

IN THE LABOUR COURT OF LESOTHO

LC 15/06

HELD AT MASERU

IN THE MATTER BETWEEN:

RAMPOETSI TJELOANE

APPLICANT

AND

HIGHLANDS SECURITY (PTY) LTD

RESPONDENT

JUDGMENT

Dates: 12/04/06

Retrenchment – No consultation. Respondent conceding procedural impropriety. Reinstatement – not suitable remedy – compensation awarded.

Set-off – boss of gun and two way radio – cost or value of stolen items not proved – set off refused.

The applicant was employed by the respondent as a security guard on the 15th December 2001. He was assigned to guard a supermarket store at Tsenola in Maseru. He was issued with a pump action shot gun and a two way radio. On the night of 1st June 2005 he was attacked by unknown assailants who took away the firearm and the two way radio. The two items have never been recovered to date and the attackers have never been arrested.

On the 7th June the applicant was written a letter in which he was informed that he would be surcharged for the loss of the two items which were jointly valued at M6,200-00. He was to be surcharged at the rate of M250-00 per month until the full amount had been recovered. It does not look like the surcharge was effected. However, on the 24th October 2005 applicant was served with a letter of dismissal. The reason given was operational requirements. He was promised to be paid his terminal benefits and reminded that he still owed the company the M6200.00. Mr. Makutle is the

Operations Manager of the respondent. He testified that after the theft of the gun and the two way radio from applicant, the company no longer trusted him. It could not entrust him with yet another gun, as such they could not deploy him. This is why they terminated him on the ground of operational requirements.

Transport, Security and Allied Workers (TSAW) of which applicant is a member wrote a letter to the respondent challenging the procedure followed in retrenching applicant. There is no evidence of respondent's response to that letter. On the 27th February the applicant filed the present application contending that the retrenchment is procedurally flawed in as much as there was no consultation with the applicant and alternatives to retrenchment were not considered. The applicant claimed reinstatement or payment of compensation as well as terminal benefits in the form of notice pay, leave pay, public holidays and severance pay totaling M3,449-64.

The respondent conceded that the applicant's retrenchment was unprocedural. They however pleaded that they could not reinstate the applicant. The reason which they gave was that they could not trust applicant anymore and that they could not allocate him duties which require the use of a gun due to the mistrust. They pleaded that the court awards applicant reasonable compensation in the circumstances. They further prayed that the court grant them a set off of the amount that the court will grant the applicant as compensation for the loss of the firearm and the two way radio.

We have considered that the respondent has made the work of the court relatively easy by not disputing the obvious. We have taken into account that the respondent is a relatively small organisation, as such its operational capability must be taken into account. For these reasons we have come to the conclusion that reinstatement is not a suitable remedy regard being had to the size of the organisation and the reason given for the termination of the applicant. In a security business trust is of utmost importance. We have thus decided to award applicant payment of three months wages as compensation for the unfair retrenchment. This will add up to M2,802-00 plus the undisputed M3,449-64 of the terminal benefits. The total amount payable to the applicant is M6,251-64.

The respondent contend that the amount of loss occasioned by the disappearance of a firearm and the two way radio be set off from the amount

that the court finds due to the applicant. Mr. Makutle who testified for the respondent justified the claim of set off by saying that the company did not believe the explanation of the applicant. Mr. Mahlehle who represented the applicant asked Mr. Makutle under cross-examination what action the company took, he said they reported the loss to the police. He asked him if any disciplinary action was taken against applicant he said none was taken. He asked him why applicant was not surcharged in accordance with the letter of 7th June 2005 which informed applicant of such a surcharge. He said it was because of the discussion which the Directors of which he is not a part had.

In our view these questions are very pertinent. It is not enough that the employer has a feeling of dissatisfaction about the employee's explanation. The employer must initiate the procedures for substantiating his suspicions. In this connection disciplinary proceedings would go a long way in helping to either vindicate the applicant or confirm the employer's suspicions. Furthermore, Mr. Makutle's own testimony is that the Directors overruled him when he had wanted to surcharge applicant. There is no evidence that the Directors have authorized them to seek the set off. Probabilities are that the Directors are not interested as they have previously prevented a surcharge from being effected.

Finally, the figures of M3,200-00 for the shot gun and M3,000-00 for the two way radio are not substantiated. From the very beginning the respondent has been alleging the aforesaid amounts without any scintilla of evidence to corroborate the amounts. The court did ask Mr. Makutle to produce evidence in the form of for instance the receipts for the purchase of the lost items. He answered that he has the receipts at the office but to this day they have not been produced. This leads to an irresistible inference that the claimed amounts are imaginary. Mr. Mohaleroe sought to address this gap in their evidence by saying that the applicant has never disputed or queried the amounts. Whilst it is true that there is no indication of applicant queering the amounts, it does not absolve the respondent of the onus that lies on them to prove their claim. For these reasons the set-off applied for cannot be granted. Accordingly, the respondent shall pay the applicant the amount of M6,251-64 in full and final settlement of this matter no later than 26th May 2006.

THUS DONE AT MASERU THIS 25TH DAY OF APRIL, 2006

L. A. LETHOBANE
PRESIDENT

J.M. TAU
MEMBER

I CONCUR

M. MOSEHLE
MEMBER

I CONCUR

FOR APPLICANT:

MR. MAHLEHLE
of TSAW

FOR RESPONDENT:

MR. MOHALEROE