

IN THE LABOUR COURT OF LESOTHO

LC/25/02

HELD AT MASERU

IN THE MATTER BETWEEN:

OLGA MAMORAKE LEPOLESA

APPLICANT

AND

SECURITY LESOTHO

RESPONDENT

JUDGMENT

This case arises out of a disciplinary hearing held against the applicant for alleged act of insubordination. After the hearing, the disciplinary committee recommended that the applicant be dismissed. The applicant appealed against the findings to the Managing Director who after a detailed consideration of the appeal altered the penalty by substituting the recommended dismissal with a last warning and a demotion from her position of accountant to Assistant Accountant for a period of three months. A few days later the penalty was amended to include the fact that during the period of demotion applicant will earn an Assistant Accountant salary. However, two weeks later the applicant was written another letter where she was informed that her demotion was being suspended and that the only leg of the penalty that remained would be final warning.

The applicant filed the present proceedings on the 15th August 2002. She averred in paragraph 4 of her Originating Application that the proceedings have been filed in consequence of “the Procedural impropriety of respondent’s disciplinary hearing against the applicant.” She accordingly prayed for an order “nullifying the disciplinary

proceedings of Security Lesotho on the ground of procedural impropriety and absence of fairness.”

The respondent answered in accordance with the rules of the court. In their Answer they raised a point of law in limine regarding jurisdiction. The matter was scheduled for hearing on the 17th February 2004 at which hearing only the point in limine was interrogated. The respondents averred that a demotion is a breach of contract which in terms of Section 226(2) of the Labour Code (Amendment) Act 2000 ought to be determined by arbitration at the Directorate of Disputes Prevention and Resolution (DDPR). This submission lost sight of the fact that the demotion has since been suspended and as such no longer forms part of the penalty against the applicant.

Be that as it may the complaint of the applicant is not against the penalty per se but the entire disciplinary process. An unfair disciplinary process if so found does amount to a breach of contract. This is so because the common law places a duty on an employer to treat their employees with respect and to avoid to do anything untoward which might dent the relationship of trust between the parties (see M. Brassey Employment Law Vol.1 Juta 1988 p.E4:51).

Mrs. Kotelo for the applicant argued that the matter falls under the jurisdiction of this court because it is an unfair labour practice. Indeed Section 226(1)(b) of the Act vests the Labour Court with exclusive jurisdiction to resolve disputes involving alleged unfair labour practices. When she was confronted by the court with a question whether it is her case in the founding papers that the alleged unfair treatment of the applicant amounted to unfair labour practice, she answered that it was not so expressly stated and that the court would have to infer it from the papers.

It is trite law that a litigant must stand and fall by his pleadings. From paragraphs 7.5.1 to 7.8 of the Originating Application, the applicant lays out the grounds for her contention that the proceedings should be nullified. The grounds are many but none comes close to suggesting an unfair labour practice. The closest she came is in paragraph 7.8(3) where she says the disciplinary hearing as well as the awards amount to her victimization as a professional. It comes close but it does not lay the basis for a case of an unfair labour practice. It still remains in essence

the common law duty which we said is placed on an employer to treat his employee with dignity and respect. Breach of that duty amounts to breach of an implied term of contract, the claim for which must be forwarded to DDPR for determination by arbitration. In the premises the respondent's points in limine succeeds and this matter is accordingly referred to the DDPR.

THUS DONE AND DATED AT MASERU THIS 20TH DAY OF FEBRUARY 2004.

**L.A. LETHOBANE
PRESIDENT**

**C.T. POOPA
MEMBER**

I CONCUR

**M.E. MOSEHLE
MEMBER**

I CONCUR