

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 117/96

HELD AT MASERU

IN THE MATTER OF:

TEBOHO MAJORO

APPLICANT

AND

LESOTHO ELECTRICITY CORPORATION

RESPONDENT

JUDGMENT

The facts of this matter are common cause. The applicant was dismissed following a disciplinary inquiry which found him guilty of contravention of the respondent's Personnel Regulations by fraudulently providing unauthorised electricity supply at a residential house in Maseru West. The applicant had steadfastly denied the charge before the disciplinary committee. However his co-accused, who were his team mates pointed at him as the culprit.

The applicant lodged an appeal to the Managing Director pleading, inter alia, that a lesser punishment be considered as this was his first offence and that he had in fact not committed the offence alone. The rest of his team mates who had decided to testify against him were also party to the fraud and that it was being perpetrated with the approval of the team supervisor, the applicant pleaded.

According to annexure "TM5" to the Originating application, paragraph one thereof, the applicant appeared before the Managing Director in connection with his appeal on a date that is not mentioned. It appears further from the said annexure "TM5" that the Managing director instructed the applicant to disclose more details which he knew about the fraud scam and he did. These details which were concluded with further pleas for leniency are contained in the said annexure "TM5". Thereafter the Managing Director appointed an appeal committee to investigate the allegations raised in the applicant's letter of appeal namely, annexure "TM5".

The terms of reference of the committee were stated as including “ *conducting interviews, questioning certain members of staff, making necessary enquiries, seating in the tribunal and producing a report concerning the aforementioned to management.*” The applicant was invited to appear before the appeal committee on Friday 9th December 1996. According to the report of the appeal committee (annexure “TM11(c)”) the applicant admitted installing the econometer which was the subject of his disciplinary charge. He also said that this was done with the knowledge and consent of the team. He stated further that it was common practice within the team to fraudulently install meters at friends’ or relatives’ places. He took the committee to five such places. After the hearing of his appeal the committee recommended and the Managing Director accepted, that applicant’s dismissal be upheld. (see annexure “TM10”)

Notwithstanding this clear and transparent procedure, the applicant has approached this court for relief on the grounds that he was not afforded a hearing (see paragraph K (i) and (ii) of the originating application). In his submissions in court, however, Mr. Maieane conceded that the applicant was infact afforded a proper opportunity to defend himself at the initial hearing which found him guilty and recommended his dismissal. He contended that they are particularly concerned with the appeal stage, which is where they feel they were not afforded a hearing. He contended that what the respondent’s appeal committee did was to make investigations which were not followed by a hearing.

As we have already shown, by applicant’s own admission in annexure “TM5”, the Managing Director did hear his appeal. However, the Managing Director extended the appeal process further by acting in terms of clause 3.3.3 of the disciplinary procedure which provides that;

“ 3.3.3 The Managing Director shall appoint a three man appeal committee as and when necessary.”

The applicant appeared before this committee and used that opportunity to chronicle chilling details of the seriousness of the fraud with which he had been found guilty. It goes without saying that the respondent must have been shocked to learn that the case of the applicant had just been the tip of the iceberg. It offends any sense of logic how the applicant says he was not given a hearing in such circumstances. He had more than one opportunity to be heard at the appeal stage. The fact is that his pleas for leniency were not heeded and understandably so given the extend of his involvement in the fraud.

In our view the respondent bent over backwards to hear applicant’s story. He substituted his original denial of the charge with unqualified admission of the quilt on appeal. This court has held before that where an employee admits quilt, the primary purpose of holding the enquiry is to decide on the appropriate penalty and to give the employee an opportunity to make representations in that regard. (see

Nthabiseng Moshabesha V. Lesotho Bank LC 20/94) . This is essentially what the applicant did in his two letters of appeal (annexure “TM2” and “TM5”). To what extent he pursued this question of a lesser sentence when he appeared before the appeal committee is not clear from the papers before court. One thing clear is that the appeal committee did not feel that he deserved a lenient sentence. The applicant has clearly been given more than his share of the right he is claiming and yet he still comes before this court to say he was denied the right to be heard. We have no hesitation in holding as we hereby do that this application be dismissed with costs.

THUS DONE AT MASERU THIS 21ST DAY OF MAY, 1997.

L.A. LETHOBANE
PRESIDENT

T. KEPA
MEMBER

I CONCUR

M. KANE
MEMBER

I CONCUR