

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 21/96

HELD AT MASERU

IN THE MATTER OF:

JAMES MOOKAMELI

APPLICANT

AND

NATIONAL ABATTOIR & FEEDLOT COMPLEX

RESPONDENT

JUDGMENT

On the 31st August 1995, the applicant herein was served with a letter suspending him “...*from duty without remuneration from 1st September through 22nd September, 1995...*” (see annexure “JTM 1” to the answer.) A series of allegations which were said to be the reason for the suspension were detailed in the letter, annexure “JTM1”. For the purposes of this judgment it will suffice to mention only three namely that; the applicant’s “... *negative behaviour (encouraged) employees to ignore company’s rules and regulations by attending unauthorised meetings held within premises during working hours.*” Secondly the applicant was alleged to hold unlawful meetings during performance. Lastly, it was alleged that the applicant misused company’s transport for personal errands without permission.

It turned out during evidence, both for the applicant and for the respondent, that applicant had been suspended with two others namely; Mr. Sello Makhoa and Ms Matiisetso Nthongoa. When the applicant returned to work after serving his 22 days suspension he was moved from his work as a meat truck driver. He was instructed “to present (himself) to the Manager in charge of the Division” who would presumably allocate him new duties.

It is common cause that the applicant refused to do as instructed by Management. In his summary of his case the applicant stated that he regarded the change in his duties as the continuation of his suspension. On the 7th February, 1996 the applicant, through his attorneys, B.M. Khasipe & Co. filed the present application complaining that he has since the 31st August, 1995 been “*suspended by the respondent from work without pay to date.*” He averred further that “*this decisive measure was taken against me without giving me a chance of hearing...*”

In support of his claim the applicant called two witnesses namely Sello Makhoa and Thabo Ts’ilo. The applicant himself did not testify. It must be noted from the onset that this court is in full agreement with Mr. Moilola’s submission that Makhoa’s evidence was largely irrelevant to applicant’s case. His testimony related to his own disenchantment with the respondent. It may just be mentioned that Makhoa had a case in this court against the respondent; concerning his suspension, which was decided against him in default of his and his attorneys appearance on the day of hearing. He was then clearly seizing the opportunity to state his own case against the respondent. This much was admitted by the applicant in his argument although he said parts of his (Makhoea) evidence were relevant.

As Mr. Moilola correctly stated the closest Makhoa came to testifying in support of applicant’s case was when he said that sometime later after he had been served with the suspension letter, he learned that applicant and Nthongoa had received similar letters to his. Even this bit, Makhoa had a serious difficulty with it, under cross examination. When he was asked if he was there when Makhoa was served with his suspension letter he said he was not there. Asked how he knew that the applicant had received a similar letter to his he said he was told by the applicant. Clearly therefore, he cannot testify first hand about Makhoa’s letter of suspension.

Still under cross-examination, Makhoa was shown annexure “JTM1” which is the letter with which applicant was suspended. He was asked if he received such a letter, his answer was in the negative. He was read paragraph (e) of that letter and asked if the letter he received had such a paragraph, his answer was that he could not remember. This clearly makes Makhoa’s evidence highly unreliable.

The parts of his evidence which related to the applicant were further that they refused to accept the change of duties because they wanted the transfer to be done in good faith and through consultation. He also testified that he and the applicant were dismissed as a result of their refusal to accept their transfer to new duties. Here Makhoa was clearly imposing his desires or his own reasons for not accepting the transfer on the applicant. In his statement of case applicant said he did not accept the transfer because he regarded it as a continuation of his suspension. Regarding the dismissal it has not been applicant’s case in his pleadings that he was dismissed. His case has been that he has been subjected to an indefinite suspension. This also takes care of Tsilo’s evidence which was to the effect that as a security

guard he had been given instruction to ensure that applicant did not enter the respondent's premises as he was no longer an employee.

In our view the evidence of the two witnesses does not advance applicant's case any further. As the originating application clearly states, there are two issues to be decided. These are whether it is true that by writing the applicant a letter informing him of the change of his duties the respondent was in effect continuing with the suspension. Secondly the court has to decide whether the applicant was or was not afforded a hearing prior to the suspension.

Regarding the first issue, the applicant was suspended for a fixed term of 22 days. When that period expired, he returned to his duties but was allocated different functions. By no stretch of imagination can this be said to be an act amounting to the continuation of the suspension. If applicant wanted to challenge the transfer he could do so. However, this is what he has clearly failed to do.

On the question of the hearing this court has on a number of occasions confirmed the principle that the right to a hearing is a prerequisite to any suspension in the same way as a dismissal. (See *Thato Liphoto .v. Lesotho Agricultural Development Bank LC21/95* (unreported) and *Palesa Peko .v. The National University of Lesotho LC33/95* (unreported).) This is more so where an employer is a public utility like is the case in *hoc casu*.

It is abundantly clear from the evidence of Mr. Moeketsi, who was the acting General Manager of the respondent that he never gave the applicant any hearing. This is clear from his evidence both in chief and under cross examination. In his evidence in chief he said whilst he met some of the committee members to warn them against holding meetings during working hours without permission, he never talked to the applicant personally. Under cross-examination the applicant asked him a very direct question in the following words;

Q. *“do you say you called me to a hearing?”*

A. *“I called meetings of staff at which you were present.”*

This answer confirms what Mr. Moeketsi had said in chief that he used to call staff meetings at which he informed staff that it was improper to hold meetings inside working hours without permission. Now these meetings could be said to be laying ground rules for the expected conduct from the employees. Breach of these rules would give rise to disciplinary action. The management of the respondent seem to have wrongly interpreted these meetings as constituting a hearing. In the premises we hold that the applicant was not afforded a hearing prior to the suspension and as such the suspension was unfair.

AWARD

1. The application is upheld with costs.
2. Respondent is ordered to pay applicant's salary for the twenty two (22) days that he was suspended without pay.
3. Since the respondent has since ceased operations no further orders are made.

THUS DONE AT MASERU THIS 26TH DAY OF
OCTOBER , 1998.

L.A LETHOBANE
PRESIDENT

M. KEP A
MEMBER

I AGREE

K.G LEROTHOLI
MEMBER

I AGREE

**FOR APPLICANT :
FOR RESPONDENT:**

**IN PERSON
MR. MOILOA**