

IN THE LABOUR COURT OF LESOTHO

LC/15/04

HELD AT MASERU

IN THE MATTER BETWEEN

THISETSO SARELE

APPLICANT

AND

**JUN WEI WANG
CHINA STATE CONSTRUCTION**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

21/07/05

Contempt – Respondents failing to reinstate applicant per DDPR award – Evidence – Applicant never presented himself to 1st respondent – Latter therefore not in contempt – Applicant presented himself to a manager who never informed 1st respondent – 2nd respondent liable for omissions of its servants therefore guilty of contempt.

2nd respondent incapable of physical detention – a fine imposed.

Time lapse – reinstatement no longer feasible – reinstatement varied and compensation ordered.

This is a case of contempt of court in that the respondents have failed to abide by the award of the Directorate of Dispute Prevention and Resolution (DDPR) to reinstate the applicant. The applicant had lodged a referral of unfair dismissal with the DDPR on the 9th July 2003. The DDPR made an award directing the respondents to reinstate the applicant by the 1st August 2003.

Applicant avers that he reported to a Mr. Serobayane who is the Human Resources Manager on the 29th August 2003, but was not reinstated as ordered. He avers further that he again met with Mr. Serobanyane on the 13th August 2003 and the latter told him that there was nothing he could do if his bosses were not responding to the award. Thereafter he met with one Loma on the 15th October and the 15th November 2003. The said Loma was applicant's supervisor and he allegedly promised that they were in the process of purchasing a new truck which applicant would be assigned to drive. Nothing turned on this promise. On the 3rd December he went back to the DDPR which told him that it had sent the award to the respondents by fax. He then proceeded to this court to launch contempt proceedings as respondents had failed to comply with the order to reinstate him.

In cross-examination the applicant was asked who the manager of second respondent is. He said it is the first respondent. He confirmed that Mr. Wang is the one who is in charge of the affairs of the second respondent. Asked if he ever reported himself to Wang for the purpose of effecting the award he said he did not. Asked if he could deny Mr. Wang's evidence that he knew of the award that directed him to reinstate the applicant but he has never seen him (the applicant) for the purpose of reinstatement, he said he would not deny it.

The Human Resources Manager of 2nd respondent gave evidence in which he made a bare denial that he ever met with the applicant. He said that they expected to see applicant on the 1st August 2003 because the award said he should be reinstated on that date but he did not show up. DW1's testimony is highly suspect. It sought to convey the message that applicant was expected at the respondent on the 1st August because that was the date he should have been reinstated. He however does not deny applicant's testimony that he was there on the 29th July 2003. Clearly DW1 has misread the award. What it says is that applicant should be reinstated by the 1st August 2003. What this means is that he could be reinstated on any date from the date of the award which is 9th July 2003 but not later than the 1st August 2003. It follows that the applicant was right to have presented himself on the 29th July 2003.

The first respondent has since left Lesotho and gone back to China. He however has deposed to an affidavit in which he denies that the applicant ever reported for resumption of duty. We now know that this version is only partly true in that the applicant never reported to the first respondent

personally. He however reported to Mr. Serobanyane on the 29th July 2003. Mr. Serobanyane is the servant of the respondents. His omissions bind the respondents. Infact the applicant stated that Mr. Serobanyane was a link between them (the staff) and the management. It was therefore Mr. Serobanyne's duty to have informed the first respondent of the applicant's presence. His failure to do so can only exonerate the first respondent, Mr. Wang but not the second respondent. The latter is indeed guilty of contempt as charged due to the failure of its servant, Mr. Serobanyne to inform them that applicant did report for work on the 29th July 2003.

AWARD

It is now three years since the applicant was dismissed. The contempt proceedings were conducted on the 21st July 2005 and judgment was reserved. For some strange reason the file disappeared from the desk of the presiding officer as a result judgment remained pending until Monday 26th June 2006 when this anomaly was brought to my attention. It is clear therefore that too much water has passed under the bridge since applicant's dismissal and since the finalization of the contempt proceedings.

In as much as the company is indeed guilty of contempt the person charged with it is not guilty. Furthermore, the 2nd respondent is an incorporeal entity incapable of physical apprehension let alone detention. The only way to punish it for its criminal wrong is through its servants of sufficiently high standing to answer for its actions. None of those in the position high enough to be held liable are capable of being held so liable because applicant never personally presented himself to them for reinstatement per the DDPR award. It follows that the remedy lies in the imposition of a fine.

Against the backdrop of the remarks made in this judgment we make the following order.

1. In the light of the time lapse since the applicant's dismissal the reinstatement order of the DDPR is varied and an order of compensation for the unfair dismissal made as follows:
 - 1.1 The respondent shall pay applicant compensation for unfair dismissal in the amount equivalent to twelve months salary, being the period from 1st August 2003 to 31st July 2005. This period represents the time span from the time applicant should have been reinstated and the time the contempt proceedings judgment should have been handed down.

- 1.2 The compensation shall be calculated on the basis of the salary applicant would have earned during the relevant period if he had continued in employment.
2. Furthermore the 2nd respondent shall in terms of section 24(1)(P) of the Labour Code Order 1992 as amended read with section 239 of the same order pay a fine of M600-00 to the government to purge its contempt.
- 2.1 Both the compensation and the fine shall be payable within 30 days of the handing down of this award, save that the fine shall be payable to the Accounts Section of the Department of Labour.
- 2.2 Since the 1st respondent has since left Lesotho the person who has taken his place or in his absence any next person in authority shall ensure that these orders are complied with failing which they shall be personally liable for imprisonment; in the case of failure to pay compensation for a period of six months and in the event of failure to pay the fine, imprisonment for three months.

THUS DONE AT MASERU THIS 30TH DAY OF JUNE 2006

L. A. LETHOBANE
PRESIDENT

M. MOSEHLE
MEMBER

I CONCUR

A.T. KOLOBE
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENTS:

MR. SEMULI OF TSAWU
MS. THABANE