

IN THE LABOUR COURT OF LESOTHO

LC/REV/306/2006

LAC/REV/15/05

HELD AT MASERU

IN THE MATTER BETWEEN

IMPERIAL LESOANA

APPLICANT

AND

RAMAILI LESAOANA

**DIRECTORATE OF DISPUTE
PREVENTION AND RESOLUTION
H. MOSHOESHOE H.O**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

JUDGMENT

Date 23/04/08

Review of DDPDR answered –whether document handed in during arbitrator should be marked as exhibits –these is no requirement in the requirement in the regulation for documents to be so marked-evidence arbitrator seeking additional evidence to corroborate what is already corroborated and is infact admitted by the there side – such not necessary as available witness suffice especially give that it was evidence on the arbitrator disregarding

*evidence on the basis of an irrelevant requirement –
Award reviewed corrected and set aside*

1. This is a review applicant arising out of the award of arbitrator Moshoeshoe date 28th January 2005. The 1st respondent was employed by the applicant company as a panel beater at Imperial workshop commonly referred to as imperash. On the 11th October 2004 he was served with a notice to attend a disciplinary hearing, scheduled for 26th October 2004. He was charged with insubordination in that he “refuses to take instruction from white supervisors and that he would only be instructed by black supervisors. He was said to have confirmed the same in front of the Managing Director on the 11th October 2004,
2. Following the hearing, the hearing, the 1st respondent was found guilty as charged. He was dismissed on the 19th October 2004. The 1st respondent referred a dispute of unfair dismissal in that he did “....*not agree with the reason for his dismissal.*” The dispute was arbitrated on the 21st January 2005. evidence led on behalf of applicant was given by three witnesses namely, the National Workshop Manager Mr.Palo Julius Lesupi, the training officer Mr.Fransisco Ferreira also known as chicco and the chairperson of the disciplinary enquiry Ms Mary Lepota.
3. The 1st witness Mr. Lesupi testified that on the 11th October 2004 he had met with chicco, one Eddie and the Managing Director Mr. Cornelius Johan scheepers. They asked him to accompany them. They headed towards imperach workshop 2 which is an extension of the original imperash 1. Upon arrival the Managing director asked for 1st respondent. He was said to be at imperash 1. He sent someone to call him.
4. On arrival the managing Director asked him what he was doing that afternoon. He said he was reading a newspaper. He asked him why he was reading a newspaper at that time. He said the supervisor to whom he was answerable a

Mr. Seroeng Mphenetha had not given him any job to do. The Managing Director asked him if Chicco and Eddie had not given him any work to do he said he did not take instructions from them. The witness stated that this showed that 1st respondent would only take instructions from Mr. Mphenetha.

5. DW2 Was Chicco, and he testified that he worked at the workshop and he gave out the work to be done. He testified further that 1st respondent did not want to take the orders from him. He stated that 1st respondent
“..... Would ask me who am I he will not listen to me he will only listen to Jerry, the supervisor at the workshop”
(p.48 of the paginated record)

Asked how long this had been going on he said it had been going on since he stated at smp vrash in November 2001.

6. Asked what triggered the event of the 11th October 2004, he stated that there was a vehicle that had to be assembled and that work had to be done by Ernest who happens to be the 1st respondent. When he came around to check he by Mr. Mphenetha. He found that the vehicle was being worked asked him where 1st respondent was, he said he did not know. He looked for him, but hiding himself. He notices the 1st respondent sitting in a car reading a newspaper.
7. This was said to be around 2.15pm which was long after lunch break. DW2 testified that since this was not the first time this happened he went to report to one Engelbrecht also known as Eddie. They both decided to go and report the incident to the Managing Director. The latter went with them to the workshop to see for himself what was happening. On the way they met Mr. Lesupi and they asked him to accompany them. Upon the managing Director inquiring why he was reading a newspaper at time he was supposed to be working, 1st respondent he answered as already testified by DW1. When DW2 tried to chip into contribute to the exchange between 1st him and the managing Director, the 1st respondent should and said he

must shut up. He repeated before the Managing Director that he did not recognize them (White Managanagement).

8. The third and last witness was Ms. Mary Lepota. She testified that over and above the evidence that was table before the disciplinary hearing to support the charge the 1st respondent himself admitted the charge. She stated that, *“In the statement he gave, he made it clear that he did not recognize the authority of the personnel of his work place. That being department imperash workshop.”* (sa p. 59 of paginated record).

She stated further that due to these reasons she found that there would be no place for him in imperial if he is not prepared to work with his superiors.

9. In his own testimony 1st respondent said he finished the work he was doing before lunch. When someone realized that was not doing anything he asked for his help. He informed Mr.Mphenetha and he agreed. He asked him where he could work the part of the vehicle that he was dealing with and he said anywhere. During lunch he sat in the car and read a newspaper. He testified that he saw Chicco close the boot of the car next to the one he was sitting in, but he has forgotten what time it was. He decided to go and continue with the work he was doing because he, *“Realized that they were looking for me time and again. I kept on checking on them and then came back to imperach 2.”*(see p. 67 of the paginated record).

- 10 He testified that the Managing Director came to him with Chicco and Eddie. He stated that he was in a fit of rage and told him to take his hand out of his pockets. He enquired what he was doing that afternoon. He confirmed he was reading a newspaper. He asked him why he only came out (of the car) when he saw Chicco. He answered that it was only them he realized it was after 2,00pm.

11. (PW1) confirmed that he argued with the Managing Director and that he told him that he was unjust. He confirmed that he told Chicco to “*keep quite*” when the latter tried to intervene in what he calls “*noisy argument*”. He goes on,

“And I told him in front of the accept any work that I honestly will not accept any work that he give me to do, I am employed there as panel seater. He asked exactly what is it that you want? And I replied sir all i want is to work as a panel beater”.

He testified further that the Managing Director teacted by saying that these people say that you don’t want to do any work referring to Chicco and his party. In reply he said

“It was then that I explained to him that the person who could give me works to do is Mr. Mphenetha..... I said that the person who gives me work instructions is Mr. Mphenetha and here he is ask him if has ever been work instructions that he gave me that I refused to carry out.”(p. 68 of the paginated record).

12. The it respondent testified that the Managing Director did not ask Mr.Mphenetha anything but said that Mr. Mphenetha anything but said that Mr.Mphenetha fears him i.e 1st respondent. He went further to state that they and the Managing Director were arguing angrily and that the “conversation was not a very polite one.” To demonstrate this he state that he said to the Managing Director:

“it seen you undermine me because I am black

L. A. LETHOBANE
PRESIDENT

M. MAKHETHA
MEMBER

I CONCUR

L. MOFELEHETSI
MEMBER

I CONCUR

FOR APPLICANTS:
FOR RESPONDENT:

MR. TSOEUNYANE