

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 114/95

HELD AT MASERU

IN THE MATTER OF:

LESOTHO CLOTHING AND ALLIED WORKERS
UNION (LECAWU)

APPLICANT

AND

C&Y GARMENTS (PTY) LTD

RESPONDENT

J U D G M E N T

This case arose out of the strike and subsequent mass dismissal of employees of the respondent company on the 12 July, 1994. Mr Billy who represented the applicant union gave a version of facts which was not only in conflict with the respondent's version but also with the record of minutes of conciliation meetings which were held under the Chairmanship of the Labour Commissioner immediately after the events which gave rise to the dismissals.

According to Mr Billy's account of the events, on the 12th July, 1994, workers had gone to work as usual, when the Management allegedly announced that some workers were going to be retrenched. He alleges further that a meeting was convened between the Branch Committee and Management on the same day. At the meeting the Branch Committee (the Committee) allegedly requested for permission to consult their union but the request was not acceded to. The Committee then sought to negotiate the retrenchments with Management but the latter refused. It was Mr Billy's submission that management's conduct constituted an unfair labour practice which caused workers to go on strike. He, however, later

turned around and said he does not regard workers' stoppage of work on the 12th July, 1995 as a strike.

Whatever, Mr Billy might consider the workers' stoppage on that day as constituting, it is untenable to suggest that the alleged management's conduct in this case amounted to an unfair labour practice. Mr Billy was requested by the Court to point out the section of the Labour Code Order, 1992 (the Code) which the employer contravened, thereby committing an unfair labour practice. It is common cause that part XV of the Code deals with unfair labour practices. Significantly Mr Billy could not point such a Section.

The respondent's version which as stated is confirmed by the records of meetings chaired by the Labour Commissioner, which meetings inquired into the dispute is that, on the 11th July, 1994, the Management of the respondent company sought advise from the Deputy Labour Commissioner as to how they could carry out retrenchments as they contemplated laying off workers in the sections where there was little or no work. (See p. 2 of Minutes of Meeting of 26th July, 1994). The management were advised to consult and discuss the contemplated retrenchments with the workers concerned.

On the same day management informed the Committee about the contemplated retrenchments. The Committee expressed a desire to consult their union/lawyer on the issue. The Management also informed workers of the sections in which the retrenchments were to be carried out about the plan. The concerned workers allegedly walked out of the meeting without making any suggestions. On the morning of the 12th July, 1994, the Committee consulted Management before the start of the day's shift and requested for permission to consult their union. The Committee was told that the permission would be granted by the "boss". When the latter delayed to grant the permission the workers stopped work.

Management sought the intervention of the Department of Labour which sent officers to the factory to mediate and advise workers about the procedures for lodging of complaints. The workers were allegedly unruly and insulted the Government Officers, threatened to beat them and stamped their vehicle with shoes. Management was also allegedly stoned and threats to burn the factory were made. Consequently Management barricaded themselves inside the factory. Ultimatums were allegedly given to the workers and when they did not heed them they were dismissed at the end of the day. For the purpose of our decision we will base ourselves on the facts as given by respondent as they are corroborated by the record of meetings at which representatives of the applicant were always in attendance.

In their answer the respondents indicated that they would raise a point in limine about the time limit for the filing of unfair dismissals. In particular they contended that applicant had not even applied for leave to sue out of time. However, at the

start of this proceedings, the Court, noting that applicants are not represented by a legal practitioner condoned their failure to apply for leave and allowed Mr Billy to explain his delay to the Court.

Mr Billy's explanation was that this matter had all along been in the hands of the Labour Department. He obtained the report from the Labour Department to support his argument. The Labour Department's report dated 26th April, 1996 shows that following a strike at the respondent's factory on the 12th July, 1994 a series of conciliation/mediation meetings were held under the auspices of the office of the Labour Commissioner. The last meeting was on the 27th July, 1994, when it was agreed that applicants and the respondents would continue with bilateral contacts to finalize the remaining issues. Minutes of these meetings have been attached to the report.

