IN THE LABOUR COURT OF LESOTHO

CASE NO LC 5/2000

HELD AT MASERU

IN THE MATTER OF:

NATIONAL UNION OF RETAIL AND ALLIED WORKERS
APPLICANT

AND

FRASERS LESOTHO LTD RESPONDENT

JUDGMENT

This case arises out of the retrenchment of the employees of the respondent who were members of the applicant union. The sole cause of complaint on the part of the union is that there were insufficient consultations with the union itself and that there was no consultation with the workers. The union contends that on the 15th July 1999, their General Secretary received a letter from the Managing Director of the respondent inviting him for a meeting on the 19th July 1999. They aver that at that meeting the union was informed that the company had decided to retrench some employees and that the people earmarked for retrenchment had not been informed as the company was afraid that if they knew they would steal the merchandise.

The union says it asked for time to consider the issue and requested the company to supply it with the list of those employees earmarked for retrenchment. The meeting ended at around 4.30 pm. They aver that when they got to the office they found the office full of retrenched workers from the respondent's shops. The list of the retrenched workers was forwarded to the union on the 20th July 1999.

The respondent's version is that it is incorrect that consultation took place only on the 19th July 2000. They aver that consultation with the union and the workers started in April 1999. As regards prior notification they confirmed the applicant's

version and said experience has taught them that if employees know in advance that they are earmarked for retrenchment they destroy company assets.

It is correct as respondent states that the applicant union was not hearing of the retrenchment for the first time at the meeting of the 19th July `1999. As far back as 20th April 1999 the respondent wrote to the applicant union asking for their views on the retrenchments which were inevitable as a result of union demands for above average wage increases. They went out of their way to give the union the exact number of people who would be affected if wages were increased by certain margins. It is not clear from the record if the union reacted to this letter, but what is clear is that they were given the opportunity to comment. The meeting of the 19th July was only a follow up, which according to respondent had to finalize the issue of retrenchment. It is apparent that the union sought to delay the process further by asking for more time but this was not acceded to by the respondent.

On the 29th April the respondent wrote a Memo which was addressed to all staff. It briefed them about the wage negotiations and concluded by asking them "....whether (they) go along with the idea of paying higher basic wage and reduce staff, because it is the only option left in order to meet the demands of the union." That is what consultation is about, to inform the employees about the impending retrenchment and allow them to express their views. It seems to us that this requirement was fully met by the respondent. The fact that the union's request for more time was not accepted does not mean that the consultation did not take place.

As regards the fear of the respondent that if it informed the individual workers of their impending retrenchment, they might start to destroy company property and steal; we gave Mr. Putsoane the opportunity to say what the respondent should have done in the circumstances. His response was that that was not the only thing the respondent could have done. Now we should not run the risk of assuming the role of an umpire. We must place ourselves in the shoes of the respondent, especially when they say experience in the past has taught them this. In SA Chemical Workers' Union & Others .v. Toiltpak Manufacturers (Pty) Ltd and Others (1988) 9 ILJ 295 at 304 F the court was of the view that the two days notice of retrenchment given to the employees who were to be retrenched, though obviously insufficient was adequately compensated by the two weeks pay in lieu of notice which the workers had received. We note that in hoc casu the workers received six weeks' pay in lieu of notice as opposed to the legal minimum of one month. This coupled with the explanation furnished by the respondent ought to compensate whatever prejudice the workers might be of the view that they suffered as a result of respondent's failure to inform them in advance that they are selected for retrenchment. We accordingly find that there is no merit in this application and it is therefore dismissed. Costs shall be costs in the cause.

THUS DONE AT MASERU THIS 13TH DAY OF AUGUST, 2001.

L.A LETHOBANE
PRESIDENT

C.T. POOPA
MEMBER I AGREE

P.K. LEROTHOLI
MEMBER I AGREE

FOR APPLICANT : MR PUTSOANE
FOR RESPONDENT: MS SEPHOMOLO