

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 11/96

HELD AT MASERU

IN THE MATTER OF:

NATIONAL UNION OF RETAIL & ALLIED WORKERS

APPLICANT

AND

LEWIS STORES LESOTHO (PTY) LTD.

RESPONDENT

JUDGMENT

The applicant union is suing on behalf of its member Mrs. Bernice Scott who was an employee of the respondent. Mrs. Scott was summarily dismissed by the respondent's Branch Manager on the 30th December 1995. She appealed against the dismissal. The appeal was heard on the 29th January 1996.

According to the Originating Application, at the appeal hearing the complainant was forced to go through the process of disciplinary hearing not the appeal. The union contends that this is contrary to the rules of procedure. When its attempts to bring the irregularity to the attention of the chairman were ignored the union members decided to leave the meeting. It is alleged that the complainant also left the meeting. However, this is denied by the respondent which says the complainant was present throughout the hearing.

The union took up the matter with the respondent's Human Resources Manager who confirmed that the hearing of the 29th January was the initial hearing as the dismissal of the 30th December was withdrawn because it had been found to have been procedurally irregular. The union contends that its appeal against the decision of the Branch Manager to dismiss its member without a hearing was not decided and that the second dismissal of the 29th January was also done without a hearing.

Even though heavy reliance was made on the respondent's disciplinary procedure both in the Originating Application and at the hearing hereof, these rules were not availed to the court. In the circumstances the court is unable to make a finding as to whether the respondent's rules of procedure were indeed violated or not.

In their Answer, the respondents contend that a decision was made to overturn the original dismissal as the complainant had not been given a hearing. In terms of annexures to their answer they say that the arrangement was agreed with the union representatives at the hearing, that the appeal hearing be turned into an initial hearing from which an appeal could be made. They then reinstated the complainant up to the day of the hearing namely 29/01/96.

Mr. Ramochela on behalf of the union contended that no formal pronouncement was made that the appeal was being upheld and the applicant reinstated. This may or may not be so. However, what is clear from the letter written by the applicant union (exhibit A) the union itself *"...recommended that the retrial should be instituted at the level of disciplinary hearing."* The emphasis is that of the union. This understanding is confirmed by the presiding officer's letter of 23/05/96 to the union (exhibit F) where he states under paragraph 2;

"An appeal was lodged to Head Office and I was instructed to give her an appeal hearing regarding this case. It took place in the Maseru Branch on 29 January 1996. Before this hearing commenced the representative of the union advised me that it could not be an appeal hearing as the employee had no previous hearing. I agreed therefore to treat the hearing as the first hearing."

Once the parties were agreed that this is the way they were going to proceed that was the end. Any claim that no formal pronouncement was made that the appeal was being upheld is splitting hairs and academic. After all there is no denial that as proof of her reinstatement the complainant was duly paid her January salary up to the date of the hearing. Clearly therefore, the irregularity committed by the Branch Manager was corrected by agreement between the union which represented the complainant and the chairman of what was to be an appeal hearing, but later turned into an initial hearing.

Following their agreement, what then followed was a fresh hearing with full rights of appeal maintained. Even though the union walked out the complainant sat through the proceedings. It is therefore, false to claim as Mr. Ramochela did that even the second dismissal was still without a hearing. It is common cause between the parties that even after the disciplinary hearing of the 29th January 1996 the decision arrived at was still to dismiss the complainant. In our view there is no merit in this application and it is accordingly dismissed.

Cost shall be cost in the cause.

THUS DONE AT MASERU THIS 5TH DAY OF NOVEMBER,
1998.

L.A LETHOBANE
PRESIDENT

P. K. LEROTHOLI
MEMBER

AGREE

T. KEPHA
MEMBER

AGREE

FOR APPLICANT :
FOR RESPONDENT:

MR RAMOCHELA
MISS QHOBELA