

IN THE LABOUR COURT OF LESOTHO

LC/REV/354/2006
LAC/REV/64/05

HELD AT MASERU

IN THE MATTER BETWEEN

GLOBAL GARMENTS

APPLICANT

AND

MOSEMOLI MOROJELE
DIRECTORATE OF DISPUTE
PREVENTION AND RESOLUTION

1ST RESPONDENT
2ND RESPONDENT

JUDGMENT

Date: 16/04/08

Review of DDPR award - In an application for review the court will not entertain the challenge of the merits of the decision of the arbitrator - Compensation is the discretion of the arbitrator which must be exercised judicially basing oneself on evidence tendered.

1. This is an application for the review of an award handed down by learned Arbitrator Mosisidi on the 31st March 2005. First respondent had referred a dispute of unfair dismissal the facts of which are common cause.

2. On the 14/10/04 1st respondent tendered a notice to resign upon expiry of one month. On the 18th October 2004, she wrote the following letter to the Human Resources Manager:

“Dear Sir,

*Re: Withdrawal of Notice of Termination
of Contract*

After our discussion with you and the Global Management, I have decided to withdraw my resignation dated 14th October 2004.

*Yours faithfully,
Mosemoli Morojele*

*c.c. Factory Manager C & Y
Personnel Manager Global”*

3. On the 19th October 2004, the Factory Manager responded as follows:

*“Personnel Office
Global Garments Co.
Thetsane*

ATT: MS MOROJELE

*Re: Your letter of termination and
subsequent Letter of Withdrawal of
Termination of Contract*

I have received your letter of termination of contract and subsequent letter of Withdrawal of Termination of Contract dated 14th and 18th October 2004 respectively.

I therefore wish to inform you that after a great deal of thought, I do not accept your letter of withdrawal of termination of contract but accept the first one, being that of termination of contract.

I also wish to waive the right to receive notice of termination of contract as per the Labour Code Order Section 62(2)(b).

Today shall be your last day at work and you shall receive all your money due to you here at Global Garments at 14.00 hrs tomorrow on the 20th October 2004 instantly.

I wish you good luck in your future endeavours.

*Best regards,
David Huang
Factory Manager”*

4. In response 1st respondent lodged a dispute with DDPR claiming that the Factory Manager’s decision amounted to an unfair dismissal. She contended that she had withdrawn her initial letter of resignation at the instigation of the management of the applicant namely, the Human Resources Manager Mr. Ntlhabo, the Personnel Manager Mr. Molapo, the Factory Manager Mr. Huang and the latter’s assistant whom she could not identify by name. That this was so would seem to be confirmed by her letter of withdrawal of resignation. It refers to a meeting with Human Resources Manager and it is copied to those whom she says were present namely Messrs Molapo and Huang.
5. Significantly, the applicants did not write back to the applicant to dispute that the meeting they had with her could have been meant to influence her to withdraw her resignation. Before the DDPR however, Messrs Molapo and Ntlhabo testified and essentially denied that the meeting was in any way intended to persuade the 1st respondent to withdraw her resignation.
6. The arbitrator concluded that whatever the true version was, the 1st respondent was within her right to withdraw her resignation before the expiry of notice period she was

serving. She accordingly found for the 1st respondent that the applicant's "action of choosing to accept the letter of termination of contract over that of withdrawal especially when the latter was received before the expiry of the notice period was tantamount to dismissal (which) dismissal was unfair because there were no reasons advanced..." The arbitrator went further to award six months compensation in favour of 1st respondent amounting to M14,700.00.

7. The applicant applied for the review of the award on two grounds. Firstly, they argued that the arbitrator erred in deciding that the 1st respondent was dismissed when she had in fact resigned. Secondly, they argued that the compensation awarded was excessive given that the 1st respondent had claimed less.
8. With regard to the first ground of review Mr. Mochochoko on behalf of the 1st respondent argued correctly in our view that, this was an appeal disguised as a review. It has repeatedly been pointed out that a review does not reopen the merits of the decision of the trier of facts. It only deals with the regularity of the proceedings and the legality of the process. For this court to be called upon to examine whether the arbitrator was right or wrong in finding that the act of the Factory Manager amounted to a dismissal will be interfering with the merits and thus turning the principle of finality of administrative decision into a mockery. Accordingly this ground of review falls to be dismissed.
9. The second ground of review was that the learned arbitrator's award of six months salary was not supported by evidence in as much as the 1st respondent had in her referral and in evidence at the arbitration claimed compensation of four months salary. The court was referred to page 7 of the transcribed record of the arbitration proceedings. The learned arbitrator asked:

"Arb: "so what do you want to be done?"

Appl: "I am asking that I be compensated for the period that I was not at work seeking another employment.

Arb: "For what period do you want compensation?"

Appl: "For four (4) months I am also asking that I be given a notice pay because I worked there for almost two (2) years and they are the ones who initiated a dismissal and they are obliged to give me a notice pay."

10. In her award the learned arbitrator awarded "compensation equivalent to 6 months wages inclusive of 1 month's notice." It is trite that the measure of compensation to be awarded is at the discretion of the arbitrator. However, that discretion cannot be arbitrarily exercised. It must be exercised judicially basing oneself on the evidence adduced. Even more so the court cannot award a litigant what they have not claimed.
11. It follows that the award of 6 months in the circumstances is against the weight of evidence adduced before the arbitrator. It is for that reason irregular. Accordingly, the award is reviewed and corrected to read: 1st respondent is awarded compensation equivalent to 4 months wages inclusive of 1 month's notice. The compensation shall be calculated at the rate of M2,450.00 which the 1st respondent admittedly earned at the time of the unfair dismissal. There is no order as to costs.

THUS DONE AT MASERU THIS 12TH DAY OF JUNE 2008

L. A. LETHOBANE
PRESIDENT

**J. M. TAU
MEMBER**

I CONCUR

**M. MAKHETHA
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR RESPONDENT:**

**MS. SEPHOMOMOLO
MR. MOCHOCHOKO**