

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 17/99

HELD AT MASERU

IN THE MATTER OF:

JAMES MOOKAMELI

APPLICANT

AND

NATIONAL ABATTOIR & FEEDLOT COMPLEX

RESPONDENT

JUDGMENT

This is a matter in which the applicant petitioned the court for relief in the following terms:-

- (a) Directing respondent to pay applicant an amount of M1060.00 being severance pay.**
- (b) Directing respondent to pay applicant an amount of M1060.00 being payment in lieu of notice.**
- (c) Directing respondent to pay applicant an amount of M50.00 being monthly allowance.**
- (d) Directing respondent to pay applicant an amount of M831.70 being payment in lieu of leave days earned but not taken.**
- (e) Directing respondent to pay applicant an amount of M8480.00 being salary.**
- (f) Relief in terms of section 69(5).**
- (g) Further and/or alternative relief.**

The applicant was employed by the respondent as meat truck driver. In August 1995 he was suspended with two others for 22 days. This led in him instituting proceedings in this Court in LC21/96. That matter was heard and finalized and

judgment, which was in favour of the applicant on the suspension issue, was handed down on the 28th October 1998. On the 1st June 1999, the applicant instituted the present proceedings seeking relief as outlined hereinabove.

In their Answer the respondents raised two points in limine. Firstly, that the present case is *res judicata* in as much as the issues it raises are the same issues that were dealt with in LC21/96. Secondly that, the matter is prescribed in terms of section 25(2) of the Labour Code Order 1992 (the Code).

A look at the respondent's Answer in LC21/96 and the evidence of J.T. Moeketsi who was the respondent's General Manager reveals that all claims appearing in LC17/99 were indeed dealt with in LC21/96. In their Answer and Mr. Moeketsi's evidence in LC21/96, the respondents averred that after his return from suspension, the applicant was transferred to Sales and Marketing. The applicant refused to accept the transfer and instead sat in the truck that he previously drove doing nothing. In the end the applicant ceased to come to work.

Mr. Moeketsi testified further that the applicant was however, never dismissed in the hope that he would see reason and change his mind. This never happened. He further stated that the respondent ceased operations on the 31st March 1996 and all staff including applicant were paid their terminal benefits. Applicant however, only collected his pay in May 1996. Mr. Moeketsi produced "JTM5" which showed that applicant was paid and he signed for an amount of M2654.70 as severance pay. The following questions and answers which appear in the record of MR. Moeketsi's evidence in chief are in our view pertinent:

- "Q Do you still owe Mookameli any money after 31/03/96?
 "R Not to my knowledge.
 "Q. Did applicant make a conditional/acceptance of these amounts?
 "R. No.
 "Q. What do you say about applicant's claim that you owe him?
 "R. We do not owe him. We thus ask the Court to dismiss his claim.
 "Q. What do you say about the time he spent in the truck not working and all the time he was sitting not doing anything until his discharge on the 31/03/96?
 "R. We only pay people who have worked not people who have not Worked."

Under cross-examination Mr. Mookameli asked Mr. Moeketsi the following question;

- "Q. Did you give me the severance pay according to the law?
 "R. I gave it to you according to the law."

The answer was clearly corroborating Mr. Moeketsi's evidence in chief that applicant got his severance pay. It is common cause that this evidence was never

contradicted, as such it was accepted by the Court as the correct version of the events.

It will be noticed that this evidence deals with all the claims of the applicant. The general question which was asked if the respondent still owed the applicant, which was answered in the negative and followed by another general denial of any indebtedness to the applicant quashes all the claims. But even individually Mr. Moeketsi's testimony sufficiently dealt with each and every one of the claims. Mr. Moeketsi further testified that the applicant was never dismissed despite absconding. There is thus no need for relief in terms of section 69(5) of the Code. This section can only be invoked if an employer dismisses the employee and fails to give him reasons for such dismissal.

The claim for M50.00 allowance goes together with M8480.00 claim for salary. This is said by the applicant to be monies due and owing to him for the period that he was refusing to be transferred. Whilst these can also be sufficiently dealt with in terms of the general denial of any indebtedness towards applicant, which was not controverted, Mr. Moeketsi had occasion in his testimony to deal with these claims specifically when he said the company does not pay people who have not worked. By his own admission applicant did not work during that period.

In terms of section 25(2);

“except as provided by section 70 in respect of a claim for unfair dismissal, any claim under the Code shall be filed within three years of the occurrence which gives rise to the claim.”

On the 1st of June 1999 when these proceedings were filed three years and two months had lapsed since the closure of the respondent. Accordingly therefore, the claims were presented out of time prescribed by the Code. In the premises both points in limine must succeed and they are accordingly upheld with costs as this is not a case for unfair dismissal.

**THUS DONE AT MASERU THIS 23RD DAY OF
MARCH, 2000.**

L.A LETHOBANE
PRESIDENT

M. MAKHETHA

MEMBER

I AGREE

A.T. KOLOBE

MEMBER

I AGREE

FOR APPLICANT :

IN PERSON

FOR RESPONDENT:

MR MOLETE