

IN THE LABOUR COURT OF LESOTHO

LC69/04

HELD AT MASERU

IN THE MATTER BETWEEN

FUSI RATSEBE & 24 OTHERS

APPLICANT

AND

TZICC CLOTHING COMPANY

RESPONDENT

JUDGMENT

Dates : 18/08/05, 13/09/05

Strike, - employees going on wild cat strike – union and management successfully resolving strike. Agreement – parties agreeing on investigation of acts of intimidation during strike and disciplining of the perpetrators.

Evidence – witness's evidence not substantiating case alleged in papers – such evidence irrelevant. Intimidation – proof – Applicants alleging charge of intimidation not proved – witness testifying to something different – Witness alleging they faced different charge at hearing – such not alleged in founding papers. – Respondent adequately proving intimidation – Application dismissed with costs.

This case arises out of the dismissal of the 25 applicants who are former employees of the respondent. The dismissal followed disciplinary hearings which were held against the applicants for allegedly intimidating other employees and coercing them to take part in an illegal strike. According to the statement of case the alleged strike was caused by the respondent's failure to pay the employees for temporary lay offs.

The respondent has a policy of temporary lay offs where there is shortage of work as a way of avoiding retrenchment. During such lay offs the employer pays the laid off workers 5 hours for each day that they are laid off. It is

common cause to both parties that in April 2004 the employees had been promised that their short time pay as it is colloquially known would be included in their end of month pay. It turned out that this promise did not materialize in as much as the employees were not paid as promised.

It is averred in the Originating Application that the shopstewards searched for the Personnel Manager to find reasons for the failure to pay short time pay as promised. They however, could not find him. On the 7th May they wrote him (Personnel Manager) a letter asking for a meeting to discuss the issue. It is further averred that the Personnel Manager told them that they would be paid after nineteen (19) days. It is stated further that the workers became unhappy with that answer and as a result they went wild. This resulted in a meeting being held between the shopstewards and officials of Factory Workers' Union (FAWU) on the one hand and the Management on the other hand in the presence of the LNDC.

It must be said that the Originating Application tends to be very evasive especially with regard to what actually transpired which resulted in the aforesaid meeting. The word "wild" does not fully disclose what was going on. However, one gets a clue of what happened when one reads annexure "C" to the Originating Application. Annexure "C" is the agreement reached by the meeting that was held after the workers turned "wild" whatever that means. The first conclusion of the meeting as recorded in Annexure "C" is that:

"The parties agreed that all the employees who were on strike should go to work on Monday morning."

The second conclusion was that the company agrees to pay the short time pay on Thursday 13th May 2004 which was the following week. The fifth conclusion of the meeting was that:

"....the employees who intimidated others and misbehaved during the strike and before should be brought to a disciplinary hearing and be disciplined accordingly if there is proof."

The parties finally agreed that "illegal strikes in the factory will not be allowed. The shopstewards will follow the proper procedure before striking." The agreement is signed by company and union representatives and is witnessed by the LNDC. It is common cause that in accordance with that agreement (annexure "C") the 25 applicants were disciplined for

intimidating others and subsequently dismissed. Applicants' claim before this court is that there was no proof brought forward to prove the alleged offence. Alternatively they contend that even if it may be found that they did go on a strike dismissal is an inappropriate penalty given that the dispute concerned a collective bargaining agreement and that this was the first offence.

The applicants' alternative grounds for relief are completely misconceived. Throughout the Originating Application, the applicants have alleged that they were disciplined and dismissed for intimidating others. According to Annexure "C" the strike was resolved and all the workers who had been on strike were allowed to return to work the following Monday. Even the root cause of the strike namely non-payment of lay off pay was successfully resolved as workers were to be paid the following week. In the circumstances it cannot be possible that the 25 workers were dismissed for taking part in the strike, because as we say that issue was resolved. This leaves only one issue namely that the respondent did not prove the alleged intimidation.

The applicants adduced evidence of two witnesses namely; PW1 Makhetha Matlali and PW2 Fusi Ratsebe. PW1 is a FAWU organiser. He testified that he received a call from FAWU members at respondent that there was a problem which needed his attention. It should be mentioned right here that according to PW2 and DW1 the call to the FAWU office was made by the Managing Director Mr. David Chen, not union members. He testified that he proceeded to the respondent. Upon arrival he found that there was a group of workers who were standing outside the factory and the doors to the factory were closed. He stated that the Management told him that those workers who were standing outside were on strike.

He testified further that he sat in a meeting with the Management and the LNDC. Asked what conclusion they reached he answered that they reached no solution as it was not clear how those workers were said to be on strike. He testified further that management also told him that among the striking workers there were those who intimidated others to take part in the strike. As if he had forgotten what he had just said in response to a question as to what solution the meeting reached the witness stated that the meeting resolved that everybody should go back to work and that the management would disciplinarily deal with those it says intimidated others to take part in the strike. He was shown annexure "C" and he confirmed that it is the

agreement that the meeting concluded and which they signed. It is worth noting that PW1 adduced no evidence in support of applicants' claim that the charges were not proved.

PW2 testified that following failure to pay workers as promised they as shop stewards looked for the Personnel Manager to find out why they had not been paid short time money. He averred that the Personnel Manager said he was busy. He stated that they went back the following day and he still said he was busy. This testimony contrasts with the averrement in the Originating Application that the shop stewards' attempts to meet with the Personnel Manager were thwarted by the fact that they did not find him. This is a serious conflict which puts the witness's testimony in doubt.

