

When Appellants are given the chance to cross examine a main witness, they must do so.

The onus of proof is on them to prove their case.

The three Appellants, who are employees of the Municipal Council of ..., have lodged appeals before this Tribunal regarding a disciplinary action, i.e. a reprimand, administered to them for failing to follow instructions given to them by their immediate supervisor. The appeals were consolidated.

Appellant's Case

Their grounds of appeal are exactly the same and are:

“(1) pertinent witnesses were not called to depone at the disciplinary hearing

(2) it was an unfair hearing

(3) pertinent material facts were not taken at the disciplinary board”.

The whole matter started on the.... The Foreman in the ... Section had requested that a mobile compressor be sent to a Cemetery. The Engineer had requested the Head MHCI of the Municipal Council of ..., who was replacing his colleague on that day, to do the needful.

The Head of section called the Appellants in turn for the towing job but each one refused to do the work for different reasons. Following the refusal from the Appellants, the Engineer submitted a report to the Chief Executive of the Municipal Council of ... to the effect that he gave instructions to Head MHIC to ask the three employees to tow the compressor to the Cemetery but the Appellants refused to do the job.

By way of letters dated ..., the Appellants were requested to submit their explanations in writing to show cause as to why disciplinary action should not be initiated against them. They submitted letters which the Respondent found not satisfactory. They were informed by the Chief Executive that disciplinary proceedings had been initiated against them for unsatisfactory service. They were initially called before a Disciplinary Committee for the ..., but this was postponed to the ... as one witness had not turned up on that day.

Following the hearing before the Disciplinary Committee, where the charge against them was proved, the Chief Executive decided to administer to them a reprimand in terms of regulation 42(1)(a)(ii) of the Local Government Service Commission Regulations 1984 on the grounds of unsatisfactory service.

Let us see the case of each Appellant.

Appellant No 1 averred that he had no licence to drive the vehicle. He stated that he was once advised by a police officer not to do so as he had no licence and he was liable in case of accident.

He also disputed the averment of his superior that he refused to do the job as he had a flat tyre.

He stated that he had reported a case of flat tyre on the ..., that is on the next day.

Appellant No 2 gave as reason not to do the job that he had to go to hospital that morning as he had a problem of high blood pressure.

Appellant No 3 on his part stated that he asked for permission to go home to attend to some urgent family problem. He further conceded that he immediately returned to his place of work when a friend phoned and told him that superior was reporting his case of refusal to the Engineer.

Respondent's Case

The Respondent denied that Appellant No 1 could not tow the vehicle. According to the Engineer, there was no technical hitch. He further stated that all drivers in the "special" Unit should be able to drive any "special" vehicle. Appellant No.1 was a long time driver. This point of view was buttressed by the ..., who stated at the hearing before us that Appellant No 1 was given training to drive such "special" vehicles when he joined the Municipal Council as driver and he was examined by the police before he was allowed to drive such "special" vehicles. These were larger vehicles than the vehicle that he was asked to drive on the relevant date.

The Head stated that the issue of flat tyre arose on the next day.

As regards Appellant No.2, a Record Officer from the Hospital, was adamant that he never came to the Hospital on the relevant date. There was no record of his attendance at the Hospital. Had he been to the hospital it would have been recorded on his health card as he used to go to that hospital to monitor his high blood pressure. Appellant No 2 could not rebut the averment of the Record Officer.

The Head denied that Appellant No.3 was given permission to go home. Appellant had only waved his hand in the air and turned his back and left.

Determination

The issue before the Tribunal is one relating to discipline. It is important to see the disciplinary process and analyse any fault on the part of Respondent regarding such process.

As a result of the refusal of the Appellants to follow instructions given to them, they were asked in the letter of ... from the Chief Executive, to *"submit your explanations, in writing, to the above, not later than ..., to show cause as to why disciplinary action should not be initiated against you in accordance with regulation 42(1), justifying dismissal, of the Local Government Service Commission Regulations 1984, to wit on ground of misconduct"*. The Appellants were therefore given the chance to explain and they were told that action under Section 42(1) can lead to dismissal.

We also have to address the complaints of the Appellants with regard to the hearing before the Disciplinary Committee. In the letter dated ... requesting the Appellants to appear before the Committee the charge was clearly spelt out. The Appellants were even told "*You may bring any evidence/witness in order to substantiate your case*". The onus was, therefore on the Appellants to bring any witness and since this was not done, the Appellants cannot invoke the non presentation of witness as being the fault of Respondent. Before the Disciplinary Committee the Municipal Council was represented by the Head of the section who could have been questioned but was not. The first ground of appeal is therefore not sustained.

As regards the facts of the case, this Tribunal has not found the Appellants credible. Appellant No 1 has not satisfied us that he could not drive the vehicle. The explanations of the Engineer and the Human Resource Manager were more plausible. As to the flat tyre issue, the Tribunal has come to the conclusion that there was a misunderstanding and it occurred on the next day. However, this is not crucial to the case. The issue was more as to whether the Appellant could drive the vehicle or not.

Appellant No.2 did not prove that he went to the Hospital as he claimed. The Record Officer gave proof that he did not attend hospital on the relevant date.

Appellant No 3 went home supposedly to attend to an urgent family problem but he immediately returned to his workplace when his friend phoned him. The Tribunal finds it difficult to reconcile this with his need to attend to urgent family matters which required his return home. He never proved that he had any authorisation.

The Tribunal finds that the Respondent has followed the process as required by the Local Government Service Commission Regulations regarding disciplinary action.

The appeals are set aside.