

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 156/00

HELD AT MASERU

IN THE MATTER OF:

TEBOHO MOHAPI

APPLICANT

AND

FRASERS LESOTHO LTD

RESPONDENT

JUDGMENT

This is a case in which the applicant has approached the court seeking relief that the respondent's refusal to release his wages be declared illegal and that the respondent be ordered to release the said wages to the applicant. The facts are briefly that the applicant worked in the division of the respondent's supermarket chain called Lesotho Food Industries. On the 25th August 2000 he appeared before a disciplinary inquiry which found him guilty and recommended that he be dismissed. He was duly dismissed.

He appealed against the conviction. The chairman of the appellate tribunal ordered that the case be re-heard so that the applicant could be able to call his key witness whom he said he had not been allowed to call. The chairman of the initial hearing Mr. Selepe was ordered to set a new date for the re-hearing and to advise the applicant accordingly. The ruling of the appeal tribunal was dated 8th September 2000.

In his evidence the applicant stated that the Manager who had chaired his initial hearing never advised him of the new date of hearing until this day. On the 1st November 2000 he presented himself at work to ask

for his salary as he perceived himself to be still an employee. He was instead issued with a letter of dismissal dated the 25th August 2000. The applicant contend that his dismissal on the 25th August 2000 was overturned on appeal as such it no longer has any effect.

The respondent however, contend that the applicant was dismissed and still remains dismissed. They argue that the decision of the 25th August was never overturned. The chairman of the appeal merely ordered the re-hearing to enable applicant to call his witnesses not that he changed the decision as such. They argue further that the applicant never availed his so-called witnesses until this day. Until such time that he brings the witness he remains dismissed, they argue.

The line of argument here is clearly flawed. There is no way the appeal could order a re-hearing without changing the original decision. Infact a decision arrived at ought to be based on evidence. If it is found on appeal that the decision arrived at by the original tribunal was not based on evidence it is clear that it is a wrong decision. According to the ruling of the appeal chairman, the applicant was to bring his witness to a newly arranged hearing.

Applicant's testimony is that no such re-hearing was scheduled. He says what Mr. Selepe did was to place him in contact with his prospective witness by telephone when he told him that he did not know where to find him. When he asked the prospective witness to come and testify on his behalf the latter refused and said he could not help him because he was at work. The manager was aware of this communication. Ms Sephomolo for the respondent says there was no point in the manager arranging a hearing when he was aware that the key witness was refusing to come and testify.

It seems the manager got himself involved with what ought not to have concerned him at that stage namely; whether the applicant's witness would come and testify at the hearing or not. His was to arrange a re-hearing and facilitate the release of the applicant's witness from work, as he had made it clear that he was not able to come to the hearing because he was working. Incidentally, the witness was employed by the respondent as well, although he worked in the supermarket. Accordingly, the two managers could liaise to secure the attendance of

the witness at the hearing. Whether he would agree to testify or refuse when he got to the hearing, is something that could only be known when the hearing had been convened. We find therefore, that the respondent through applicant's manager failed to comply with the directive of the chairman of the appeal hearing which was that a re-hearing be held to enable applicant to lead his witnesses which he had complained he was not allowed to call.

We have already made a determination that the effect of the appeal chairman's ruling was to set aside the finding of the original enquiry. Accordingly, the applicant reverted to the position in which he was before the disciplinary enquiry of the 25th August 2000. Indeed rule 6 of the respondent's Appeal Procedure states:

“6 Restoration of the status quo

In the event of a successful appeal against any disciplinary action provided for in this procedure, the employee's situation as it existed immediately prior to the disciplinary action will be re-established.

Where an employee has been dismissed and the dismissal is reversed because of the appeal the employee will be paid his normal rate of pay from the time of his dismissal until the time of his reinstatement.”

In casu, in as much as the applicant's dismissal was reversed by the order that his case be re-heard, he was not reinstated. He is however, not guilty of the charges he is accused of until the re-hearing has been convened and a pronouncement made on his guilt or otherwise.

The applicant seeks to be paid his salary for the period that he has been waiting for the re-hearing until such time that the re-hearing is held. In principle this demand makes sense. For all this time that he has been waiting for a re-hearing the applicant has been for all practical purposes still an employee of the respondent. He will remain so until he is properly terminated after a proper and fair hearing. For the reasons that can best be explained by the respondent it did not allow him to resume his work while he was waiting for the re-hearing. Even after he presented himself on the 1st November 2000 they would not even accept to pay him at least for the two months of September and October. They

instead issued him with a letter indicating that they were beholden to their finding of the 25th August 2000. For these reasons we are of the view that the respondent is unlawfully and unfairly holding onto applicant's salary as they have no basis in law to do so. Accordingly, the respondents are ordered to pay applicant his salary for the period that he has been out of work until such time that a re-hearing is held and a decision is made on his guilt. The costs hereof are awarded to the applicant.

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

L.A LETHOBANE
PRESIDENT

A.T. KOLOBE
MEMBER

I AGREE

M. MAKHETHA
MEMBER

I AGREE

FOR APPLICANT :
FOR RESPONDENT:

MR PUTSOANE
MS SEPHOMOLO