The witness testified further that on Friday 7th May 2004, they went to the Personnel Manager during lunch break to request a meeting as the workers wanted him to address them. He testified that the Personnel Manager agreed to address the workers, but in the course of that address, the Managing Director, Mr. David Chen came and pulled him away. This act caused a commotion as workers wanted to know why he was pulling the Personnel Manager away while he was talking to them.

He testified further that after a while the Personnel Manager came back and told them that they would be paid after 19 days. He stated further that the Personnel Manager wanted to leave after he had made that announcement but the workers wanted the meeting to continue. He testified that there was noise as workers wanted the Personnel Manager to continue to address them. He further testified that in consequence of the noise the LNDC came accompanied by Police. Later FAWU arrived at the invitation of management. He testified further that they (workers) requested LNDC to call Mr. Chen to come and talk with them as he had refused to talk to them. He testified that Mr. Chen did come and they sat down with him and the LNDC and FAWU.

PW2 testified further that at the meeting Mr. Chen accused them of embarking on a strike which they denied because they had only been talking with the Personnel Manager. He testified that the meeting agreed that all workers return to work and that claims of intimidation be investigated and culprits be disciplined accordingly. Asked when they were paid the short time monies he said they were paid the Wednesday of the following week which means that they were indeed paid in accordance with the agreement as

reached in annexure “C”. He testified further that subsequently some 25 of them were charged of intimidation. He averred that to their surprise at the hearing itself they did not answer the charge of intimidation but of participation in an illegal strike.

There is no doubt in our minds that PW2’s testimony is a fabrication. This testimony comes nowhere near substantiating applicant’s case as stated in the Originating Application. It essentially seeks to found a new case which is not pleaded in the papers filed of record. It is without doubt irrelevant to the case the respondents were called to answer. The respondent for their part called the evidence of the Personnel Manager Mr. Mpho Ramonyatsi. He denied that he was at a meeting where he addressed the workers. He averred that in the morning of the 7th May 2004 PW1 and other shop stewards came to his office with a letter enquiring when the workers would be paid their short time pay.

He testified that he took the letter and at around 11.00 hrs that morning he gave the shop-stewards a response to the effect that they would be paid their money after nine (9) days. This of course conflicts with the applicant’s averment that he said they would be paid after nineteen days. We make no finding as regards when the workers were promised to be paid because, the respondents failed to put their version of nine days to applicants’ witnesses. At the sametime PW2’s testimony is generally of an unreliable nature and we cannot rely on his testimony in this regard.

DW1 testified further that when they came back from lunch they found PW2 and others blocking the entrance to the factory preventing workers from going inside. He stated that they were even uttering threats that they would make those workers who wanted to go inside drink benzene and paraffin. He stated that those workers who wanted to go inside but were prevented by those who wanted them to be part of the strike stood aside, while those who were wearing FAWU T-shirts remained at the door singing. He testified further that there were those workers who had managed to go inside and continued to work while those who worked outside also continued to work. Those outside were washing section employees. At around 2.00 pm the striking workers attacked the non-striking workers who were doing washing by throwing cone thread rolls and hangers at them.

At about the sametime the striking workers sought to forcibly enter section A and B of sewing lines with the aim of attacking the workers who were

working inside. Management had to close the doors in order to deny them access and to protect those workers inside. He stated that from that moment the striking workers attacked anyone coming from A and B sections whom they regarded as not being part of them. This led management to call the Police. When the Police arrived they were met with insults and objects were thrown at them by the striking workers. The Managing Director called FAWU and two union officials arrived after about 20 minutes and they were later followed by the arrival of the LNDC.

DW1 averred that when the two union officials arrived the situation was far from being calm. Infact the two union officials are the ones who appealed for calm when they arrived in order to allow talks to proceed. They then got into a meeting which culminated in the making of annexure "C". He confirmed that they held disciplinary hearings which led to the dismissal of the twenty five applicants. He denied that the applicants met a different case from that they were notified of when they got into the hearing. We are inclined to believe his version because by applicant's own admission and as evidenced by annexure "C" the strike was successfully resolved by the parties' agreement that all workers should return to work without any preconditions. There was no reason for anyone to subsequently be made to answer a case of a strike which had been peacefully resolved. Secondly, exhibit "2" is the notification of termination of employment of PW2. It was handed in by PW2 as part of his evidence and it shows that he was dismissed for the same reason for which he was charged namely intimidation. DW1's testimony clearly shows that there were indeed acts of intimidation during the strike and applicants have not shaken the respondent's witnesses' testimony in this regard.

As we pointed out PW1 did not adduce any evidence in support of the allegation that the charges were not proved. PW2 sought to found a completely new case which was different from that pleaded in the Originating Application. The nearest he came to substantiating the Originating Application was when he said at the hearing they were confronted with allegations of participation in the strike as opposed to the charge of intimidation. Even then this is a new allegation which does not appear anywhere in the applicant's founding papers. Furthermore his own exhibit 2 shows that he was dismissed for intimidating others and not participation in the strike as he alleges. Finally his evidence is directly challenged by that of DW1 whom we have no doubt was an honest witness. On the contrary PW2 was clearly an untruthful witness. For these reasons

we find that the applicants have not proved the claim that the charges were not proved. Accordingly this application is dismissed with costs.

THUS DONE AT MASERU THIS 20TH DAY OF SEPTEMBER, 2005

L. A. LETHOBANE
PRESIDENT

J. M. TAU
MEMBER

I CONCUR

M. MOSEHLE
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

M. RANTHITHI
T. MOHALEROE