IN THE LABOUR COURT OF LESOTHO

CASE NO LC 67/00

HELD AT MASERU

IN THE MATTER OF:

NATIONAL UNION OF HOTELS FOOD AND ALLIED WORKERS **APPLICANT**

AND

MALUTI HIGHLANDS ABATTOIR **RESPONDENT**

JUDGMENT

This is a fairly brief matter. The point we are called upon to decide is whether, in the circumstances of this case, the dismissed workers who were members of the applicant union, were given an opportunity to make representations prior to dismissal, in accordance with section 66(4) of the Labour Code Order 1992 (the Code). Evidence led by two of the dismissed workers does not shed light as to what gave rise to their dismissal. PW1 Tangtang Ralikhute only said in chief that on the 6th March 2000 he and others were issued with letters by the Personnel Manager which when they opened they found to be dismissal letters. He said he had not been charged before being issued with that letter.

PW2 Teboho Nyabela said on the 6th March, some six of them were called by the Personnel Manager who gave four of them letters. When they opened the letters they found that they were dismissal letters. He said he had not been previously charged, but on the 29th February 2002 he was called before a management panel where he was asked to explain what

happened on the 25th February 2002. He said he gave a statement of what happened and he was then told to wait outside.

In answer to questions put to him under cross-examination, PW1 also confirmed that on the 29th February he had been called before a management panel where he was asked to explain what happened on the 25 February 2002. He said he explained fully what happened. PW2 was asked under cross-examination what his comment would be if he were told that the meeting he had with the panel to explain the events of the 25th February was infact a hearing he was being given in respect of the events of that day. He said he believed that it was a hearing.

Without elevating pleadings to evidence, which they clearly are not, it seems to be common cause between the parties that on the said date i.e. 25th February the workers had assaulted a supervisor by the name of Motlatsi Machesetsa. They had also threatened and intimidated management. These events were a result of the concerned workers having been told that they would work short time. They then demanded to be given letters which show the change. It was in that process that intimidations, threats and assaults occurred.

We regard these events as common cause because they arise in the pleadings of both parties. For instance, the applicants have attached a specimen letter of dismissal which detail the above reasons as the reasons for their dismissal without contradicting its events. The respondent has specifically pleaded in paragraph 6 of the Answer that the applicants assaulted a production supervisor as a result of which he had to be rescued by the security. In their evidence the applicants have not contradicted this pleading. Whilst stating in evidence that they were called to explain what happened on the 25 February, the two witnesses did not disclose what actually happened. They merely said they explained to the panel as required by it. This in our view fortifies the view that we hold that the events of that day seem to be common cause.

At the close of the applicant's case Mr. Mapetla rose to submit that he is in agreement with the evidence of the applicants' witnesses with regard to the meeting of the 29th February 2000, where they were called to explain the events of 25th February 2000. He said that is where the applicants were afforded the opportunity to make representations. He referred us to the

Court of Appeal decision in Mamonyane Matebesi vs. Director of Immigration & Others 1997 – 98 LLR – LB455 at 464 where it was stated:

> *"The right Audi is however infinitely flexible. It may be expressly or impliedly ousted by statute, or greatly reduced in its operation. Thus in appropriate instances fairness may require only the submission and consideration of written representations; the right to be heard is not necessarily to be equated with an entitlement to judicial- type proceedings with their full attributes."*

To this excerpt with which we are in full agreement, we may add the following extract from an Article by Edwin Cameron, The Right To A Hearing Before Dismissal – Part 1 (1986) 7 ILJ 183 at 185 where the learned author stated:

> *"The right to a hearing is not an inflexible package. Once it is held applicable, the employer will not be burdened with a cohesive bundle of duties all of which he must observe, and disregard of any of which will vitiate his decision to dismiss. It has been held that the rules relating to the holding of disciplinary enquiries cannot and should not be applied mechanically to every situation."*

Mrs. Nyabela on behalf of the applicants, argued that the dismissed workers ought to have been given charges to which they would then put up their defences. She raised several formalities which she said; to be fair the hearing ought to have gone through them, such as advance notice of the charges and the right to cross-examine the accusers. Quite clearly this if sanctioned, will amount to that which Cameron supra says must be avoided namely; to burden the employer with a cohesive bundle of duties which he must observe and disregard of any of which vitiates his decision to dismiss. It would of course be different if there was a pre-determined procedure which imposes those rules in the order sought by Mr. Nyabela, for there, the employer would be bound by the Code whether negotiated or unilateral. In the absence of such pre-determined procedure the employer is at large as to what procedure to follow provided he is guided by the basic principles of fairness and legality in whatever procedure he adopts.

It is significant that the witnesses who testified did not take the court into their confidence by informing it what explanation they gave to the

management panel. But as observed earlier it seems as though what happened on the day in question is common cause. If the applicants' explanation was to candidly admit what their role in the events of that day was, surely they would not subsequently expect the employer to charge them when they have already pleaded guilty. That would be a fitting case for the employer to impose penalty as it would have substantially complied with the requirements of section 66(4) of the Code. In the absence of evidence of what explanations were proffered we come to the conclusion that there has been substantial compliance with section 66(4) of the code. Accordingly this application is dismissed with costs.

THUS DONE AT MASERU THIS 25TH DAY OF APRIL, 2002.

L.A LETHOBANE
PRESIDENT

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

M.S. MAKHASANE
MEMBER **I AGREE**

FOR APPLICANT : **MS NYABELA**
FOR RESPONDENTS: **MR MAPETLA**