IN THE CONCILIATION, MEDIATION & ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI **CMAC REF: SWMZ 2/12**

In the matter between:-

JABU NDZIMANDZE **Applicant**

And

UNION INDUSTRIAL WASHING (PTY) LTD **Respondent**

CORAM:

Arbitrator : Sanele I. Mavimbela

For Applicant : Ephraim Dlamini

For Respondent : Gcina Mamba

ARBITRATION AWARD

Venue : CMAC offices, KaLaNkhosi Building, Manzini.

Dates of Hearing : 19th February, 2015 & 12th March, 2015.

1. DETAILS OF HEARING AND REPRESENTATION

1.1 The arbitration hearing was held at CMAC offices, KaLaNkhosi Building in Manzini on the aforementioned dates.

1.2 The Applicant is Jabu Ndzimandze, an adult Swazi female of Matsapha area, Manzini District. The Applicant was represented by Mr. E Dlamini, a Labour Law Consultant.

1.3 The Respondent is Union Industrial Washing (Pty) Ltd, a textile company duly incorporated in terms of the company laws of Swaziland, with its offices situated at the Matsapha Industrial Sites in the Manzini District. The Respondent was duly represented by its Personnel Officer Mr. G Mamba.

2. ISSUES TO BE DECIDED

2.1 The issue to be determined is whether the Applicant's dismissal was fair both procedurally and substantively.

3. BACKGROUND TO THE DISPUTE

3.1 The Applicant reported a dispute of unfair dismissal against the Respondent to the Commission (CMAC) on the 26th January, 2012. The dispute was conciliated upon but it was not resolved, hence the issuance of Certificate of Unresolved Dispute No. 66/12 by the Commission.

3.2 The Applicant then launched an Application for Determination of Unfair Dismissal to the Industrial Court and the matter was referred back to the Commission by the Court on the 28th October, 2014. I was then appointed to arbitrate same.

3.3 On the 19th February, 2015, a pre-arbitration conference was conducted, wherein the issues that are common cause between the parties were identified and subsequently confirmed on record. It is common cause that the Applicant was employed in or about the month of August, 2008 as a Machinist and was earning a fortnightly salary in the sum of E550.00 at the time when the employment relationship ended. It was also agreed between the parties that the Applicant's services were terminated on the 4th November, 2011 and that she was an employee to whom the provisions of **S35 of the Employment Act, 1980(as amended)** applied.

3.4 The Applicant seeks the following relief: Notice pay (E1, 100.00), Additional Notice (E411.84), Severance pay (E1, 100.00) and 12 months compensation for unfair dismissal (E13, 200.00).

4. SURVEY OF EVIDENCE AND ARGUMENTS

4.1 I have considered all the evidence and submissions by the parties but I have referred to the evidence and arguments I deem relevant to substantiate my findings as required by Section 17(5) of the Industrial Relations Act, 2000 (as amended).

4.2 There were two witnesses who gave evidence in support of the each of the party's respective case.

5. APPLICANT'S CASE

Jabu Ndzimandze (AW1)

5.1 The Applicant was the first witness to give evidence in support of her case. She testified that she was made to undergo a disciplinary hearing on a charges of gross misconduct for cutting a piece of cloth, for which she was eventually dismissed. She stated that four of them had been given instructions by their supervisor to unpick pieces of cloth, since it had been wrongly cut with the front part shorter than the back part. She testified that unpicking entailed separating the front and back part and putting the former into a plastic bag after chopping it. Her evidence was further that the front pieces which were put into the plastic bag were to be thrown away, since they were no longer usable. She also stated that new pieces had to be re-cut to match the back part. It is on the basis of the above that Applicant views her dismissal to be substantively unfair, coupled with the fact that she had a clean service record and that she did not know that such conduct was an offence. The Applicant also contended that her dismissal was procedurally unfair in that she was denied the right to representation and to call witnesses. She also stated that her immediate supervisor Sandra Thompson had informed her that she would be given a final written warning as opposed to dismissal and argues that the decision of the chairman of the hearing was altered by the Respondent. She further stated that she was only verbally informed about the outcome of

the hearing, but was not furnished with the written outcome, hence she had to prepare her appeal without it.

