

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 16/00

HELD AT MASERU

IN THE MATTER OF:

LABOUR COMMISSIONER

APPLICANT

AND

COOPERATIVE LESOTHO LTD.

RESPONDENT

JUDGMENT

This is a case in which the Labour Commissioner is suing on behalf of a dismissed employee in terms of section 16(b) of the Labour Code Order 1992 (the Code). The complainant was employed by the respondent as a night watchman at one of the respondent's staff residences. On or about 22nd October 1999, at around 18hrs20 the complainant entered the premises of the respondent's head office accompanied by an unnamed woman. One Tlali Monosi was the watchman at these premises. According to Monosi's report to the management the complainant did not report his presence on the premises to himself as the person on duty at the time.

Monosi was unhappy with the situation hence after a while he decided to follow the couple to find out what they were doing. In his report to management he says he found the complainant together with that female companion of his in the toilet. The woman was washing her hands while the complainant was holding her by the waist from behind. The complainant is reported to have let go of the woman when he saw Monosi and then said; "don't be surprised. It is me I have brought this woman to the toilet, she needed to relief herself urgently." Monosi who knew that he had locked the toilet and was keeping the keys asked the complainant how had he opened. He informed him that he had his own keys.

The report of Monosi further indicates that he (Monosi) asked the complainant to take out his companion and come back so that they could talk. Monosi reportedly asked the complainant how he could come to his place of work at that time which was after normal working hours for that matter in the company of a female who is

not an employee of the respondent. This resulted in an altercation between the two which was witnessed even by street vendors. The following day Monosi made a report to the management which detailed what transpired between him and the complainant.

On the 27th October 1999 the complainant was served with a notification of disciplinary hearing. He was to appear before the committee on the 29th October 1999. Attached to the notification of hearing was a charge sheet containing three charges which were preferred against the applicant. The charges were;

- (a) Unbecoming behaviour at work.
- (b) Misuse of place of work for personal benefit.
- (c) To be at the place of work at unacceptable hours.

At the hearing Mr. Monosi was called to testify in support of the charges. At the conclusion of the testimony the complainant was invited to cross-examine the witness. He reportedly said he had no questions. After the witness was released the complainant was invited to give his version. He allegedly refused. The complainant was found guilty and dismissed.

After his dismissal he went to the Labour Department to file a complaint which then brought this matter to court challenging the procedural fairness of the complainant's dismissal on the ground that "the charges did not contain sufficient particulars to enable complainant to answer thereto." (see paragraph 6 of the Originating Application). At the hearing hereof the complainant testified. The thrust of his testimony was that he did not understand the charges he was called to answer. He said that after the conclusion of Monosi's testimony he suggested to the committee to extract from Monosi's testimony what they perceive to constitute the charge and then prefer the same against himself.

In their Answer to the applicant's Originating Application the respondents aver in paragraphs 4(c), 4(d) and 4(e) that Monosi's report which constituted the basis of the charges was annexed to the letter of notification of disciplinary hearing together with the charge sheet. Indeed looking at the report it is very clear and when one reads it against the charges there can be no complaint that the charges are unclear.

In his oral testimony the complainant did not deny this allegation. It is trite law that what is not denied is taken as admitted. That being the case we are of the view that the complaint was in a clear picture as to what the complainant against him was. This view that we hold is fortified by the fact that the applicant does not deny the incident. Furthermore, the hearing was held fairly soon after the occurrence when the happenings of that day ought to have been still very clear in their minds. It is significant that the employer's disciplinary tribunal must not be equated to a criminal court. If what the employer did was reasonable that should suffice. It would be totally misconstruing the function of the court if we were to require the employer to apply the criminal standards of drawing of the charges.

Furthermore, it is quite clear from the complainant's own evidence that he did not object to the lack of particularity of the charges at the start of the hearing. He only objected after Monosi had given his testimony. Now even assuming that the charges were unclear as he alleges, certainly the testimony of Monosi cured the deficiency. At that stage he could no longer complain about lack of particularity. At best he could ask for a postponement to enable him to digest the testimony further. But it is common cause that this he did not do. In the circumstances we do not accept the applicant's contention that the complainant could not answer the charges due to lack of particularity. As we see it he did himself a great injustice by not answering the charges. In the premises this application cannot succeed, it is accordingly dismissed. There is no order as to costs.

THUS DONE AT MASERU THIS 7TH DAY OF DECEMBER,
2001.

L.A LETHOBANE
PRESIDENT

C.T. POOPA

MEMBER

I AGREE

P.K. LEROTHOLI

MEMBER

I AGREE

FOR APPLICANT : MR MOCHOCHOKO
FOR RESPONDENT: MS THABANE