

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 116/96

HELD AT MASERU

IN THE MATTER OF:

THABISO RAMOKOENA

APPLICANT

AND

STANDARD CHARTERED BANK

RESPONDENT

JUDGMENT

The applicant is an employee of the respondent bank. Until the 23rd November 1995, he was employed as the Branch Manager of respondent's Maputsoe branch. On the 21st November 1995 applicant appeared before a disciplinary enquiry to answer certain charges relating to alleged impropriety in his work. He was found guilty and was demoted.

Counsels for both parties agreed to deal only with the procedural aspects of the enquiry and to go into the merits if the alleged procedural irregularities are not upheld. It is common cause between the parties that the applicant was advised of the decision to demote him per letter dated 23rd November 1995 and signed by the Managing Director. The applicant appealed against the decision which appeal was heard by the Managing Director on the 9th May 1996, in the presence of all members of the original enquiry.

Mr. Phafane who appeared for the applicant contended that the enquiry was procedurally irregular because:

- (a) The Managing Director presided over the appeal notwithstanding that he was the one who took the decision to demote the applicant, on the recommendation of the disciplinary committee.
- (b) Members of the original enquiry were also members of the appeal committee.

Mr. Van Tonder contended on the contrary that the Managing Director was not the one who took the decision to demote applicant. The decision was taken by the disciplinary committee and communicated to the applicant under the Managing Director's signature. In terms of paragraph 57 of respondent's Staff Manual a disciplinary committee will be convened to hear any allegations of misconduct and the concerned employee will be invited to attend. The paragraph states further that:

“ thereafter, the committee will reach a decision and this will be advised direct to the officer(s) concerned under the signature of the Chief Manager or his nominated deputy....” (emphasis added)

Clearly therefore, in writing the letter of demotion the Managing Director was neither acting on a recommendation nor taking a decision himself. He was only a conduit for the transmittal of the committee's decision and this was in conformity with the respondent's Staff Manual. The Managing Director's chairing of the appeal cannot therefore be faulted, as he acted entirely in accordance of the respondent's Staff Manual.

Applicant's second argument that members of the original enquiry also participated in the appeal hearing, is supported by annexures “B” and “C” to the answer. According to annexure “B” which is a letter that was written to the applicant by the Managing Director, the latter met the applicant on a one on one basis to discuss the appeal. Thereafter the Managing Director put two alternatives to the applicant, the first one being for applicant to undertake to abide by his decision on the

matter based on the review of applicant's file and the comments made by applicant during the discussion. The second option was that a formal hearing of the appeal be convened in which case, the Managing Director stated that;

“ it will be necessary for all of the members of the original disciplinary hearing to be present and actively involved in the hearing in addition to myself.

It would appear that applicant preferred the latter option, because on the 9th May 1996 a formal hearing of the appeal was convened with all members of the original enquiry present in addition to the applicant and the Managing Director.

It was Mr. Phafane's contention that this procedure was fatally irregular. He referred the court to paragraph 7 of applicant's supporting affidavit and stated that the procedure adopted violated the rules of natural Justice. In response Mr. Van Tonder stated that the procedure followed in the conduct of the appeal was in accordance with the respondent's Staff Manual. He however, could not show the court the paragraph or clause which stipulates such a procedure. In the view of the court the issue for determination is whether in using the procedure which he followed the Managing Director violated the rules of natural Justice. In other words was the procedure followed in any way unfair to the applicant.

The respondent's Staff Manual has no provision for appeal, as such the respondent has no standing appeal procedure. However, it is evident from annexure "B" to the answer that the Managing Director accorded the applicant the right to appeal to his office, which right the applicant exercised. There being no standing procedure to follow, the Managing Director devised his own, which was to invite the members of the initial enquiry to be present at the hearing.

At the appeal hearing the Managing Director explained that *“..... his judgment would not be given immediately but at least 7 days from the date of the appeal hearing. The members of the original tribunal were present so that Mr. Ramokoena and Mr. Dewar (the Managing Director) could question them on their findings and they could also pose questions*

where necessary... ” (see annexure “C” to the answer). As we have said this procedure seems to have been authored by the Managing Director himself as it is not contained in the Staff Manual.

In the case of ‘ Maisaaka Mote V. Lesotho Flour Mills LC 59/95 (unreported) this court had occasion to quote from the judgment of Landman A.M. as he then was in the case of National Union of Mineworkers & Others V. Driefontein Consolidated Ltd (1984) 5 ILJ at 145, where the learned member stated as follows:

“ It does not lie within the competence of this court to lay down rules of procedure which an employer should follow so that a dismissal will be fair. The performance of such a function would amount to blatant legislation.”

Even though the learned member was dealing with a case of dismissal, the principle, is however, applicable wherever the court is faced with a procedural challenge to an employer’s disciplinary action. In the same case (Mote’s case) the court also quoted Baxter’s 1984 impression of Administrative Law volume at P. 545, where the learned author submits that;

“ except where legislation prescribes otherwise, administrative bodies are at liberty to adopt whatever procedure is deemed appropriate, provided this does not defeat the purpose of the empowering legislation and provided that is fair.”

In the view of the court there is no sound basis to impugn the procedure adopted by the Managing Director when conducting applicant’s appeal. He has made it clear in his introductory remarks at the appeal hearing that he and he alone is going to decide on the outcome of the appeal. He also made it clear why he needed the presence of the members of the original enquiry, and that was to enable him and the appellant - applicant herein, to question them on their findings. In our view the hearing applicant was afforded was not “ *marred with irregularities and violations of natural Justice,*” as paragraph 7 of applicant’s supporting affidavit suggested. There was in our view therefore, no procedural unfairness to the applicant.

Neither party herein asked for costs. It cannot but be assumed that they desired that costs be costs in the suit and it is accordingly so ordered.

THUS DONE AT MASERU THIS 23RD DAY OF JULY, 1997.

L.A LETHOBANE
PRESIDENT

A.T. KOLOBE
MEMBER

I AGREE

P.K. LEROTHOLI
MEMBER

I AGREE

FOR APPLICANT : MR PHAFANE
FOR RESPONDENT: MR VAN TONDER