5.2 It was put to the Applicant under cross-examination that she had been instructed to unpick not to chop or cut the pieces, as they were to be re-used. The Applicant admitted that they had been instructed to unpick but explained that they all chopped the short pieces before putting them into the plastic bag, since it was no longer usable. It was further put to her that she was found by the Section Manager known as LB cutting the back part with moon shaped panel where the label is attached as opposed to the front part. She responded by stating that she was no longer sure but insisted that it was short and not matching with the other piece. She was also asked as to whether she fully understood the charge and pleaded guilty to same. The Applicant confirmed that she fully understood the charge and that she had indeed pleaded guilty because she was found cutting the piece. It was further put to her that she tried to hide the piece when the Section Manager approached her, which she refuted and stated that she placed the piece next to a pile of other pieces and the Manager retrieved it from the other pieces. It was also put to her that she was represented by Phindile Dlamini at the hearing as reflected in the findings and recommendations and she responded by saying she had no comment.

5.3 The Applicant was further referred to the disciplinary hearing verdict and it was put to her that she received the outcome of the hearing and signed for it. Her response was that the documents were never explained to her but was only told to sign. She was

asked as to how she knew that she had to appeal if the documents were not explained to her and her response was that she was not satisfied with the decision and was further advised by the Commission's officers to do so. The Applicant was referred to the notice of disciplinary hearing where all her rights are listed including the right to appeal and it was put to her that all those rights were explained to her when she was served with the said document. The Applicant's response was that she could not remember if the rights were explained to her. The Applicant was further referred to the disciplinary guidelines and it was put to her that she had been charged with a serious offence which falls under category D(1), with a sanction of dismissal even for a first offence. It was further put to her that she had been trained on these guidelines and that same are displayed on the notice board at Respondent's premises. Her response was that she had no comment on same. She was also asked as to whether her appeal had been motivated by her allegations that Sandra had informed her that she had to be given final written warning. She responded by stating that it was because she was not satisfied with the verdict coupled with what she had informed her. It was put to her that what Sandra told her was not true and her response was that she was not sure about that. It was further put to her that the company had suffered a huge loss as a result of employees cutting pieces of cloth like she did and that her dismissal was therefore justifiable and fair since she had intentionally cut the piece of cloth. She responded by stating that she had followed the instructions of the supervisor in cutting the piece of cloth.

5.4 The Applicant stated under re-examination that she did not know about the disciplinary guidelines and was never informed about same. She also stated that she did not intentionally cut the piece because she did not know that it would be an offence to do so, as she was following the supervisor's instructions. She stated that she pleaded guilty because she had been informed by the Section Manager that she had been wrong in cutting the piece, notwithstanding that she had been instructed by the Line Manager to cut the piece. She also stated that both the Section and Line Manager did not attend the disciplinary hearing and that she did not understand the charge well.

Phindile Bonisile Dlamini (AW2)

5.5 She confirmed that the Applicant was once employed by the Respondent as a Machinist. She stated that it was not understandable why the Applicant was dismissed as there was no clear evidence. She testified that they had to unpick pieces which were wrongly cut and cut matching pieces which were sewn together by the Applicant. She further stated that after they had completed the task, the Applicant took the damaged pieces which were to be thrown away and cut it with a pair of scissors, as a way of destroying it. It was then that she was found by the Section Manger, who informed the Applicant that she was wrong in cutting the piece. She further testified that this resulted to her being charged and dismissed after the hearing. Her evidence was also that she represented the Applicant at the hearing and that the Applicant was only asked if she had cut the piece of cloth, which she admitted but was denied the opportunity to explain further. She

stated that the Applicant was cut short by the chairman of the hearing, who stated that it was enough that she had pleaded guilty and they were informed that they had to come back for the verdict. She also stated that she could not remember if the Applicant was given a chance to mitigate.

