

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 25/00

HELD AT MASERU

IN THE MATTER OF:

LABOUR COMMISSIONER

APPLICANT

AND

FISH EAGLE SECURITY (PTY) LTD.

RESPONDENT

JUDGMENT

In this application the Labour Commissioner is suing in terms of section 16(b) of the Labour Code Order 1992 (the Code) on behalf of nine complainants who are former employees of the respondent company. In the course of the proceedings some three complainants were struck out while one died thus leaving five complainants. The case was first heard on the 31st January 2002 at which hearing two complainants testified.

The matter was rescheduled to be heard on the 1st October 2002. On the scheduled day neither the Directors of the respondent nor their legal representative, Mr. Monyako were in attendance. The case proceeded in terms of rule 16 of the rules of the court. It again turned out that the management panellist Mr. Poopa was unable to attend. The court again decided to proceed in terms of rule 25(2) of the Rules

which permit the remaining members to proceed with the case to finality if they constitute a majority of the original membership.

The case of the five complainants who testified is that they were neither given notice of retrenchment nor were they paid in lieu thereof. They further complain that the respondent never allowed them to proceed on leave whilst they were in his employment. Only PW4 Tebello Leuna said he once took leave of fourteen days. The complainants further testified that they were each paid M540-00 per month as opposed to the M599-00 that they were entitled to get in terms of the Minimum Wages Order of 1998 which applied at the time. PW1 testified that he was owed salary for the month of January 1998, while PW2 said he was paid incomplete salary in March 1998 but it was later paid. PW3 said he was not paid in March 1999. PW4 said he was not paid in March and April 1999 and PW5 said he was not paid in January 1999.

On the 1st March 2001 the applicants had filed an application to amend the Originating Application by, inter alia, withdrawing claims for unlawful deductions and severance pay because the respondent had made payment of M4,600-00 to the office of the Labour Commissioner. It would appear that the applicant had taken the said payment to have been in respect of severance pay and to settle unlawful deductions made on employees wages. It is surprising how the applicant came to this conclusion because the receipt which they attach to the application to amend says the payment is for “wages owing at the time of dismissal.” This can include notice, underpayments, leave, as well as pay for the months that the complainants say they were never paid. To make it worse, unlawful deductions and severance pay do not form part of the applicant’s case on behalf of the complainants. It seems therefore that whilst the applicant can’t procedurally and factually withdraw what never constituted its case, it is also a misnomour to try to allocate the payment by the respondent to those headings which the applicant has not claimed under.

The applicant tendered no evidence to explain why it is allocating the payment to the heads which do not appear in the statement of case. The respondent for their part say they paid the M4,600-00 but it has not been clarified to them how it was distributed. (See paragraph 3(f) of the Answer). Accordingly, during cross-examination of PW1 Selleng

Ramabusa counsel for the respondent asked him how much he got from the M4,600-00. The witness said he did not remember. He asked him how much he is claiming from the respondent he said he did not know. He asked PW2 Tekanyo Tekanyo the same questions. He admitted getting paid but said he got about M250-00, which was said to be in respect of severance pay.

We have already shown the difficulty of seeking to ascribe this payment to severance pay as it is not part of the complainants' claim. Furthermore the witness was estimating. He could not come up with a definite figure. To make the situation worse when he was asked how much he was claiming from the respondent he did not know. This again leaves the court with a difficult question as to how much money the complainant is entitled to.

The other three complainants namely, PW3, Nkopane Mathibeli, PW4 Tebello Leuna and PW5 Paul Lekhoee did not even say if they got paid anything from the M4,600-00 and how much if anything is still owing to them. It seems however, that the complainants would be in a virtually impossible situation to say how much they are owed because the amounts due are a subject of a legal deduction which they are not privy to. However the Labour officer who investigated their complaints and computed their claims as well as to distribute the M4,600-00 among them, would be best placed to testify on what remains owing to the complainants after they were paid their respective shares of the M4,600-00. Unfortunately the labour officer was not called to testify. The resultant situation is that this court is not in a position to make a determination in the absence of evidence of what each employee got and what remains due to them. Accordingly this application is dismissed.

There is no order as to costs.

THUS DONE AT MASERU THIS 2ND DAY OF OCTOBER,
2002.

L.A LETHOBANE
PRESIDENT

P.K. LEROTHOLI
MEMBER

I AGREE

FOR APPLICANT :
FOR RESPONDENT:

MR HLALELE
MR MONYAKO