

IN THE LABOUR COURT OF LESOTHO

LC/REV/92/09

HELD AT MASERU

IN THE MATTER BETWEEN

REENTSENG MATOBAKO

APPLICANT

AND

HALEOKOE MOHAU

1ST RESPONDENT

M. MASHEANE -ARBITRATOR

2ND RESPONDENT

JUDGMENT

Date : 20/10/2010

Award reviewed and set aside. Reasons reserved.

1. Applicant has applied for the review and setting aside of the award of arbitrator Masheane on the ground that the Award was made contrary to the weight of evidence, which disputed the existence of employment relationship between the 1st respondent and applicant's Funeral Parlour which he claimed employed him. Ms. Russel for the 1st respondent conceded that the Award ought to be reviewed and set aside. It was duly reviewed and the reasons for judgment were reserved. This is now those reasons.
2. The 1st respondent referred a dispute to the DDPR claiming under payments for 18 months and nonpayment of wages for the last two months of his employment. He claimed that he was employed as a receptionist and that the applicant failed to pay him the minimum wage applicable to a receptionist.

3. The applicant vehemently denied that any employment relationship existed between Bafokeng Funeral Parlour which 1st respondent claimed employed him. He averred that when 1st respondent approached him to give him a job he told him that there were no vacancies. He stated that he however took him as a casual and promised to absorb him when a vacancy existed.
4. On 1st respondent's claim that he was employed as a receptionist he asked him under cross-examination whether he had taken over or substituted the company's full time receptionists who are known to all staff. His response was that the ladies worked day shift while he worked night shift. This response ought to have informed the arbitrator that 1st respondent's claim of employment as a receptionist and consequent underpayments was misconceived.
5. Quite clearly the 1st respondent is giving himself the post of receptionist not that the applicant employed him as such. Applicant was a night watchman who also received bodies brought to the mortuary at night. It is understandable why applicant strongly refuted 1st respondent's claim that he was a receptionist, because he was not.
6. Despite applicant's denial, first of the existence of the employment relationship; and secondly of the alleged employment as a receptionist, the learned arbitrator made the following findings:

"respondent did not challenge applicant's evidence that he was under his employment from 17th December to the 27th July 2009 and he did not dispute applicant's evidence that he underpaid him during this period."

7. These findings go directly against the evidence that the applicant herein gave that he never had a vacancy to which he could employ the 1st respondent. Furthermore, that he had lady receptionist who did the job of welcoming people. Applicant's additional duty of receiving bodies occasionally brought at night did not make him a receptionist as understood in our labour law. The Award of the learned arbitrator upholding 1st respondent's claim to underpayments was therefore clearly irregular and therefore reviewable.
8. The 1st respondent further claimed to have not been paid for the months of June and July. The applicant on the other hand claimed that the 1st respondent disappeared and resurfaced at his (applicant's) home where he was paid his wages for the period by applicant's wife. 1st respondent disputed this. The learned arbitrator was clearly faced with the word of the 1st respondent against that of the applicant.
9. Faced with this situation the arbitrator decided to reject the version of the applicant saying he failed to produce documentary proof that he indeed paid the 1st respondent. There is no evidence that the applicant was asked to produce that documentary proof. If he was applicant would have shown as he did his Founding Affidavit, paragraph 6.9 thereof where he says:

"what evidence would I have when I succinctly stated that the applicant was not in my employ and it is on record that the 1st respondent in cross-examination agreed that he never entered into work contract?"
10. Available evidence was not capable of leading to that desired end of producing proof of payment because the employment relationship was denied. To add insult to injury the applicant was not afforded the opportunity to deal with that issue of documentary proof. At worst the evidence was totally insufficient to support the definitive finding which the learned arbitrator purported to make. As we said Ms. Russel correctly conceded these irregularities. For these reasons the award was reviewed, corrected and was set aside.

THUS DONE AT MASERU THIS 8TH DAY OF MARCH 2011

L. A. LETHOBANE
PRESIDENT

R. MOTHEPU
MEMBER

I CONCUR

L. MATELA
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

IN PERSON
MS. RUSSEL