

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC 64 OF 2006

BETWEEN

MAGANGA..... APPLICANT

-and-

RAIPLY MW LTD..... RESPONDENT

CORAM: R. ZIBELU BANDA (Ms); CHAIRPERSON
NAMANDWA D; Employers' Panellist
PADAMBO M; Employees' Panellist
Mwala; of Counsel for the Applicant
Respondent; Absent without excuse
Gowa; Official Interpreter

JUDGMENT

1. *Dismissal-Reason-Misconduct-Neglect of Duty-Leaving duty station without permission*
2. *Employer bears burden of proving reason for dismissal*

Facts

The Applicant was employed as Production Supervisor. On the material day he left his duty station to visit a dispensary (clinic). Later he was invited by management to be asked why he had left his duty station. He explained that it was because he had visited the clinic. He received a letter of termination. The letter referred to another incident where the applicant had allegedly neglected his duties by leaving his work station without permission. The applicant challenged the termination. He contended that he was away from his duty station for a good reason. He said that as Production Supervisor he was required to move around the premises for supervision. He was not expected to be stationery at one spot.

The respondent did not attend court to substantiate the alleged case of neglect of duty. The court proceeded to hear the matter in the absence of the respondent in accordance with provisions of section 74 of the Labour Relations Act.

The burden of showing a reason for dismissal and substantiating it is on the employer. Where the employer fails to prove the reason there is a conclusive presumption that the dismissal was unfair, see section 61 of the Employment Act. And the court so finds.

Finding

The termination was unfair. The reason for dismissal was not substantiated with evidence. Applicant is entitled to compensation. The matter shall be set down on a date to be fixed to assess compensation.

Any party aggrieved by this decision is at liberty to appeal to the High Court in accordance with section 65 of the Labour Relations Act.

Made this 26th day of May 2008 at BLANTYRE

Rachel Zibelu Banda
CHAIRPERSON

Daphter Namandwa
EMPLOYERS' PANELIST

Maxwell RM Padambo
EMPLOYEES' PANELIST