

**IN THE LABOUR COURT OF LESOTHO**

**CASE NO LC 25/98**

**HELD AT MASERU**

**IN THE MATTER OF:**

**NATIONAL UNION OF RETAIL & ALLIED WORKERS**

**APPLICANT**

**AND**

**PEP STORES**

**RESPONDENT**

## **JUDGMENT**

**In this case the applicant union is suing on behalf of three of its members who were dismissed by the respondent. The union is seeking a declaration that:**

- (a) dismissal of its members was unfair;**
- (b) the said members be reinstated in their positions;**
- (c) the members be paid their salaries from date of dismissal to the date of reinstatement.**

**In its brief summary of the grounds relied upon for relief in the Originating Application, the union avers that:**

- (a) In the case of Mojabeng Matjeane no evidence was led to establish her guilt.**
- (b) The chairman did not consider both sides of the case but made the finding that members were guilty.**
- (c) Evidence tendered did not disclose the guilt of the union members.**
- (d) The respondent failed to produce the alleged stolen goods as evidence.**
- (e) The person who effected the dismissal had no authority to do so.**
- (f) The record of proceedings is incomplete in as much as it has omitted some other evidence led by the union members.**

It is common cause that the respondent suffered loss of merchandise at its Mokhotlong branch which it suspected the staff of stealing. The staff was handed to the Mokhotlong Police where they confessed that they were the ones responsible for the disappearance of the merchandise. Each of the staff members wrote down in her own handwriting what items she stole. Thereafter the matter was handed over to the management where the staff members were disciplined and dismissed.

The individual staff members reported their cases to the applicant union. According to the General Secretary of the applicant union, the matter was reported by himself to the National Executive Committee of the union, which resolved that it should institute proceedings before this Court on behalf of the members. The grounds upon which relief is sought were stated in the Originating Application as hereinbefore recorded.

In support of its case the union called four witnesses three of whom were the complainants on behalf of whom the proceedings have been brought. The fourth witness was Mr. Ramochela the General Secretary. At the close of the applicant's case Mr. Molete on behalf of the respondent moved that the Court should dismiss this case on the grounds that;

- (a) the applicant has not brought enough evidence to warrant the grant of what the applicants are praying for.
- (b) Secondly that the union has brought these proceedings to Court without authorization from the members purportedly being represented.

As we stated four witnesses testified. Mr. Ramochela's evidence was mainly to project a picture that the decision to sue on behalf of the three members was taken by the National Executive Committee. He averred that the NEC derived its powers under Article 5.7 of the applicant union's constitution which provides that one of the aims and objectives of the union is;

*“to provide legal assistance and representation to members and/or officials where it deems necessary and in the interests of the union to do so.”*

It does not require an expert to see that the clause being relied upon does not come anywhere near authorizing the applicant union to sue on behalf of the complainants. Providing “legal assistance and representation” are totally different from suing on behalf of members. Providing legal assistance is to engage a lawyer at one's cost for another person or organisation. To represent is to appear in court on behalf of a person. What has been done by the applicant union herein is totally different i.e. to sue in its name on behalf of an aggrieved member.

Section 222(1) of the Labour Code Order 1992(the Code) provides that, “a registered trade union or employers' organisation may sue, be sued or be prosecuted under its registered name.” For the purpose of this judgment, we will assume

without deciding that the applicant union is a registered union capable of suing and being sued. In our view, even though the Constitution of the applicant does not specifically clothe it with legal status to sue and be sued, it suffices that the principal legislation namely the Code, has clothed it with that legal capacity. In recognition of this status Article 8.7.7 empowers the NEC to “institute and defend legal proceedings by or against the union.” This provision again leaves out the power to resolve to institute proceedings on behalf of members. On this ground alone this matter should fail.

