

**IN THE LABOUR COURT OF LESOTHO**

**CASE NO LC 24/97**

**HELD AT MASERU**

**IN THE MATTER OF:**

**THABO THELINGOANE**

**APPLICANT**

**AND**

**MORADI CRUSHERS (PTY) LTD**

**RESPONDENT**

**JUDGMENT**

This matter was finalised by two members who constituted the majority of the original number in terms of Rule 25 (2) of the rules of the court because Mr. Kane the Labour panel member passed away before the matter was finalised.

The applicant herein was employed by the respondent as a blaster. In that capacity he was responsible for drilling machine operators. He had a personal clash with one of the operators which resulted in the management having to intervene. Despite management's intervention he still could not work harmoniously with that other worker resulting in him not being able to carry out certain instructions of management because he said he was afraid to go near that operator. He was disciplined for refusal to obey instructions. He was found guilty and dismissed. He noted an appeal which was

considered by the Board of Directors on the basis of the record and then dismissed without him prosecuting it.

The applicant launched the present proceedings complaining that his dismissal was wrongful and unlawful because he was not given a fair hearing. In his evidence he pointed out that the hearing was unfair because he was not given the chance to cross-examine the supervisor who gave evidence that led to his conviction. He further averred that the appeal hearing was also unfair in that the appeal was decided in his absence. He further averred that he was refused the right to be represented by the union shop steward, Mr. Ts'ehlana.

The respondent for their part do not deny that the applicant did not cross-examine his accuser. He was asked in chief what transpired after the supervisor had testified. He said he was called upon to stand up and defend himself, whereupon he stood up and presented his version. He was asked if he knew his rights. He said he knew some though not all. Under cross-examination he was asked if he asked for permission to ask the supervisor questions. He said he did. Asked at what point he made that request he said it was at the very end where he was asked if there was anything he would like to say to conclude the proceedings. It was at that point that he allegedly said he would like to ask Mr. Ryneke (the supervisor) some questions and the request was turned down.

This evidence is in stark contrast to what the applicant said in chief. Never once did he allude to the chairman refusing him the right to cross-examine the witness. His evidence is that he did not ask cross-examined because he did not know his rights. All of a sudden when he is asked under cross-examination if he asked for permission he says he did and the permission was refused. This now constitutes a completely different reason and contradictory one at that, for not asking questions in cross-examination. This points to one irresistible conclusion, that the applicant is fabricating.

If he did not ask questions out of ignorance that is understandable. However, to found a claim for irregularity in this regard the applicant ought to point to a rule or regulation that entitles him to such a right. As Baxter's Administrative law 4<sup>th</sup> Ed. 1984 at p.354 puts it, "*natural justice does not ... entail a right of cross-examination.*" In the absence of a

specific rule on which he relies the applicant cannot succeed on this ground.

The applicant contended further that the hearing was unfair because the appeal was dismissed in his absence. Again, we are unaware of a rule of natural justice which entitles a person to personally prosecute his case on appeal. The Labour Code Order 1992 (the Code) entitles an employee to an opportunity to state his side of the story at the time of the dismissal. It does not afford him (employee) any further rights in the subsequent steps that industrial relations practices entitle him e.g. appeal. It follows therefore, that the exercise of such extra statutory rights as appeals ought to be regulated by other instruments such as collective bargaining agreements or employer's personnel codes. To establish a breach on the part of the employer, the applicant ought to point to a rule or agreement that the employer has breached by deciding his appeal without his participation. In the absence of such a rule the employer was at large to determine the appeal procedure.

The last leg of applicant's case is that he was refused permission to be represented by a union steward Mr. Ts'ehlana. He said in his evidence that the chairman said Mr. Ts'ehlana could only sit in the proceedings as an observer. The question of representation at disciplinary enquiry is again one that is regulated by the employer's rules or collective agreements. It is not clear what the rule in casu was, because the applicant has not pointed to any rule in this regard that should guide our determination of the issue. However, the disciplinary record which the applicant himself handed up as evidence does not support applicant's testimony that he was refused representation. At paragraph 1 of the record the following is recorded;

*"1. Procedure*

*The following procedural matters were agreed upon:*

- 1.1 That Mr. James Ts'ehlana would attend the hearing as an observer and representative of the defendant."*

Whatever meaning can be ascribed to the above extract, it cannot be interpreted to mean that applicant was refused representation as he alleges. If anything Mr. Ts'ehlana was clearly recognised by the chairman as his representative. Under paragraph 4 of the record the following is recorded;

*“4 Intervention by Representative”*

Thereafter Mr. Ts’ehlana’s contribution as a representative is recorded. Not only has applicant himself handed in this record, he also never contradicted its contents. It follows therefore, that there is no merit in this complaint as well.

The applicant did not challenge the substantive fairness of his dismissal. This is despite the fact that the merits of his dismissal were extensively canvassed in his evidence. It follows therefore that the failure of these procedural challenges to the dismissal rest this case for good. The application is therefore dismissed and there is no order as to costs.

**THUS DONE AT MASERU THIS 11<sup>th</sup> DAY OF DECEMBER,  
2002.**

**L.A LETHOBANE  
PRESIDENT**

**A.T. KOLOBE  
MEMBER**

**I AGREE**

**FOR APPLICANT :  
FOR RESPONDENT:**

**MR. MOSAE  
MR. MOLETE**