

IN THE LABOUR COURT OF LESOTHO

CASE NO LC/12/94

HELD AT MASERU

IN THE MATTER OF:

LESOTHO GENERAL WORKERS UNION
APPLICANT

AND

SECURITY UNLIMITED (PTY) LTD
RESPONDENT

J U D G M E N T

This case was lodged on the 18th November 1994. Prior to the 1st April 1993, employees of security firms used to work a five day week of seventy hours, divided into fourteen hours per day. The Labour Code Order No.24 of 1992 (the Code), which came into operation on the 1st April 1993, provides in Section 118(1) that:

“(1) Except as otherwise provided in the Code, the normal hours of work for any employee shall be not more than 45 hours per week, calculated as follows:

(a) for an employee who ordinarily works a five day week, nine hours of work on any day;

(b) for an employee who ordinarily works a six day week, eight hours of work on five days and five hours of work on one day.”

Employees of security companies were also to work fourty five hours per week like all other employees.

On the 31st October 1993, the complainants appearing in Annexure “A” to the Originating Application were terminated. On the 18th November 1994, they lodged the present application with the assistance of the applicant union seeking:

- (a) payment of 8% interest accrued to the complainants under a pension scheme created by the first respondent for its employees.**
- (b) payment of overtime as reflected in Annexure “A”.**

In their answer the respondents contended that of the twenty-nine people listed in Annexure “A” only ten were members of the fund and that only Seitlheko had come to collect his interest. The interest due to the others was awaiting their collection. Consequently this prayer was subsequently abandoned by the applicants. At the day set for the hearing both counsel agreed that the issue of overtime be referred back to the Labour Commissioner for further investigation. A report of the inspection by Mrs. Nkoko was filed with the court.

In essence the report of Mrs. Nkoko showed that the respondents kept what is called “post-log-book” in which an employee records his arrival and departure from a duty station. These records are kept for six months. Since the inspection was carried out on the 22nd May 1995, the records for the period April 1993 to October 1993 could not be found. Only the report of Tselisehang Malelu for the month of July 1993 was found. The report further showed that the employees worked a five day week of twelve hours per day.

Mr. Mahao for the applicants contended that the complainants worked five days of overtime each month, made up of one hour of traveling prior to clocking and the four hours which the complainants worked each day in excess of the legally permitted eight hours. Mrs. Nkoko’s report showed that Malelu whose report she got hold of, took over duties at 0600 hours and handed over at 1800 hours. It seems to the court that the report of the Labour Commissioner is unassailable with regard to the number of hours that Malelu worked, because nothing to the contrary was put forward by the applicants.

Mr. Mahao contended further that before actual take over of duties at 0600 hours Malelu would already have been instructed and would have been to the inspection parade. Significantly, however, Mr. Mahao could not favour the court with the authority for the proposition that an employee is entitled to payment of overtime for the period between leaving his home and actual resumption of duties. There is ample authority for the proposition that an employee who gets injured on the way to work using an employer provided transport is entitled to compensation. We are, however, not aware of any authority to support the proposition that an employee is entitled to payment of overtime for the travel period to work before the official start of duties.

It was Mr. Mahao's further contention that from the time that they clock in the employees are already at work and they are entitled to be paid. However, Mr. Mahao could not say exactly when the clocking in time was. It is therefore not necessary for the court to pursue this point any further as it lacks the necessary fundamental averments. We therefore hold that as the report of Mrs. Nkoko shows the complainants worked twelve hours per day.

The issue to determine is how many of the twelve hours worked by the complainants daily were overtime hours. Mrs. Nkoko's inspection report which is not disputed by the applicants or the respondents showed that even after April 1993, respondents' workers continued to work a five day week. It will be recalled that Section 118(1)(a) provides that "*...an employee who ordinarily works a five-day week, (shall work) nine hours (per) day.*" Accordingly therefore the overtime worked by the complainants was three hours each day, as they had to work nine hours a day.

Mr. Makeka for the respondents contended that the complainants were paid for the overtime they worked. To prove his contention he again used Malelu as an example. (Annexure B) to the report of Mrs. Nkoko showed Malelu's monthly basic salary as M600-00 as at April 1993. This is the same salary he earned until October 1993. According to applicants' submission which is not disputed by the respondents Malelu's hourly rate was M2.00 per hour. It was Mr. Makeka's contention that according to Malelu's hourly rate and the number of hours he worked per month his salary ought to have been M390-00. When the number of overtime hours is added to the basic pay, Malelu's salary ought to have come to M540-00 per month and yet he was paid M600-00.

Malelu's record having been the only one available, was in the opinion of the court the only yardstick that could be used to determine how the rest of the other complainants were paid. No attempt was made to show that (Annexure B) to the report of the Labour Commissioner was not reflecting the true position or that if it did it was not necessarily reflective of the true position in respect of the other complainants. We are thus of the view that the complainants have failed to prove that they are in any way owed overtime payment by the respondents. The application is accordingly dismissed.

Mr. Makeka prayed for costs in the event of the application being dismissed. We are not persuaded that the applicants behaved in an unreasonable manner. We are of the view that their pursuit of this matter was a result of inability to properly interpret the law and to grapple with the arithmetic involved in working out entitlements to overtime. There is therefore no order as to costs.

THUS DONE AT MASERU THIS 14TH DAY OF MAY 1996

L.A. LETHOBANE
PRESIDENT

M. KANE
MEMBER

I CONCUR

S. LETELE
MEMBER

I CONCUR

FOR APPLICANT : MR. MAHAO
FOR RESPONDENT : MR. MAKEKA