

IN THE LABOUR COURT OF LESOTHO

LC/11/94

HELD AT MASERU

IN THE MATTER OF:

RATS'OLO THAMAE

APPLICANT

AND

HIGHLANDS WATER VENTURE

RESPONDENT

JUDGMENT

This matter was heard on Friday 18th May, 1995. At the end of the hearing the application was dismissed. What now follows are the reasons for the dismissal of the action.

Applicant was employed by the respondent on the 11th May, 1992. He was a member of the shop stewards committee as well as the Regional Chairman of the Construction and Allied Workers Union (CAWULE), to which the majority of the respondent's employees belonged. He therefore had a prominent role to play in the union both at the shopfloor and at the national level since the regional chairmanship earned him ex-officio status at the national executive committee level.

On the 24th March, 1994, the applicant was given permission by his supervisor to go to Riverside Mess where the Union Shop Stewards were going to be elected. Applicant used the permission to be away from work, to go and transact union business at FEDICS Food Company where he went to represent employees of that company in a complaint involving allegation of intimidation of employees by the management. The applicant was disciplinarily charged for having abused the permission

given to him to go and administer election of shop stewards for employees of the respondent by using that time to carry out union functions which had no bearing to the respondent. He was found guilty and given a warning.

The respondent went further to write a formal letter of complaint to the union's regional organiser, Mr. Mofana, who was a full time official of the union, about the applicant's behaviour.

In particular the respondent requested that the union should;

"..... make it clear to Mr. Thamae and all the shop stewards that their role in the union's structure is only recognised when it relates to their functions within HWV (respondent) environment, as per recognition agreement."

The Regional Organiser responded to the management's letter in part as follows: "we agree that Mr. Rats'olo Thamae or any site steward will not leave the working place without permission or take permission and use it for the wrong purpose."

On the 24th April, exactly a month since the last incident, the applicant sought permission from his supervisor to go and meet one Mr. Passarani at the main office in connection with a case of a fellow employee. The permission was granted. He left the work station at around 0800 hours. At 11h55 the applicant met with Mr. Figueiredo, the Personnel Manager at the main offices, to whom he handed the permission to leave work station form. At this time applicant was with the complainant whom he had gone to represent and the Regional Organiser Mr. Mofana. Mr. Figueiredo noticed that the applicant had left the work station at about 08h45 and yet was

only meeting him at 11h55. He enquired where the applicant had been and the applicant allegedly answered that he had been to Khokhoba village to see Mr. Mofana the Regional Organiser. Mr. Figueiredo immediately indicated that disciplinary steps were going to be taken against the applicant.

On the 04 May, 1994 a disciplinary enquiry was conducted with Passarani presiding and Figueiredo as complainant. At the end of the hearing the applicant was dismissed. He lodged an appeal which failed. He then filed these proceedings in which he is essentially challenging his dismissal on the grounds that, as a Personnel Manager Mr. Figueiredo has no right to prefer a disciplinary charge against him, only his supervisor who gave him permission to leave the work station could charge him. Secondly he argued that he was not given chance to defend himself. He also contended that there were no witnesses to confirm that he had been to CAWULE office at Khokhoba village.

The applicant also tried to make issue out of the fact that his dismissal was contrary to the recognition agreement between CAWULE and the respondent. It should be pointed out from the outset that the paper that the applicant was holding on which he based his arguments regarding the number of warnings that he could be given before dismissal, had no single signature. Mr. Figueiredo did challenge its authenticity on the grounds that as opposed to the unsigned paper that applicant was referring to, the Recognition Agreement between the parties is signed and each page is initialled. He said the paper that applicant was referring to was a tender document of one of the partners in the venture. It goes without saying that no agreement can be authentic unless it is signed by the parties thereto as testimony of their agreement as detailed in the document being signed.

It is significant that the applicant does not deny that he was at the CAWULE office during the time 09h45 to 11h55. He merely says the complainant did not see him there. The complainant says he was told by him the applicant, that he had been there. The applicant's attempt to explain his movements between these hours is not convincing. He merely says he arrived at the administration block at 09h55 and started to look for Mr. Passarani. The office block is said to be an L shape of roughly 20m in length both sides. It will not take a serious person more than 40 minutes to look for a person and be able to know if such a person is present or not, within the office block of that size. Applicant's argument that there were not witnesses on both sides cannot help him either. The respondents charged him on the prima facie case of being away from work for an unreasonably long time and there being no evidence of his having been at the administration office during that time, which is where he was permitted to go, save for a short time when he met a Mr. Rapopo at around 0900 hours, which again contrasts sharply with the time given by the applicant as the time when he arrived at the administration offices. It was for the applicant to establish his whereabouts to the satisfaction of management during the four hours. Mr. Figueiredo said the applicant told him that he had been to Khokhoba village in the presence of Mr. Mofana and the complainant, whom he had gone to represent. Applicant was free to call these two people as his witnesses, but he chose not to. He cannot therefore be heard to say that there were no witnesses.

It is difficult to understand what the applicant really means when he says he was not given chance to defend himself. A disciplinary enquiry was held in which the applicant participated. This enquiry led into the applicant's main

contention that Mr. Figueiredo had no right to charge him. He appealed against the finding of the inquiry, albeit unsuccessfully. The contention that the applicant was not given chance to defend himself is therefore completely unfounded.

Equally unfounded is the applicant's contention that the personnel manager has no right to charge him. Mr. Figueiredo contended that the personnel manager is part of the senior management of the organisation and as such is entitled to prefer charges against any employee of the Venture. This in our view is partly true. The full truth is that anybody in the organisation can lay a charge against each one of the fellow employees if he is dissatisfied with his activities at the workplace. In other words even one of the applicant's colleagues at work could lay a complaint which could lead into a charge regarding applicant's absenteeism from work. Mr. Figueiredo was the one who noticed that applicant had been away from work for about four hours. He had the right to lay a complaint against the applicant. The fact that applicant had been permitted by his supervisor could only be a defence to the charge, not that a complaint could not be made, or that only the person who granted the permission could lay a charge against the applicant.

It seems that the applicant was a very stubborn person. He was infatuated by his position in the union leadership structure. He, therefore, thought that he could do as he wished. This is demonstrated by his repeat of the same mistake in just about one month. He never took heed of the warning. In court he disputed the letter that Mr. Mofana wrote to the effect that he (the applicant) will no longer use permission given to him for wrong purposes. He said Mr. Mofana could not write such a letter without his permission as he was his boss.

This showed clearly that the applicant was not convinced that what he had done was wrong. A shop steward is still an employee like all other employees from whom the employer is entitled to expect conduct consistent with the employment relationship, (see *Mondi Paper Co. Ltd. .v. Paper Printing Wood and Allied Workers Union & Dhlamini* (1994) 5 (2) SALLR 1 and *K.E. Malingu .v. The Cold Chain* (1991) 2 (1) SALLR 1).

It is significant that before deciding on the penalty of dismissal the Chairman of the enquiry took into account the entire service record of the applicant. He satisfied himself that the applicant had a bad employment record. In the circumstances the court finds no justifiable reason on which it can disturb the employer's decision to dismiss the applicant. The application is therefore dismissed.

Costs will be costs in the suit.

THUS DONE AT MASERU THIS 31ST DAY OF JULY, 1995.

L. A. LETHOBANE

PRESIDENT

S. LETELE
MEMBER

I CONCUR

M. KANE
MEMBER

I CONCUR

FOR APPLICANT
FOR RESPONDENT

:
:

IN PERSON
MR. FIGUEIREDO