

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 11/95

HELD AT MASERU

IN THE MATTER OF:

SELLO MAKHOA

APPLICANT

AND

NATIONAL ABATTOIR & FEEDLOT COMPLEX

RESPONDENT

JUDGMENT

This application was heard and dismissed on the 21st January 1998. The reasons for judgment were reserved and what now follows are those reasons.

The applicant instituted these proceedings on the 9th January 1996, seeking the nullification of his dismissal by the respondent on the ground that it was contrary to the rules of natural justice. In particular he alleged that his dismissal contravened Section 66(4) of the Labour Code Order 1992 (the Code).

The facts in brief were that the applicant belonged to the National Union of Hotels, Food and Allied Workers. He was a member of the union branch committee. The Personnel Manager who was then Acting General Manager of the respondent complained that applicant was holding meetings during working hours and without consultation with management thereby disrupting the operations of the respondent. He (the Personnel Manager) accordingly warned the applicant and his friends to desist from doing so.

When the applicant did not heed this warning, the national committee of NUHFAW was invited to intervene. The committee did advise the applicant to stop holding

meetings during working hours. This caused the applicant and his colleagues to be unhappy with the union and they eventually resigned from the union. It would appear however that applicant continued to hold meetings as before. Consequently on the 31st August 1995, he was suspended without pay for 22 days.

Upon his return from suspension he was transferred from Service and Maintenance Division to Sales and Marketing Division. The applicant asked that he be given the reasons for the transfer in writing. This the General Manager did on the 26th September 1995, but the applicant refused to accept the letter. Whilst he continued to report for work he, however, refused to accept the transfer. On the 30th October the Acting General Manager wrote to the applicant asking him to state in writing;

“...why he cannot be dismissed by this company after refusing to take written instruction to perform as required at NAFC.”

or

“...why you cannot resign as you no longer need to obey instruction by the Management of NAFC.”

The respondent alleges in its answer that following this letter applicant never resumed duties with respondent. Neither did the respondent receive applicant's written response to the letter. (See paragraphs 17 and 19 of the Answer). On the 31st March 1996, the respondent ceased operations and a new entity called Maluti Abattoir started operations on the premises previously used by the respondent on the 1st April 1996. However, because of an undertaking by the sole shareholder of the respondent, the Government of Lesotho and the new entity, the two are still answerable to all claims arising prior to the closure of the respondent.

According to paragraph 19 of the respondent's Answer on the 30th April the applicant was retrenched along with all former employees of the respondent. The respondent state further that applicant's terminal benefits were calculated up to 31/03/96, which was the last day of operation of the respondent. Applicant himself received and signed for his terminal benefits on the 19/07/96.

On the day of the hearing of this matter neither the applicant nor his legal representative were present. The matter was postponed to 2.30 pm to enable further efforts to be made to secure the attendance of his lawyer. However, whilst establishing that applicant's lawyer was aware of the set down respondent's attorney still could not get him (applicant's lawyer) to attend as he was not at the office. Mr. Moiloa for the respondent asked the court to proceed with the case in the absence of the applicant and his attorney in terms of rule 16 of the rules of this court.

This court was satisfied by the efforts taken by Mr. Moilola, which were not his obligation, that sufficient effort had been made to secure applicant's lawyer's attendance, but in vain. These efforts had established that the office had received the notice of set down. This court further found itself in good company, regard being had to the South African Industrial Court decision in the case of Delta Motor Corporation (Pty) Ltd (1988) 9 ILJ 743, where it was held that;

“the starting point is that the respondent opposing the application for postponement finds itself in the superior position. It has a procedural right to have its case heard on the appointed day. That right will prevail in the absence of strong reasons for postponement.” (emphasis added).

We have emphasised *“in the absence of strong reasons for postponement”* because, in hoc casu we are not faced with request for postponement as neither the applicant nor his lawyer have shown up. In the absence of an application there are therefore clearly no reasons that are advanced. In the circumstances we find no reason why the respondent's request that the case proceed as scheduled should not be granted and it was accordingly granted.

In his submission Mr. Moilola argued that the applicant was never dismissed as the calculation of his terminal benefits up to 31/03/96 show that he was still regarded as an employee. The applicant adduced no evidence to controvert respondent's claim that after he was written a letter asking him to show cause why he should not be dismissed or why he should not resign, he never reported to work again. Neither has he denied that despite his being AWOL from 31st October 1995 to 31st March 1996, he was still paid his terminal benefits as though he had been at work throughout. In the premises we are of the view that the applicant has failed to discharge the evidentiary burden to prove that he was dismissed as he alleges. The application was therefore dismissed.

Costs will be costs in the suit.

THUS DONE AT MASERU THIS 3RD DAY OF JANUARY,
1998.

L.A LETHOBANE
PRESIDENT

M. KANE
MEMBER

I AGREE

K.G LIETA
MEMBER

I AGREE

FOR APPLICANT :
FOR RESPONDENT:

No appearance
MR. MOILOA