

IN THE LABOUR COURT OF LESOTHO LC/30/09

HELD AT MASERU

IN THE MATTER BETWEEN

MAMOLETSANE MOLETSANE

APPLICANT

AND

MALITLAKALA MATHAPHOLANE

RESPONDENT

JUDGMENT

Date: 14/04/10

Retrenchment – Evidence showed that parties parted due to disagreement over salary – That type of termination does not constitute retrenchment – Undertaking employing only one person is one classified as small business – Minimum wage applicable to applicant is that of small business – Claim for payment of days worked at termination – Onus on employer to show that she paid applicant for those days – Claim for unfair retrenchment and underpayments dismissed but claim for payment of 22 days succeeds.

1. The parties herein represented themselves as the legal representative of the respondent was excluded in terms of section 28 of the Labour Code Order 1992 (the Code). The applicant's representative Mr. Semoli was also excluded as he is an officer of a Security and Transport Union (TSAWU) which does not organize in teaching industry. The applicant on the other hand is a teacher at a Day Centre owned and run by the respondent.
2. The applicant was terminated on the 22nd January 2009. She

- referred a dispute of unfair retrenchment to the DDPR. Conciliation failed and the matter was referred to this court. In her Originating Application the applicant alleged that she was unfairly retrenched without prior consultation. She further claimed to have been under paid in the amount of M9,243-00 during the period of her employment. Finally she claimed payment of M856-98 being salary for the 22 days of January which she said was not paid.
3. The applicant took care of children whose working parents left them at respondent's home for day care. She was originally paid M300-00. Her contention was that she ought to have been paid M673-00 in accordance with the general minimum wage applicable at the time. Her remuneration was revised to M500 in 2007. It was raised again in March 2008 to M550-00. At the time of her dismissal she was earning M600-00. Even that new salary was still lower than the general minimum wage of the time which was M697-00. The respondent admitted that she paid the applicant as alleged but countered that the wage was legal in terms of the minimum wage applicable to small business which she said her day centre was. As regards the salary for the 22 days of January 2009, she testified that she had paid applicant for those days.
 4. Evidence of the parties with regard to the termination was not really conflicting. The disagreement arose when the centre reopened after the Christmas break. The school opened on the 19th January. The applicant demanded to be paid M700-00 as opposed to the M600-00 she was getting at the time. Applicant testified that the respondent dismissed her on 22/01/09 due to the disagreement over salary.
 5. The respondent conceded that she had disagreement over salary with the applicant. She stated that at the time applicant demanded an increase she had only 10 children and she was facing declining numbers of children left under her care, due to the retrenchment of workers in the textile industries. When applicant insisted on an increase despite the realities they faced she parted with her. At the conclusion of the evidence the court made the ruling that follows hereunder.

RULING

We have carefully listened to the evidence. What is clear is that both sides are agreed that the applicant has not been terminated for operational requirements.

Quite clearly the parties could not agree on the terms of employment of the applicant namely salary. She (applicant) does not deny evidence that when the school reopened in January 2009, she demanded to be paid M700-00 which respondent said she could not afford. This signaled the departure between the parties. That cannot be interpreted as a retrenchment, when parties separate because they could not agree on the wage payable. It follows therefore that the alleged retrenchment of the applicant is not proved. As such this claim is dismissed. With regard to the minimum wage compliance the applicant has not given the enrolment at the day care centre. The respondent on the other hand says she had at most ten children when the enrolment was high. This has not been denied.

The fact, that the enrolment was small is confirmed by the fact that applicant was the only teacher at the centre. For these reasons the respondent is correct to say her operation fell under small business which is family business which employs no more than five employees.

It follows that the respondent is correct to say applicant should have based her claim on the minimum wage applicable to small business. The claim based on the general minimum wage is not justified.

According to respondent what she paid to applicant was above the minimum applicable to small business. Applicant has not denied this or proffered a different minimum for small business from that suggested by respondent. It follows therefore that even a claim for underpayments falls to be dismissed.

On the issue of 22 days for January 2009, the onus rested on the respondent to prove that she discharged the obligation to pay the January wage. Other than her verbal statement to this effect which applicant denies she has produced no proof. Infact it cannot be possible that applicant was paid given that in her own evidence respondent says she had not yet collected fees as it was at the beginning of the year. Furthermore, tempers were so charged according to both sides evidence that payment could have possibly been made. For these reasons applicant's claim for payment of 22 days of January succeeds. Respondent is ordered to work out applicant's wage for the 22 days and effect payment of same to applicant not later than 15th May 2010. There is no order as to costs.

THUS DONE AT MASERU THIS 14th DAY OF APRIL, 2009.

L. A. LETHOBANE
PRESIDENT

D. TWALA
MEMBER

I CONCUR

M. THAKALEKOALA
MEMBER

I CONCUR