Assuming we are wrong in our foregoing findings, the three complainants came nowhere proving any of the allegations they have made. This Court is faced with three instances where these complainants have had the opportunity to give their respective stories. These are at the Police station, at the disciplinary enquiry and before this Court. In each of these occasions the complainants have each given a different story. On this ground alone it is sufficient to conclude that the evidence they were giving before this Court cannot be relied upon, without a justification why it differs from the other two instances where the complainants made statements. If ever it is true as they allege that they made statements at the Police station out of fear, then there is no explanation why what they said at the enquiry should differ from what they are saying before this Court. Their stories are so haphazard that it will not serve any useful purpose to try to summarise what they said. Suffice it to say even among themselves there was no consistency in their stories despite their allegedly being together when they were arrested and when they were interrogated. The other two complainants sat throughout Mojabeng Thulo’s evidence but none of the other two came anywhere near corroborating the material aspects of Thulo’s evidence in particular the alleged beatings by the Police and suffocation which led to her implicating herself. It should be noted that even this aspect of Mojabeng’s evidence was coming up for the first time in Court, it was never mentioned at the disciplinary hearing.

As regards the claims that the confessions were inadmissible and that there were no exhibits of stolen goods, we have repeatedly stated that the employer’s disciplinary enquiries are not to be equated to criminal court proceedings. Clearly Mr. Putsoane was seeking to import the criminal procedure standards of proof into these proceedings and it was made clear to him during arguments that this must not be the case. In our view there was absolutely nothing wrong with the employer using these admissions to convict the complainants.

This being the case the claim that the evidence adduced did not disclose the guilt of the complainants is not sustainable. In any event it is common cause, as it was conceded by all three complainants that some two staff members namely Maphakiso Phakisi and Makatseng Khatleli testified at the enquiry and confirmed their earlier admissions that staff in general used to steal goods from the shop in retaliation for management’s failure to pay them overtime.

Quite clearly a chairman of an enquiry faced with such evidence i.e. confessions of accused employees corroborated by the evidence of their colleagues would have no option but to convict. The evidence on the papers before us, which were availed to the Court as true reflection of the proceedings of the disciplinary enquiries against the three union members does not support the proposition that in deciding the cases the chairman did not consider both sides of the story. He clearly had abundant evidence on which to make a finding of guilt.

None of the three witnesses was able to say in chief what it is that she said at the enquiry which the record left out. It was only under cross-examination where Thulo, sought to cover her contradictions by saying that she mentioned at the enquiry that she was forced to confess through torture and the person who was recording did not record it down. This was clearly a novelty which she was bringing up in defence of herself only when she felt the pressure of cross-examination. She never mentioned it in papers or in her evidence in chief. The claim of incomplete record is therefore equally unsustainable.

Finally, it was alleged that the person who dismissed the union members did not have authority to do so. The first witness Bonang Thulo never testified as to who dismissed her or who in her opinion had the power to dismiss her. The second witness, Matsilo Matjeane was only asked who Jackie Coetzee was responsible to and she said he was responsible to David Louw. It was never suggested, let alone stated in evidence that he (Cotzee) is the one who dismissed the witness. Neither was it suggested that Louw was one who had power to dismiss. In any event Matjeane's hearing as was the case with all others was chaired by the Area Manager Mr. Matsaba. Mr. Coetzee was only the Prosecutor.

The third witness Mampe Mosese also known as Mathapelo Khobatha is the one who stated in her evidence that her hearing was chaired by Mr. Matsaba. When asked who dismissed her she said it was Matsaba together with Coetzee. Quite clearly the witness shows that she is not sure who dismissed her. However, the true position is that she was dismissed by the Chairman of the enquiry. No evidence was led to show that the chairman did not have the power to take the decision to dismiss. This was just a bare allegation. It cannot therefore, as with all others succeed. Accordingly this application ought not to succeed and it is therefore dismissed.

We note that this is a case falling under Section 70 of the code. Costs ought not to be imposed against either party unless a party has behaved in such a way that it warrants to be punished with costs. The evidence of the respondent's witnesses was a catalogue of untruths. The Court wants to sound its displeasure with this behaviour especially because these witnesses were testifying under oath. The applicant union is strongly warned not to repeat this type of thing in the future, otherwise an appropriate order of costs will be made.

THUS DONE AT MASERU THIS 22ND DAY OF  
MAY, 2000.

L.A LETHOBANE  
PRESIDENT

M. KANE  
MEMBER

I AGREE

G.K. LIETA  
MEMBER

I AGREE

FOR APPLICANT : MR PUTSOANE  
FOR RESPONDENT: MR MOLETE