According to the letters attached to the report, not much progress was made until the 10th October when the two sides met face to face to address the outstanding issues. According to an undated report to the Labour Commissioner by the applicants, (this report bears the Labour Department's date stamp dated 22/03/95) there were five issues on the agenda. The meeting was followed by another one on the 19th November, 1994. The report states in paragraph 3 that;

“at the end of this meeting only three issues remained unresolved i.e item 1,2 and 3”.

At the bottom of the report, the pending issues are summarised as:

- dismissal of committee members
- underpayments
- dismissed workers who were not in on the 12/07/94

The applicant union wrote another letter to the Labour Commissioner on the 24th January, 1995, requesting the intervention of his office in the resolution of the outstanding issues. There is no evidence of any further communication by either party with regard to this dispute ever since the 24th January, 1995.

The present case was lodged on the 25th August, 1995. The applicant union seeks relief in the following terms.

- (a) An order declaring the dismissal of applicant's members unfair;
- (b) An order declaring dismissal of committee members unfair;
- (c) payment of arrears from the date of dismissal to the date of declaration of (a) above;
- (d) Payment of overtime and under payments;
- (e) Further and/or alternative relief.

In the view of the Court, it is not true that the whole claim as contained in paragraph 8 of the originating application has always been in the hands of the Labour Department. The report of the Labour Department does not bear Mr. Billy out in this regard. The issues which have been proven to have been referred to the Labour Department for further conciliation are those styled "Pending Issues" in applicant's undated report to the Labour Commissioner. Those are the only issues with which the Labour Department became seized after the resolution of all others, as applicants' report and the letter of 24th January 1995, shows.

The issue of the reinstatement of the workers seems to have been thoroughly discussed at the meetings of the 26th July, and 27th July, 1994. At those meetings Management stated that it had already re-employed 850 of those workers who had been dismissed. After the completion of the retrenchment exercise which was disrupted by the strike, Management had planned to operate with the strength of 1000 employees. At the meeting of the 27th, Management reaffirmed its commitment to this figure and that the remaining 150 places would be filled with workers from the dismissed group. At the time they already had 17 places which they were going to fill with the workers from the dismissed lot. At the bottom of page 4 of the minutes of the meeting of the 27th July, 1994 the union accepted this arrangement regarding the strength of the workforce. The issue of unconditional reinstatement of all workers last surfaced at that meeting. There is no evidence of its having been any further subject of applicant's concern thereafter.

What is apparent is that Mr Billy is trying to somersault on previous agreements and this cannot be permitted. Moreover, the issue of reinstatement of all the workers is clearly prescribed as it was never a subject of any further consultations between the applicant and the respondent or between the two social partners and the Labour Commissioner after the meeting of the 27th July 1994. Accordingly therefore prayer (a) of the originating application has to be dismissed.

The issue of reinstatement of the committee members was among the issues referred to the office of the Labour Commissioner by letter of the 24th January, 1995. There is no evidence of what the Labour Department did or did not do. But the issue remained pending at that office until it was brought to Court. We therefore accept this issue as not prescribed. Applicants contended that the dismissal of the committee members was unfair because they did not strike as they were involved in meetings with management during the strike. The respondent on the other hand contended that the committee members were part of the striking workers. It seems to us that this contention is true, because at the time that the strike started, the committee was not sitting in a meeting with management. At that time they ought to have been working in their respective sections, whilst awaiting the decision of the "boss" on their request. They only got involved in meetings after the strike started, to which they were party. In the circumstances prayer (b) of the originating application also has to be dismissed.

Prayer (c) automatically falls away as it could only follow applicant's success in their prayers (a) and (b). Not an iota of evidence was given by the applicant to prove the claims of overtime and underpayments. Applicant's Annexures "LEC1" "BM1" and "BM2" only reflect calculations of amounts allegedly owing, but no evidence was tendered to support the claims. The Court has no alternative but to dismiss prayer (d) of the notice of motion as well.

In the circumstances the application is dismissed.

There is no order as to costs.

THUS DONE AT MASERU ON THIS 30TH DAY OF MAY,
1996.

L.A LETHOBANE

PRESIDENT

K. MOJAJE
MEMBER

I CONCUR

M. KANE
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MR BILLY
MR VAN TONDER