IN THE LABOUR APPEAL COURT OF LESOTHO

HELD AT MASERU **LAC/CIV/A/09/13**

In the matter between:

FACTORY WORKERS UNION APPELLANT

AND

CRABTREE (PTY) LTD RESPONDENT

CORAM: THE HONOURABLE MR JUSTICE K.E. MOSITO AJ.

ASSESSORS : MR S. KAO

MRS M. RAMASHAMOLE

Heard on : 21 OCTOBER 2013

Delivered on : 7 NOVEMBER 2013

SUMMARY

Appeal from the Labour Court to the Labour Appeal Court – the Labour Court having raised the issue of jurisdiction mero motu – the Labour Court having declined jurisdiction on the basis that it had no power to review the decision of the conciliator – the Labour Court erred in this regard.

Matter referred to the DDPR for conciliation in terms of section 225 of the Labour Code (Amendment) Act 2000 – Appeal succeeds with costs.

JUDGEMENT

MOSITO AJ

1. INTRODUCTION

1.1 This is an appeal from the decision of the Labour Court (Ramoseme ADP). The matter came before the Labour Court as an application for review. The applicant union instituted proceedings against the respondent

company with the Directorate of Dispute Prevention and Resolution (DDPR). The matter was placed before the learned conciliator of the DDPR for conciliation. It appears that the conciliator thereafter purported to issue an award in the nature of "rules of the strike to be embarked by the union".

1.2 The essence of the matter is that the union (appellant) had members who are under the employ of the respondent. There appears to have been a labour dispute between the union and the company (respondent). The parties could not agree and the union ultimately referred a dispute to the DDPR. It is not exactly clear what happened at the DDPR but from the document annexed and which formed the basis of review in the Labour Court, it seems that the parties had reached a deadlog on the issue of increment of 30% across the board. This was a dispute of interest.

1.3 It appears to be common cause that at the DDPR, the conciliator did not conciliate the dispute but decided to come up with what the conciliator called "rules of the strike to be embarked by the union". The second page of the alleged rules has a hand written note by the conciliator which reads as follows "*applicant was read the rules but refused to sign them. N.Mosae".*

1.4 However, on the left-hand side of the note appears a signature opposite where a representative of the union would have signed. There is also a signature for the respondent, the conciliator has also signed, and this appears to have been done on the 29th day of November 2012. It seems that this issue formed the basis for the complained by the union. The union was complaining in the Labour Court that there was no conciliation at the DDPR. What only happened was that this particular conciliator tried to issue the so called "rules of the strike to be embarked by the

union" without having first conciliated the dispute. In the case before the Labour Court, the union complained that the conciliator having not conciliated the dispute, and it (the union) having refused to sign the rules that resulted from no conciliation, the Labour Court had to intervene and resolve the problem.

1.5 The claim of the union was not opposed so much so that the allegations of fact contained in the originating application of the union ought to have been assumed as correct by the court.

2. THE CASE BEFORE THE LABOUR COURT

2.1 In the Labour Court when the matter was heard, the Labour Court raised a preliminary point *mero muto sua* concerning the jurisdiction of the court to declare the conduct of the learned arbitrator *ultra vires*. The Labour Court points out in its judgment that:

> "we led to this view by the fact that this Court is a creature of statute and as such it is bound by the four corners of the statute that created it, for purposes of its jurisdiction on any matter referred to it. In raising this point *mero muto*, we acted on the basis of the authority in **Thabo Mohlobo & Others vs Lesotho Highlands Development Authority LAC/CIV/A/02/2010,** that the court has the power to raise a point of law on its own motion.

2.2 In the result, the Labour Court dismissed the application before it for want of jurisdiction and ordered that there would be no order as to costs.

2.3 It is difficult to understand why the Labour Court held that it had no jurisdiction to intervene in a matter which had been referred to it and which had started at a conciliation forum. This was a case where the conciliator had failed to conciliate a matter which has been presented

before him. In terms of section 24 (2) (d) contained in section 8 of the Labour Code (Amendment) Act 2000, the Labour Court has jurisdiction 'to enquire into and make awards and decisions in any matters relating to industrial relations, other than trade disputes which may be referred to it.' This is a general section that confers powers upon the Labour Court to have intervened in cases such as this.

2.4 It was common cause before us that the conciliator was enjoined to conciliate in terms of section 225 of the Labour Code (Amendment) Act 2000. In fact in terms of section 225 of the Act, the DDPR is enjoined to appoint a conciliator who has the responsibility for conciliating a dispute until it is settled. The conciliator must attempt to resolve the dispute through conciliation within thirty (30) days of the referral. It is clear that in terms of section 225 (6), if the dispute remains unresolved after the thirty days period, then, and it is only then that the conciliator can take a further step.

2.5 In the present case, the undisputed facts before us are that the conciliator did on the same day of the commencement of the conciliation, purport to issue rules for a strike. Clearly the conciliator was wrong to have done so regard being had to the section to which we have just referred. The question then is where the conciliator had erred in the manner he had done, where did the party aggrieved by his decision have to go to? Does it mean such a party was without a remedy? The answer is clearly in the negative. The Labour Court had jurisdiction to review such a decision of an arbitrator (see **Rule 16 (1) of the Labour Appeal Court Rules 2002 read with section 5 of the Labour Code (Amendment) Act No. 5 of 2006).** There can be no doubt that the

conciliator in doing what he did, was exercising an administrative action which was reviewable by the Labour Court.

2.6 In my view the Labour Court erred in holding as it did that it had no jurisdiction to intervene in this sought of case.

3. CONCLUSION AND ORDER

3.1 It is clear from the foregoing discussion that the Labour Court erred in declining jurisdiction in this matter. The circumstances of this case are such that it would not be prudent to refer the matter to the Labour Court to resolve a question of law such as this. It is for this court to reverse the decision of the Labour Court and make a directive that this matter be properly conciliated by the DDPR.

3.2 In the result the following order is made:

1. The appeal succeeds with costs.
2. The matter is referred to the DDPR for conciliation by a different conciliator.

3.3 This is an unanimous decision of the court.

DR K.E. MOSITO AJ.
Judge of the Labour Appeal Court

For the Appellant : Advocate M. Rasekoai

For the Respondent: Advocate N. T. Ntaote