

IN THE LABOUR APPEAL COURT OF LESOTHO

In the matter between:-

**LESOTHO BANK 1999 LTD**

**APPELLANT**

and

**MATSOTELO MAPETLA**

**RESPONDENT**

**JUDGMENT**

**CORAM** : HON. MR JUSTICE S.N. PEETE

**PANELLISTS:** 1. MR. TAU  
2. MR. MOTHEPU

**DATE** : 24<sup>TH</sup> MARCH, 2006

[1] This is an appeal against the judgment of the Labour Court before which the present respondent had brought an application seeking an order-

- (a) *declaring her dismissal from the appellant's employment to have been unfair;*
- (b) *directing appellant to pay her damages equivalent to her total remuneration till she could have attained age of 55; alternatively reinstatement."*

[2] It was common cause that the respondent started working as a bank employee in 1994 and was re-engaged on the 4 August 1999 by the appellant upon its restructuring as an Enquiries Clerk.

[3] She became a teller from 3 January 2000 and was earning net salary of M2311.52 per month.

[4] On the 6<sup>th</sup> June 2001 she was dismissed by the Operations Manager a **Mr. Neil Arentsen** and was then working as an ATM custodian at the Cathedral Branch of the Lesotho Bank 1999 Ltd.

[5] Respondent had previously moved to ATM section in April 2001 having been verbally told of this transfer and describes her ATM custodian work as

*"...to assist customers with opening new accounts. I assisted customers on operation of ATM whether for withdrawals or deposit. To count and balance cash in the machine at the end of the day."*

[6] It was not in dispute that the ATM process involved a dual control i.e. opening of deposit envelop should be done in the presence of two custodians "*whom each had a key and after opening the machine we*

*take out the money and count it jointly.” She fully explained the depositing procedure.*

- [7] It was a common cause that on the 5<sup>th</sup> May 2001, one customer Sehloho Ramphalla deposited some M400.00 with the assistance of another Bank ATM custodian **Mrs. Moshabesha**.
- [8] Despite this deposit, the M400.00 was not credited to Ramphalla’s account when account and an investigation was mounted it appeared Mrs. Moshabesha had assisted the said Mr. Sehloho Ramphalla in depositing the M400.00.
- [9] Mrs. Moshabesha was at the time Manager at the Cathedral Branch.
- [10] During the investigation respondent was suspended and was later taken to a police station and made to spent the night there and later charged with the theft of the M400.00. This charge was later withdrawn.
- [11] It is also clear that when the disciplinary proceedings began on the 15 June 2001, the criminal charge had not yet been withdrawn.
- [12] The disciplinary charge read:

*“You negligently failed to follow procedure in handling customer ATM deposit on account no. Sehloho Ramphalla thereby resulting in disappearance of same in the amount of M400.00”.*

- [13] Angered by her recent incarceration and arraignment during the proceedings respondent chose to boycott them which nonetheless proceeded to finality the respondent was found guilty and the panel recommend her dismissal.
- [14] She says that the Operations Manager later dismissed her also without giving her a hearing.
- [15] Her appeal to the Executive Manager was also unsuccessful.
- [16] Respondent insisted that she never helped Ramphalla to deposit his money and knew nothing about the disappearance of his money.
- [17] On being cross examined by Ms Sephomolo she admitted that she was an ATM custodian and was dually responsible for counting the deposited money, but insisted she had done nothing to assist Ramphalla deposit until Ramphalla raised his query and she stated that even Ramphalla's deposit did not appear on the register.
- [18] It was common cause that after the respondent had marched out of the disciplinary hearing, the proceedings nevertheless continued and the respondent was found guilty and dismissal recommended.
- [19] On June 20, 2001 the Operations Manager Neil Arentsen terminated the respondent's employment also advising her right to appeal within 12 days.

[20] On the 3<sup>rd</sup> July 2001 the respondent appealed to the Executive Director upon two substantive reasons. To quote

*“(a) It is clear from the record of the disciplinary hearing the customer was served by Mrs Moshabesha. I did not have any contact with the customer when the alleged deposit was made.*

*(b) The fact that the machine records a deposit which is later reflected in the sparrow sub host does not necessarily mean that the customer had actually deposited that amount of money.”*

She then explained the procedure to the Executive Director **Mr. Colin Addis**.

[21] Having declined to present her case before the disciplinary hearing, the respondent now wished the Executive Director to re-hear her and consider matters that ought to have been traversed at the disciplinary hearing. This was correctly stated by Mr. Colin Addis the Executive Director.

[22] Part 8 of the appellant’s Grievance and Disciplinary Procedures states as follows.

*“All appeals will be dealt with on a review basis and appeal hearings will not be held Appeals are to be submitted in writing to the relevant reviewing person mentioned below and should be set on with motivation, the grounds on which the appeal is based.”*

- [23] In our view the respondent was afforded an opportunity to state her grounds against the decision to dismiss her. She stated these in writing on the 3/7/01.
- [24] It seems what should have been thrashed out at the disciplinary hearing, only came out before the Labour Court – why – because at the former hearing the respondent marched out. Indeed, had she stayed on boldly, the respondent could have vindicated her innocence in the whole saga.
- [25] But remains sticking out like a sore thumb is the fact that both the respondent and **Mrs. Moshabesha** violated the Bank regulation regarding the ATM deposit of Ramphalla's on the 5<sup>th</sup> May 2001. One or other or both of them were negligent in handling that deposit.
- [26] Strictly speaking violation of this nature caused loss to the bank through disregard of its rules and procedures and this according to the regulation merited a dismissal. The investigation that was mounted indicated that a deposit of M400.00 was made on the 5 May 2001 but requisite dual control was not exercised by both the respondent and Mrs Moshabesha and as a result the M400.00 was received but not – were secured, retrieved and recorded into the customer's account. Her and Mrs Moshabesha's failure to ensure that amounted to negligence – and though not to theft.

[27] We confirm as we hereby do the court *a quo*'s decision that the respondent's dismissal was substantively fair in the circumstances of the case.

[28] I am not however at *ad idem* with the line of reasoning adopted by the Labour court regarding procedural fairness of respondent's dismissal. I find nothing to convince me that once the respondent had waived the right to be present throughout the disciplinary proceedings opportunity contemplated under section 66 of the Labour Code 1992. I do not think that panel had a duty – legal or moral – again to go to the employee who has marched out of the proceedings (not shown to be oppressive or unfair) and say “come and say something to mitigate punishment.”

As an employee she signed an employment contract and knew about all these disciplinary procedures. For example the Disciplinary Brochure depicts all these stages (p.21).

[29] I am also satisfied that respondent was given a proper opportunity to write down her reasons for appeal against the decision to dismiss her. She however sought to reopen the inquiry before the Executive Director and raised issues that she ought to have traversed before the panel inquiry.

[30] I am of the view that her dismissal was also fair. I should however note that my assessors disagree with this finding.

---

**S.N. PEETE**  
**JUDGE OF LABOUR APPEAL COURT**

**PANELIST:.....**

**PANELIST:.....**

For Appellant : **Ms Sephomolo**

For Respondent : **Mr. Mohau**