANT

-and-

MALAWI POSTS CORPORATION.....RESPONDENT

**CORAM: R. ZIBELU BANDA (MS.); CHAIRPERSON
D. NAMANDWA; EMPLOYERS' PANELIST
NC KAJOMBO; EMPLOYEES' PANELIST
Chibota; For Respondent
Applicant; Present
Gowa; Official Interpreter**

JUDGMENT

- 1. Dismissal- Reason-Misconduct-Shortage*
- 2. Procedure-Right to be heard-Disciplinary hearing- Fair*

Facts

The applicant was employed by the respondent at the material time responsible for handling the respondent's money. The applicant was visited by Auditors who found a shortage of MK 2 000-00. The applicant admitted to have used the funds on personal matters without authority. This was an act of misconduct according to the regulations of the respondent. They consequently dismissed the applicant. The applicant was aggrieved and hence this action. The respondent averred that the dismissal was fair.

The Law

Section 57(1) of the Employment Act provides that before dismissal a person must be provided with a valid reason. While section 57(2) of the act provides that where the reason is connected with a person's conduct, he must be given an opportunity to be heard. Several cases have held that in all cases of dismissal, an employee must be given a valid reason and an opportunity to state his case and defend himself. See for example: *Beseni v Education Department of Nkhoma Synod* [Matter Number IRC 320 of 2002 (unreported)] IRC.

Misconduct involving incurring shortages has been held to constitute valid ground for dismissal, see: *Ulaya v SDV (AMI) (Mw) Ltd* [Matter Number IRC 133 of 2001 (unreported)] IRC.

Finding

The court finds that the reason for dismissal was valid and that the applicant was accorded an opportunity to state his case before dismissal. The respondent complied with the requirements of the law. This action is therefore dismissed in its entirety.

Any party aggrieved by this decision has the right of appeal to the High Court within 30 days of this decision. Appeal lies only on matters of law and jurisdiction and not facts: Section 65 (2) of the Labour Relations Act.

Made this 6th day of November 2007 at **BLANTYRE**.

Rachel Zibelu Banda
CHAIRPERSON

Daphter Namandwa
EMPLOYERS' PANELIST

Nick Chifundo Kajombo
EMPLOYEES' PANELIST