5.6 She was asked under cross-examination if she understood the offence with which the Applicant had been charged, to which she stated that she did not understand it well. She was also asked if she saw the Applicant's charge sheet before the start of the hearing and she answered in the affirmative. She was asked as to why she did not advise the Applicant not to plead guilty since she was fully aware of the charge sheet as she had received it prior to the hearing. She responded by stating that it would have been pointless for her to plead not guilty because she did cut the piece. She was further asked as to whether the instruction was to unpick or cut and her response was that she had to unpick. She was also asked as to which piece the Applicant cut and her response was that it was the piece with the moon shaped panel where the label is attached. She was also asked as to how the Applicant reacted when she saw the Section Manager and her response was that she was frightened. She was further asked as to why the Applicant was frightened and she responded by stating that it was because the Section Manager had not been there whilst they were working. She was also referred to minutes of the disciplinary hearing and asked why she did not raise the issues she is complaining about during their submissions, sine it is clear that they were given that chance. She stated that she could not ask any questions because of the manner in which the hearing was conducted. It was further put to her that the

Applicant was given a chance to state her case as reflected by the minutes and her response was that she did not remember her being given such a chance.

5.7 She stated under re-examination that she was not a representative for employees at Respondent's establishment, but had been asked by the Applicant specifically for this case. She stated that it was not allowed at Respondent's establishment to cut pieces of cloth and that where there was such a need like when the pieces were uneven, the piece would be given to the Line Manager to cut it. She further stated that there was no rule against cutting the pieces but they would be lambasted by the Line Manager in case they cut the pieces of cloth. She also stated that damaged cloths would be disposed by putting them into the bags next to the sewing machines. She also stated that she could not remember if they had been warned against cutting pieces of cloth and that she did not remember if the issue of cutting pieces of cloth was listed amongst the offences on the notice board.

RESPONDENT'S CASE

5.8 The Respondent led the evidence of two (2) witnesses namely; Su Jianfen (RW1) and Sanele Dlamini (RW2). With regard to the evidence of these witnesses, I will only summarize the evidence which I regard to be relevant and pertinent in deciding the issue in dispute herein.

Su Jianfen (RW1)

5.9 This witness brought her own interpreter by the name of Jacky Xu, since she has a problem speaking or reading English and the Applicant's representative had no objection with this arrangement. She testified that she was the Respondent's Line Manager, a position she has held since the 10th January, 2009. She stated that the Applicant was dismissed for damaging a garment. Her evidence was that she had instructed the Applicant to unpick but she damaged the piece instead, hence she reported her to the Section Manager. She also stated that the Applicant tried to hide the piece by sitting on top of it. She stated that the Applicant damaged the piece because she did not want to unpick it as unpicking is not an easy task. She further stated that it was the first time for the Applicant to commit such a misconduct and that they had shortages on orders because of employees damaging pieces. She concluded by stating that dismissal was the appropriate sanction and that she never interfered with the ruling of the disciplinary hearing.

5.10 It was put to her under cross-examination that she was lying that she was the one who found the Applicant cutting the piece as the evidence presented is to the effect that it was the Section Manager who found her. She disputed this and stated that she was the one who found her and she then reported the issue to the Section Manager. She maintained her evidence even after being referred to the disciplinary hearing findings and recommendation to that effect. It was also put to her that she as lying that the Section Manager came from behind the Applicant when the incident happened, because the evidence presented is to the effect that the Section Manager came from the front. It was further put to her that it would be impossible for the Applicant to hide the piece if the

Section Manager came from behind because she could not have seen her. Her response was that may be someone saw the Section Manager and alerted the Applicant. It was also put to her that she was lying that she gave the Applicant one piece to unpick as the evidence presented is to the effect that they had been assigned to unpick bundles. She disputed this and insisted that she had given her only one piece to unpick. She stated that there was a rule against cutting and that everyone was aware of the rules. She stated that she was not sure whether the rules are still on the notice board and that she did not know much about the disciplinary procedures and guidelines.

Sanele Dlamini (RW2)

5.11 His evidence was that he was employed by Kartat as its Senior Personnel Officer. He stated that he is tasked with chairing disciplinary hearings for the Texray Group of Companies, including the Respondent. He testified that the Applicant's hearing was fairly conducted since the Applicant was represented, all her rights were explained to her and that the Applicant pleaded guilty because she clearly understood the charge. He stated that the Applicant was given an opportunity to state her side of the story and she admitted that she had cut the piece yet she had been given an instruction to unpick. He stated that it was shear oversight that he did not sign his findings and recommendations, which he submitted to the Respondent.

