IN THE LABOUR COURT OF LESOTHO

CASE NO LC 119/00

HELD AT MASERU

IN THE MATTER OF:

THABANG CHERE APPLICANT

AND

FRASERS LESOTHO LTD. RESPONDENT

JUDGMENT

On the morning of 23rd September 2000, the applicant had been receiving goods at respondent's receiving section. The first he attended was a Lesotho Bakery truck. He received from them 48 loaves of brown bread and 24 loaves of white bread. This was indeed the respondent's order from that supplier on that day. Later Mr. Motsamai, the Manager conducted a spot check. He discovered that despite the applicant having received bread in the quantities herein before mentioned, the invoice showed the bread received as 72 brown loaves and 48 white loaves, an increase of 24 loaves for both brown and white bread.

The Manager sent applicant a security guard to call back the truck. When the truck arrived he asked the crew how much bread they had off-loaded. The driver said he offloaded 72 brown and 48 white loaves, while driver maid said he offloaded 48 brown and 24 white loaves. They offered to offload the remaining 24 brown and white loaves, but Mr. Motsamai declined the offer. The applicant was subsequently charged with failure to look after the assets, merchandise and cash of the company. He was found guilty and was dismissed. The applicant

lodged an appeal in accordance with the appeal procedures of the respondent. He was not successful.

He then sought relief from this court in the following terms:

(a) That the respondent's decision of 6 July 2000 to dismiss applicant be reviewed, corrected and declared null and void.
(b) The decision is inconsistent with the rules and unnecessarily too severe given the fact that applicant was a first offender.
(c) Reinstatement of the applicant.
(d) Payment of salary with effect from date of dismissal to date of judgment.
(e) Further and/or alternative relief.

In his argument before court Mr. Thamae for the applicant submitted that the evidence on which the applicant was found guilty was contradictory. He advanced this argument without elaborating on which aspects of the evidence were contradictory. When he was asked by the court to show ho the evidence was contradictory, he chose to withdraw the argument.

Mr. Thamae argued further that the applicant had not been given the chance to improve by using the system of progressive discipline. Whilst the respondent's Grievance, Disciplinary and Appeal Procedures recognize that an employee may initially be reprimanded, given warnings and be discharged if the first two steps fail, the Code is clear that the application of these steps will depend on the circumstances of each case when it is considered against the specific types of offences listed in the Code. Now according to the Code, the offence with which the applicant was charged carries the penalty of summary dismissal for the first offence, if the offence is considered serious. If the offence is considered minor the penalty for the first offence is final warning.

Mr. Thamae argued that the offence with which the applicant was charged was minor and therefore he ought to have been given a final written warning. He relied on the statement by the chairman of the

initial enquiry where in considering aggravating circumstances he had said "stock shortages build up from such petty offence and short receivings." If the offence was indeed petty as Mr. Thamae would want us believe, such would not be stated as an aggravating circumstance. It would certainly come as a mitigating circumstance. It seems to us that the presiding officer was a victim of careless use of words; but he clearly was not intending to say the offence with which applicant was charged was petty. We are fortified in the view that we hold in this regard by the respondent's Grievance, Disciplinary and Appeal Procedure which states at page 1 paragraph 6 as follows:

> ***"6 Employees have a particular responsibility to protect the assets of the company such as merchandise and cash from shrinkage or other damage. The company considers shrinkages and damage to assets as extremely serious and will take stick disciplinary measures, including dismissal where they arise."***

It should be borne in mind that the applicant had short received goods by a significant number of loaves. This could have serious financial implications for the respondent as the applicant could well have been running his private business with goods bought at the respondent's expense in this manner. That could not by any stretch of the imagination be said to be a minor offence. But when assuming that the chairman of the original inquiry had indeed intended to classify the applicant's offence as petty, he was clearly overruled by the chairman of the board of appeal who made it very clear that the offence was serious.

Mr. Thamae argued further that the applicant had infact attempted to rectify his wrong doing, but because the manager was bent on dismissing him he did not allow him to do so. Firstly, there is no evidence whatsoever that the manager was sent on dismissing applicant. Secondly, applicant was caught red handed. If it was not for the astuteness of the manager, the respondent had already been successfully defrauded. This was fitting case for applicant to be disciplined irrespective of whether he returned what he had cheated the respondent with. May be that could be a mitigating factor, but not a bar to disciplinary action against him.

It was contended further on behalf of the applicant that he was a first offender and that he had indicated that he had no training on receiving. Evidence let at the hearing which at the start of this proceeding was by consent of both counsel admitted as common cause was that the applicant had on two immediately preceding days short received bread and the difference had not been paid to the respondent. The days in question were the 21st and 22nd June 2000. Regarding training the respondent established at the disciplinary hearing that the applicant had been doing the job for five years. He could not after so many years doing the same job without significant irregularities hide behind lack of training as the reason for the default. Secondly, the default had occurred on three successive days which show a clear pattern which cannot be mistaken for lack of training. Finally, applicant was a supervisor, whom it can reasonably be deduced that he reached that level because of recognised competence in his work. For these reasons we are of the view that there is no merit in this application. It is accordingly dismissed with costs.

THUS DONE AT MASERU THIS 8TH DAY MARCH, 2002.

L.A LETHOBANE
PRESIDENT

C.T. POOPA
MEMBER **I AGREE**

P.K. LEROTHOLI
MEMBER **I AGREE**

FOR APPLICANT : **MR THAMAE OF NURAW**
FOR RESPONDENT: **MS SEPHOMOLO**