

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 66/99

HELD AT MASERU

IN THE MATTER OF:

ISMAEL MAKHETHA

APPLICANT

AND

FLASH CONSTRUCTION

RESPONDENT

JUDGMENT

This matter was initially heard and postponed on the 3rd July 2000. At the reconvened hearing on the 27th November 2001 the Management Panel Member Mr. Lieta was unable to attend due to ill health. After counsels were briefed in particular about the fact that he is not likely to be well to be with us for a foreseeable future it was agreed by all that we proceed and finalise the matter in terms of rule 25(2) of the Rules of the Court. This explains why only two members have signed this judgment.

The applicant has admittedly been employed by the respondent as a truck driver. The truck broke down even before he completed a month. He was however, retained by the respondent until the end of the month when he was paid and told that the truck he was driving would take a long time to be repaired. According to his evidence he was told to keep on checking if the truck had been repaired. According to the witness of the respondent Mr. Teboho Mabulu the applicant was told by a Mr. Glenn that he would be laid off and that he should keep checking, because he would be given first priority in employment when the truck is repaired.

The applicant says he kept checking. On the fourth occasion he was told to furnish telephone numbers where he can be contacted so that he does not have to check every often. It was in April when his truck broke down. He was paid up to the 25th April 1998 and he had at that time admittedly been employed for twenty days. Applicant says in November he saw the truck in town being driven by somebody

else. The following day he went to check and he was told that the person he saw driving the truck was the one employed to drive it. He then asked for his dismissal letter which was issued the same day namely 6th November 1998. the letter showed the reason for termination of the applicant to be that he was employed as a temporary driver.

On the 31st December 1999, the applicant launched proceedings in this court seeking relief in the following terms:

- (a) Payment of severance pay
- (b) Payment of arrears of salary for the months of April to October 1998
- (c) Payment of leave
- (d) Payment in lieu of notice.

The grounds on which relief is sought are contained in paragraph 3(d) of the Originating Application. These are that thedismissal is both procedurally and legally unfair in that he was never afforded the opportunity to defend himself against any wrong he might have committed and/or informed or consulted about the reasons for his termination...” It was Mr. Putsoane’s contention that the applicant remained an employee of the respondent until the 6th November when he was served with the letter notifying him of his termination.

The originating application in this matter was filed more than a year after the course of action arose. In terms of section 70(1) of the Labour Code Order 1992 (the Code) claims for unfair dismissal must be presented to this court within six months of the termination of the contract. The court may condone late filing if it is satisfied that the interests of justice so demand (section 70(2) of the Code). This entails that a defaulting party must make an application for condonation of the late filing. No application for condonation has been made. Accordingly this court lacks the jurisdiction to deal with the claims for unfair dismissal. Even all the consequential reliefs that flow from the determination of the fairness or otherwise of the dismissal must also fall away. This takes care of the claims for compensation, and arrears of salary and notice pay.

With regard to severance pay Mr. Putsoane conceded correctly that severance pay cannot be claimed because the applicant had not yet completed one year’s service. With regard to leave it is an entitlement which accrues after the completion of at least three months. (see section 120(5) of the Code). Now the applicant had only been in employment for twenty days. Consequently he had accrued no leave entitlement. In the premises this application cannot succeed. It is accordingly dismissed. There is no order as to costs.

THUS DONE AT MASERU THIS 11TH DAY OF
DECEMBER, 2001.

L.A LETHOBANE
PRESIDENT

M.S. MAKHASANE
MEMBER

I AGREE