5.12 It was put to him under cross-examination that the findings and recommendation did not have his signature because it was altered.

He disputed this and stated that this was the same document he had issued. He was also asked if the fact that the Applicant had a warning influenced his recommendations, which he admitted but explained that it was however not the reason he recommended her dismissal. He stated that he was influenced by the fact that the Applicant had intentionally cut the piece notwithstanding that she had been given a clear instruction to unpick and that the trust between the parties had been destroyed. He was asked to show the hearing where such evidence is found in his recommendations. His response was that he would have to go through the document again, but insisted that all he remembers is that the Applicant admitted all what he had said. He was also asked if there was anyone who gave evidence in support of the Respondent's case at the hearing. His response was that he could not remember, but stated that chances are high that there was none since the Applicant had pleaded guilty. He stated under re-examination that he made his recommendation in line with the Company guidelines and Section 36 of the Employment Act.

6. ANALYSIS OF EVIDENCE AND THE APPLICABLE LAW

6.1 Both parties filed comprehensive closing submissions as per their undertaking when the hearing was concluded. The agreement was that they would file their submissions before close of business on/before the 27th March, 2015. The Respondent has a duty to prove that the Applicant's services were terminated for a fair reason and that taking into account all the circumstances of the case it was reasonable to do so as required by **Section 42(2)(a)(b) of the Employment Act,1980**. The duty placed upon the Respondent is

in simple terms as stated in the case of **Bongani Dlamini & Another vs Swaziland United Bakeries (IC) Case No379/2005** that the Respondent must bring forth evidence to show and prove that the dismissal was initiated following a fair procedure (procedural fairness) and for fair reasons (substantive fairness).

6.2 The Applicant's evidence is that she was charged, disciplined and dismissed for cutting a piece of cloth, which was no longer usable and was to be thrown away. This piece of cloth, according to her evidence was the front part which, had to be thrown away since it was not matching with the back part as it was shorter. It is on the basis of the above that she views her dismissal to have been substantively unfair. She also stated that her dismissal was procedurally unfair because she has denied the right to representation and to call witnesses. The evidence of AW2 contradicted that of the Applicant in that she stated that she was her representative during the hearing. She further contradicted the Applicant in that she stated that the Applicant cut the back part of cloth with the moon shaped panel where the label is attached, yet Applicant had stated that she had cut the front part. RW 2 also admitted that there was a notice board at Respondent's establishment and that some offences were listened therein, but she could not remember if the one Applicant was charged with was amongst them. She also stated that the Applicant had been given an instruction to unpick not to cut an issue which the Applicant admitted under cross-examination.

6.3 It is clear from the evidence presented that the Applicant was fully aware that she had committed an act of misconduct by cutting the piece of cloth. This is based on the evidence put to her and RW2's evidence that she tried to hide the piece and the explanation that she was frightened is not reasonable. An innocent employee would not have reacted the way she did and she should have instead thrown the piece into the plastic bag for damaged pieces, than to try to hide it. RW2's evidence was also clear that they were under no circumstances expected to cut pieces of cloth and that if there was such a need they had to handover the piece to the Line Manager to cut it. She further stated that the issue was so serious such that an employee would be severely scolded when found cutting a piece and such that they had through practice learnt that it was not allowed to do such.

6.4 The Applicant did not dispute the existence of such a rule, but limited herself to stating that she had no comment upon being cross-examined on same. The Respondent's case as put to the Applicant and RW2 and as supported by the evidence of its witnesses is that such rule was well known to the Applicant and was displayed on the notice board and contained in its disciplinary code. RW2 admitted that there was a notice board and that indeed offences were listed therein but could not remember if the one under discussion was amongst them. The Applicant's response on this issue was that she had no comment. I therefore find, based on the above analysis that the Respondent has been able to prove that the Applicant was dismissed for breaching an existing rule which was well known within its establishment and that such dismissal

was for a reason permitted in terms of Section 36 of the Employment Act.

