

IN THE LABOUR COURT OF LESOTHO

**LAC/REV/07/04
LC/REV/298/06**

HELD AT MASERU

IN THE MATTER BETWEEN

TLALI PULE

APPLICANT

AND

**THE ARBITRATOR (DDPR)
LESOTHO ELECTRICITY
CORPORATION**

1ST RESPONDENT

2ND RESPONDENT

RULING

Date of hearing : 13/09/07

Ruling : 13/09/07

Reasons reserved.

Review of arbitration award - Witnesses testified without being sworn - Section 28(8) of Labour Code (Conciliation and Arbitration Guidelines) Notice 2004 mandates that evidence be given on oath - Award reviewed and set aside and remitted for fresh hearing.

1. This application was heard on the 13th September 2007. At the conclusion of the submissions a ruling was made to review and set aside the award of the learned arbitrator Thamae dated 3rd December 2004. The court however reserved the question whether to remit the matter to the Directorate of Dispute Prevention and Resolution (DDPR) for it to start de novo.

2. The applicant was an employee of the 2nd respondent stationed at Thaba-Tseka. On the 16th March 2004, he appeared before a disciplinary hearing charged with falsifying records and making fraudulent claim that he was away from his duty station when he was not.
3. It is common cause that at the said hearing the applicant refused to answer the charges. His contention was that the regulations of the company require that an employee must be charged within three months of his suspension. His own three months' suspension had run from the 15th December 2003 to the 15th March 2004. His disciplinary hearing was scheduled for the 16th March 2004. He refused to take part in the proceedings because he contended that three months had lapsed on the 15th March 2004, as such he was entitled to be reinstated without any further charges preferred.
4. The hearing proceeded without him taking any part. He was found guilty and dismissed. He made a referral to the DDPR. At the commencement of the hearing the parties reported that they would only dwell on the procedural fairness of the applicant's dismissal. This entailed hearing submissions on whether the second respondent was justified in proceeding with the disciplinary hearing a day after the three months lapsed from the date of applicant's suspension.
5. However, things took a different turn. From the start applicant was led in evidence by Mr. Letsie his representative. The evidence dealt with aspects of the substantive fairness of his dismissal. At the end of the evidence in chief, applicant was cross-examined by the representative of the 2nd respondent Mr. Lebone.
6. What is evident from the record is that even though the applicant gave elaborate evidence, he was not sworn. This contravenes clause 28(8) of the Labour Code (Conciliation and Arbitration Guidelines) Notice 2004 which provides that:

"The arbitrator must first swear or affirm the witness in and advise the witness of the process of questioning."

7. We may just add that even the statement of Mr. Lebone for the applicant which started off as an opening statement, it ended up as the real evidence on which he was cross-examined by Mr. Letsie. He, Mr. Lebone, never ended up calling the three witnesses he had undertaken to call. On the contrary his summary of what was to be the witnesses' testimony was itself converted into evidence which was not given on oath. It was clear therefore, that the proceedings before the 1st respondent are irregular for the reason that evidence was led by both parties without an oath as required by the guidelines. (See VODACOM LESOTHO (PTY) LTD .V. DDPR & 3 ORS. LAC/REV/47/05 (unreported)).
8. In the circumstances the award of the learned arbitrator was reviewed and set aside. Given that the proceedings were vitiated by the failure to observe a statutory requirement, it is only fair that the DDPR be allowed to hear the matter again observing the right procedure. For these reasons the matter is remitted to the DDPR for it to be heard afresh within 30 days of receipt of this award by 1st respondent. Neither party asked for costs. We have accordingly made no order as to costs.

THUS DONE AT MASERU THIS 19TH DAY OF SEPTEMBER 2005

L. A. LETHOBANE
PRESIDENT

R. MOTHEPU
MEMBER

I CONCUR

L. MATELA
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MR. MOLAPO
MR. NTSIHLELE