

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 5/99

HELD AT MASERU

IN THE MATTER OF:

ESTHER MOKHELE

APPLICANT

AND

PEP STORES (PTY) LTD.

RESPONDENT

JUDGMENT

This is a case in which the applicant seeks an order declaring her dismissal as unfair and unlawful and consequential reinstatement in her position as Branch Manageress. The applicant was employed by the respondent in 1973. In November 1986 she was promoted to the position of Branch Manageress, the position she held until she was dismissed on the 19th August 1997. Her dismissal followed a disciplinary enquiry in which she was charged with negligence and poor work performance. These charges arose out of the management's concern that the applicant was not following company policies with regard to filing and the handling of cash.

According to evidence adduced at the enquiry the company auditors had found the administrative anomaly in July 1997. They had held a hearing for the applicant in respect of that shortcoming and even trained her how company policies require cash to be handled and filing to be done. When they returned two weeks later, they found that the administration had still not improved. It was then decided to formally charge the applicant.

In her Originating Application, the applicant sought to down play the whole issue by saying that the charge against her was failure to staple papers, but that it was covered by a general subjective term called a mess. Even in her evidence the applicant sought to show that the complainants had found three papers on the table which had not been stapled together and that this was the source of the management's complaint against her. As a matter of fact the applicant is trying to undermine the charges by reducing them to petty nonsensical management's concerns. However, the disciplinary enquiry established that documents including bank deposits slips dating several months remained unfiled and were not posted to head office as required by company policy and it was management's concern that this could lead to financial loss. It accordingly found her guilty as charged as it in any event would in the circumstances and dismissed her.

The applicant had further challenged the procedural fairness of her dismissal contending that the charge was lacking in particularity to enable her to plead. While all effort must be made to sufficiently inform an accused employee of the nature of the conduct complained of, caution must be exercised not to equate a disciplinary charge to a criminal charge in criminal proceedings. Mr. Metlae sought to show that the charge was so vague that the closest the applicant could get to the charge was that the administration was in a mess. This was in fact the evidence of the complainant at the hearing that he had found the administration in a mess. The applicant ought to have clearly understood what was meant by that as the complaint was that her administration was messy in as much as she was not following company policies regarding administration. As a manageress herself she ought to have appreciated what the conduct complained of was.

It was argued that the respondent ought to have taken applicant's length of service into account before deciding to dismiss her. It was again sought to be shown that the charge of failing to staple papers together is too minor to warrant dismissal. We have already shown that applicant herself would wish to reduce reasons for her dismissal to insignificant triviality. But the complaint concerned much broader issues of poor administration and negligence. The applicant was employed as an administrator of the branch. She had been doing that work long enough to know the respondent's administration procedures. It further turned out that she had already been previously warned for not following the procedures.

The applicant sought to show that she had in fact been following procedures that she was taught by previous managers. Firstly, this is an admission that she was not doing things the way that the manager who charged her wanted them to be done. Secondly, if she was used to old manager's ways she was given time to change to the taste of the new manager by being given a warning. If she had still not come on board the new management could take action in terms of the company rules as they did.

It was further contended that the appeal chairman did not confine himself to the issues raised at the initial enquiry. According to the record of the findings of the appeal hearing however, it was not without reason that the appeal chairman did so. He actually records that there was an investigation into further matters and that the applicant had been given an opportunity to provide explanations but she did not turn up. The applicant neither contradicted this nor said why she did not turn up for the further investigation. She may not therefore be heard to cry foul. The view that we hold is that the applicant was afforded both procedural and substantive justice in accordance with the rules of the respondent and accordingly the decision of the respondent to terminate her services cannot be faulted. The application is therefore dismissed and there is no order as to costs.

THUS DONE AT MASERU THIS 8TH DAY OF NOVEMBER,
2002.

L.A LETHOBANE
PRESIDENT

M. MAKHETHA
MEMBER

I AGREE

C.T. POOPA
MEMBER

I AGREE

FOR APPLICANT :
FOR RESPONDENT:

MR METLAE
MR MOLETE