6.5 The next step is to determine whether taking into account all the circumstance of the case it was reasonable to terminate the Applicant's services. In **Zephaniah Shongwe vs Royal Swaziland Sugar Corporation (IC) Case No.262/2001** the Court stated that the factors to be considered amongst other things include the following;

6.5.1 The Applicant's personal circumstances and service record;

6.5.2 The nature of the Respondent's undertaking and the workplace itself;

6.5.3 The disciplinary standards set by the Respondent and contained in the Disciplinary Procedure;

6.5.4 The seriousness of the offence.

6.6 The Respondent operates a Textile Industry with its basic raw material being fabric or pieces of cloth. It was put to the Applicant's witnesses that the Respondent has zero tolerance towards the cutting of its fabric and that it was for that reason that cutting was a preserve of the Line Manager, an issue that was not disputed by the Applicant and her witness. It was also stated that this was a serious offence with a dismissal sanction even for first offenders and that the Applicant was fully aware of this as it was contained in the disciplinary code which was also displayed on the notice board.

The reason for such approach as stated by the Respondent, was that the company had incurred huge losses due to such conduct.

6.7 The seriousness of the offence must be assessed first and foremost by the seriousness of the alleged misconduct. There is however conflicting evidence on whether the cloth that was cut by the Applicant was still to be used or was no longer usable and was to be thrown away. The Applicant's version is that the piece of cloth was to be thrown away, whilst the Respondent stated that it was still to be used and that it was for that reason the Applicant had been given strict instructions to unpick. The evidence of RW1 is to the effect that the Applicant intentionally destroyed the piece of cloth because unpicking is a cumbersome task. This issue surfaced for the first time during the Respondent's case as it was not put to the Applicant or her witness. This is against the well-established principle that a that there is a duty on a party to put his case in cross-examination to the other party's witnesses and that there is also a duty on that party to then call his witnesses to support that which has been put to the other side's witnesses. See the cases of **VIP Protection Services vs Simon Nhlabatsi (ICA) Case No.10/2004 and Sifiso Motsa vs Attorney General (HC) Case No.1888/98.**

6.8 There was no further evidence to support RW1's assertion that the piece of cloth was still to be used. The minutes of the hearing do not reflect that the piece of cloth was produced at the hearing or that the Line Manager (RW1) and Section Manager had been called as a witnesses. The said piece of cloth has not been produced before the arbitration and it only appears in the chairman's findings

and recommendations that the piece was submitted as evidence during the hearing, but no evidence has been adduced to that effect. The Applicant's evidence on the other hand was corroborated by that of AW2 who stated that the piece of cloth was destined to be destroyed and that cutting it was another way of destroying it. She even went further to state that all the other employees had done the same before loading it into the plastic bags next to their sewing machines. The minutes also reflect that the Applicant stated before the hearing that the piece was no longer to be used and that the initiator never challenged this, instead he stated that he had no questions when asked by the chairman of the hearing if he had any questions. None of the other employees who had been assigned the same task as the Applicant was called to attest to the fact that the piece of cloth was still usable and that they never cut their pieces and/or threw them away into the plastic bags.

6.9 The Respondent's case is further worsened by the fact that the Section Manager who is alleged to have caught the Applicant red handed was not called as a witness to attest to the fact that the piece was usable, instead the Line Manager was called, who unfortunately did not produce the piece of cloth during the arbitration. It was therefore crucial for the Respondent to lead aggravating evidence on whether the piece was usable or not since the charge was of a serious nature coupled with the fact that the Applicant was insisting that the piece was no longer usable. The well-established principle of the law as stated in **Central Bank of Swaziland vs Memory Matiwane, (ICA) Case. No110/1993,** is that when a matter comes before a Court of first instance, by necessary extension arbitration, it is heard *de novo* (a new). The

arbitrator is therefore not confined to what transpired at the disciplinary hearing, but must also consider the evidence presented before it to make a fair award having regard to all the circumstances of the case.

