

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 126/00

HELD AT MASERU

IN THE MATTER OF:

LEBEOANA MOHALE

APPLICANT

AND

PEP STORES (PTY) LTD.

RESPONDENT

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## JUDGMENT

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This is a case in which the applicant approached the court seeking relief in the following terms:

- (a) That the decision of the company to deny him right to be heard by appeal be declared null and void.
- (b) That the decision of the 4<sup>th</sup> August 2000 to dismiss applicant be reviewed, corrected and declared null and void.
- (c) Reinstatement
- (d) Payment of salary with effect from date of dismissal to date of judgment
- (e) Further and/or alternative relief.

In his Originating Application the applicant says on the 4<sup>th</sup> August 2000 he was committed to a disciplinary hearing where he was charged with five counts namely; disobeying lawful instruction, refusal to apply/follow company's policy and procedures which could lead to financial loss or benefit yourself, dishonesty, poor work performance and gross negligence. He was found guilty and was dismissed.

The applicant appealed against the decision. Applicant contends that the appeal was not conducted as the respondent's General Manager failed to give his findings to the so-called appeal. Furthermore, he contends that the appeal was held in his absence. These contentions form the basis of the first relief sought namely; "that

the decision of the company to deny him right to be heard by appeal to be declared null and void.”

Now, there is contradiction in applicant’s averments. First he says the appeal was not conducted and in the second leg he says the appeal was held in his absence. In his oral testimony he further contradicts the averments in the Originating Application by saying that on the date of the appeal hearing he attended at the Christie House where the chairman of the appeal was going to conduct the hearing. He testifies that he met with the chairman Mr. Genis who told him that he was confirming his dismissal and that the letter confirming his termination would follow. He says however, that there had not been any hearing prior to the pronouncement of the verdict by Mr. Genis.

That the applicant attended the appeal hearing is evidenced further by the letter of the Divisional Personnel Manager (Annexure “LM2” to the Originating Application) to whom the applicant had lodged a complaint after the dismissal of his appeal. Mr. Genis’s letter to applicant (annexure “LM1” to the Originating application), also confirms that the applicant attended the appeal hearing and that he discussed the appeal with the applicant. Annexure “LM1” is further proof that contrary to what the applicant alleges in his Originating Application that the chairman of the appeal did not give his findings; infact a decision confirming the dismissal was made. Applicant also said as much in his oral testimony that the chairman made a decision confirming his dismissal and said a letter would follow.

As regards the contention that the decision was made without a hearing, the applicant did not elaborate as to what type of a hearing he expected to get. We say this in the light of the chairman’s uncontradicted averment in Annexure “LM1” that he had a discussion with the applicant at the appeal hearing. Furthermore, if applicant expected to have been carried through the procedures as if he were before the initial inquiry, it would appear that that is not what the respondent’s policy and procedure manual anticipates. The respondent’s appeal procedure as contained in the manual is quite simple. After the appeal has been lodged the General Manager or Area Manager organise the appeal hearing. At the appeal “The General Manager evaluates dismissal, completes appeal report and after consultation with the Personnel Manager Foreign Operation, upholds the dismissal or reemployment.” Thereafter the employee and the union are informed accordingly. No suggestion has been made that the General Manager did not follow this procedure. Accordingly, we are of the view that there is no merit in applicant’s contention that the appeal was marred with irregularities.

In arguments Mr. Thamae for the applicant sought to show that the appeal was unprocedural because contrary to the Policy Manual the Branch Manager and the shop steward were not in attendance at the hearing. Now this was coming up for the first time from the bar. It is neither canvassed in papers nor in evidence. Accordingly this argument also falls away.

Nothing was alleged in papers in support of the prayer that the decision of the 4<sup>th</sup> August 2000 should be reviewed corrected and set aside. The hearing of the 4<sup>th</sup> has not been attacked on any ground whatsoever in the Originating Application. In evidence however, the applicant advanced a story that he was dismissed for a fault that was not his. His contention was that they were given an instruction to mark down stock. They had been given a time frame within which to do the mark down.

He alleges that they received the letters informing them to do the mark downs later than the date they were supposed to have started. The Branch Manageress allegedly instructed them to team up and do the exercise jointly department by department. The story goes that they did as instructed and by the time they got to the applicant's department the deadline for the exercise had passed. When the Area Manager got into the shop and found him doing the mark downs after the stipulated deadline he asked him why he had not finished he gave the story as hereinbefore outlined. The Area Manager was not satisfied and he called him into the office where he served him with a suspension letter and told him to attend the hearing the following day.

Applicant was asked under cross-examination if it has happened before that the Manageress order them to do their assignments department by department as a team. He said that had not happened before. He was asked what he said to the manageress when he noticed that he was going to be behind in his department. He said he warned the manageress of the danger that he might be behind if he did other people's assignments instead of doing his. The manageress allegedly responded that everything in the shop is answerable to her and that anything that goes wrong she would take the responsibility.

It is very clear from this answer alone that the applicant is the master of creativity. It is to be remembered that this whole story has been crafted by him for the first time when he got into the witness box. It is not alluded to even in the slightest in his Originating application. Furthermore, he has not taken the trouble of getting even one of those former colleagues of his to come and corroborate his version. Moreover, even if it were to be taken as true, which it certainly is not, this whole story would certainly negative the finding of guilt on just one count namely; poor work performance. The other four counts still remain unchallenged and applicant's conviction on them cannot be tempered with. In the circumstances we are of the view that there are no grounds justifying this court's tempering with the disciplinary proceedings of the 4<sup>th</sup> August 2000. Accordingly the application is dismissed. There is no order as to costs.

THUS DONE AT MASERU THIS 4TH DAY OF FEBRUARY,  
2002.

**L.A LETHOBANE**  
**PRESIDENT**

**A.T. KOLOBE**

**MEMBER**

**I AGREE**

**M.S. MAKHASANE**

**MEMBER**

**I AGREE**

**FOR APPLICANT :**  
**FOR RESPONDENT:**

**MR THAMAE**  
**MR. MOLETE**