

IN THE LABOUR APPEAL COURT OF LESOTHO**HELD AT MASERU****LAC/CIV/A/07/2013****LAC/REV/120/2011****In the matter between:****NTHABISENG MOLIKO****APPELLANT****AND****C & Y GARMENTS (PTY) LTD****RESPONDENT****CORAM: THE HONOURABLE MR JUSTICE K.E. MOSITO AJ.****ASSESSORS : MRS L. RAMASHAMOLE****MRS M. THAKALEKOALA****Heard on : 16 JANUARY 2014****Delivered on : 21 JANUARY 2014****SUMMARY**

Appeal from the Labour Court judgment – appellant complaining that the Labour Court erred in holding that the disciplinary manager had no authority to dismiss.

Court holding that according to the relevant disciplinary rules, the manager had the authority to dismiss. – Appeal dismissed and no order as to costs.

JUDGMENT**MOSITO AJ****1. INTRODUCTION**

- 1.1 This is an appeal against the judgment of the Labour Court. The Labour Court was ceased with an application for review of an arbitration award of the DDPR. In that application the applicant sought to have the arbitration award handed down on 28 September 2011 reviewed, corrected and set aside. Five grounds of review were raised in the founding documents. However, at the commencement of the proceedings, applicant withdrew four grounds leaving only one.
- 1.2 The applicant complained that the learned arbitrator erred in law in that he made a conclusion that the recommendation of the chairman of the disciplinary hearing was final. In the result, the Labour Court dismissed the application and made no order as to costs.

2. APPEAL BEFORE THE LABOUR APPEAL COURT

- 2.1 Before this court, the appellant raised four complaints as follows:

“-1-

The learned Acting Deputy President erred and/or misdirected himself in holding that the applicant has not been able to motivate her case in a claim for review.

-2-

In so dismissing the application of the appellant, the learned Acting Deputy President erred and/or misdirected himself by making a conclusion to the effect that there was no procedural irregularity on the part of the learned arbitrator in making his conclusion and further that none has been pleaded.

-3-

The learned Deputy President erred and/or misdirected himself by making a conclusion to the effect that the submissions of applicant are based on the procedural irregularities that took place at the initial disciplinary hearing and not at the DDPR

and that the only connection that is being made with regard to the DDPR is that the learned arbitrator ought not to have accepted the respondent's argument. The learned Deputy President erred and or misdirected himself in the employment of this logic as it is not tenable in law."

- 2.2 In the case before us advocate Rampai argued one point only. The point was that the factory manager or chairman of the disciplinary case had no authority to dismiss.
- 2.3 Unfortunately this argument is not supported by the Rules of Procedure for Disciplinary Hearing of the 1st respondent. In fact the relevant Rule provides that "the chairperson or presiding officer of the enquiry has authority to impose sanction based upon his findings as he/she may find even dismissal where necessary. This is in line with the company human resource department (HRD) bible."
- 2.4 It follows therefore that there is no substance in this ground of appeal which was in any event, the basis of the case in the court below. For that reason this appeal cannot succeed. It is accordingly dismissed.
- 2.5 Mr Kao for the respondents informed the court that he would not insist on costs. There is therefore no order as to costs.

3. CONCLUSION

The obvious conclusion to which we come is that:

- (a) The appeal fails.
- (b) There is no order as to costs.

This is an unanimous decision of the court.

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

For the Appellants : Advocate M. Rasekoai

For the Respondent : Advocate T. Kao