6.10 An extract from the chairman of the hearing's findings reflects the following;

''I've considered the cost implications the company incurred on the one piece of backs, which was already declared to be not inconformity with the quality standard as it was objectionably longer than the fronts, but only a small moon panel with a label which would have been re-used for production. The cost might be trivial or minor, but one will consider that it cannot be speculated as to when Jabu started this misconduct and how many pieces has been cut by her before she is instantly dismissible as per the company's disciplinary guideline…''

6.11 Clearly, the chairman rightfully observed in his findings that the cost for the piece was trivial, but misdirected himself by considering that It could not be ascertained on when the Applicant might have started such misconduct and how many pieces she might have cut. This is because no evidence had been presented before him to warrant such a consideration. He also made reference to the fact that the Applicant had a valid written warning for negligence, which contradicts RW1's evidence that it was the first time for the Applicant to commit such misconduct. No evidence was adduced in relation to the warning and same was not produced before the arbitration. The chairman of the hearing also failed to apply himself to the fact that the Applicant had a clean disciplinary record and

weigh it against the offence she was alleged to have committed. In the case of **Jabhane James Mbuli v Mhlume Sugar Company (IC) Case No. 7/1990,** Hassanali AJP had the following to say in relation to clean disciplinary record;

> *"….where an employee has had a long record of good service in the past….this is a factor which may be taken into account by the court in judging the reasonableness of management's decision to dismiss."*

6.12 The sanction meted out to the Applicant was clearly punitive as opposed to being corrective and it overlooked the fact that she was a first offender. **The Code of Good Practice: Termination of Employment** issued under Section 109 of the Industrial Relations Act, 2000 (as amended) emphasizes that discipline should be corrective, and dismissal should be reserved for cases of serious misconduct or repeated offences. The Code states at paragraph 5 and 6 that dismissal may be justified if the misconduct *is of such gravity that it makes a continued employment relationship intolerable.*

6.13 The learned author, **John Grogan** in his book **"Work Place Law" 9th Edition at page 167** states the above position as follows;

> "*Intolerability is, of course, a wide and flexible notion. Generally, the courts accept an employment relationship becomes intolerable when the relationship of trust between employer and employee is irreparably destroyed*".

6.14 The 'intolerability' test was applied in **Maria Vilakati and Another vs Ngwenya Glass (Pty) Ltd (IC) No.139/204**, wherein the court stated that the enquiry must be whether an inference can invariably be drawn that the trust relationship between the employer and the employee has irretrievably broken down based on the alleged misconduct, to the extent that continuation of same would be intolerable. The Applicant's conduct of cutting the piece of cloth which was of less economic value cannot be said to have had the effect of destroying, or of seriously damaging, the relationship of employer and employee between the parties, so that the continuation of that relationship could be regarded as intolerable.

6.15 The Respondent has failed to prove that the Applicant had a written warning which might have justified her dismissal. This is because this issue is not captured in the minutes and the chairman of the hearing (RW2) failed to explain what the warning was for, its life span and same was not produced during the arbitration to substantiate Respondent's case, coupled with RW1's evidence that it was her first time to commit such an offence. RW2 has in any event stated in his evidence that his decision was not influenced much by the warning, instead he heavily relied on that the Applicant had intentionally or willfully cut the piece of cloth, but ignored the fact that she insisted that it was no longer usable. For these reasons, the arbitration concludes that the termination of the Applicant's services was unreasonable in all the circumstances, and therefore substantively unfair.

6.16 I now turn to consider the procedural aspect of the Applicant's dismissal. The evidence before the arbitration is clear that the

Applicant pleaded guilty to the charge and that no evidence was led by the Respondent besides the submissions by the initiator. It is further clear that the Applicant maintained that the piece was not usable, notwithstanding that she had pleaded guilty. This is reflected in the minutes and was her evidence before the arbitration. **Grogan at page 225**, propounds the view that where an employee enters a plea of guilty, the presiding officer must ensure that the employee understands the implications of the plea. He stated that a plea of guilty can be accepted only if the employee has in fact admitted all the elements of a charge. This approach was endorsed and extended to disciplinary enquiries in **Fakudze vs University of Pretoria [2010] ZAGPPHC 178,** wherein a student had pleaded guilty to a charge of assault in a disciplinary enquiry and was subsequently refused registration for his final academic year. The Court stated the position as follows;

"The Constitution enjoins us as presiding officers, that as triers of fact, we should endeavor to turn every stone on questioning the litigants or accused persons to ensure that when they plead guilty, they should satisfy all the elements of the offence. This applies mutatis mutandis to disciplinary enquiries. Failure to do so amounts to injustice."

6.17 The minutes of the hearing reflect that the Applicant was asked how she pleaded and whether she understood the charge and nothing more. The Applicant and AW1 alleged in their evidence that they were only asked how they pleaded but were denied an opportunity to explain their plea, an issue that was disputed by the Respondent and referred her to the minutes that she was given a chance to state her case. It was incumbent on the chairman to interrogate the

Applicant's plea and explain all the elements of the offence before accepting her plea, as her plea amounted to a defense to the charge. This is more so because the Applicant and her representative (AW2) have no understanding on disciplinary procedures, as reflected before the arbitration. She did not understand whether RW2 was her witness or representative and she did not even know what a charge sheet is. They kept posing questions to the Respondent's representative when cross-examining them instead of answering the questions. Her representative even stated that she had no experience in representation fellow employees and that they did not know they had to raise certain issues at the hearing. This transpired when she was cross-examined on why never stated at the hearing that they never understood the charge. They both maintained that the Applicant had pleaded guilty because she had indeed cut the piece and that she had been informed by the Section Manager that she had been wrong in doing so. It was a failure of prudence and circumspection on the part of a chairperson to just accept the Applicant's plea under the circumstances, particularly because the Applicant had been charged with a serious offence with a dismissal sanction. I therefore find the Applicant's dismissal to have been procedurally unfair based on the above analysis. It will therefore not be necessary to consider the issue of whether the chairman's recommendation was altered from final written warning to dismissal, since I have already found her dismissal to have been procedurally unfair.

6.18 Having already found that Applicant's dismissal was both substantively and procedurally unfair, the next inquiry is on the remedy to be afforded to the Applicant. The Applicant has

categorically stated that she does not seek reinstatement or to be reengaged, even if it were to be in one of the Respondent's sister companies, but she claims compensation for her unfair dismissal. The alternative of reinstatement or re-engagement as a first option, as per **Section 16(1) (a) & (b) of the Industrial Relations Act, 2000 (as amended)** cannot be explored, since the Applicant has indicated her unwillingness, in line with **Section 16(2) (a).** The only available option as per **Section 16(1) (C)** is compensation. **Section 16(6)** in essence, is to the effect that where an employee's dismissal is found to have been unfair because the employer did not prove that the reason for dismissal was a fair reason, his compensation must be just and equitable but cannot be for more than the equivalent of 12 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

6.19 After taking into account the Applicant's age (50 years) and personal circumstances; her service record (in excess of 3 years); the nature and circumstances of the offence for which she was dismissed; and the period of approximately four (4) years she has spent without employment, I am of the considered view that 8 months' salary amounting to E8, 800.00 constitutes a fair and reasonable compensation. The Applicant is in terms of **Section 33(1) (C)** of the **Employment Act**, also entitled to her claim for one month's salary (E1, 100-00) as notice pay together with E411.84 for additional notice, since she had been in continuous employment for a period in excess of three years. The Applicant is further entitled to E1, 029.60 for severance allowance which is equivalent to ten working days for each completed year of service less the first year as per **Section 34(1)** of the Act**.**

7. AWARD

7.1 The Respondent is ordered to pay the Applicant the sum of E11, 341.44 (Eleven Thousand Three Hundred and Forty One Emalangeni Forty Four Cents) made up as follows;

(a)	Notice pay	-	E 1,100.00
(b)	Additional Notice	-	E 411.84
(c)	Severance	-	E 1,029.60
(d)	8 Months Compensation	-	E 8,800.00
	Total	=	**E 11,341.44**

7.2 Payment of the total sum of **E11, 341.44 (Eleven Thousand Three Hundred and Forty One Emalangeni Forty Four Cents)** must be made at the **CMAC Offices in Manzini, KaLaNkhosi Building within 30 days of receipt of this award**.

THUS DONE AND SIGNED AT SITEKI ON THIS 25TH DAY OF MAY, 2015.

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SANELE MAVIMBELA

CMAC COMMISSIONER