

HELD AT MASERU

In the matter between:

MOEKETSI MOROKA

APPLICANT

and

FRASERS LESOTHO LTD.

RESPONDENT

RULING

Date : 22/03/11

Unfair labour practice - the ground for applicant's dismissal being that he sexually harassed an employee - Matter based on an unfair ground of dismissal and not a sexual harassment claim- Court empowered to hear claims of victims of sexual harassment - Matter therefore falls within the jurisdiction of the DDPR.

1. The applicant was employed by Frasers Lesotho Ltd from 1st September, 2006 to 2nd December, 2009 when his services were terminated following a disciplinary hearing in which he was found guilty of sexual harassment/victimization of a fellow employee.

2. The applicant challenged the substantive and procedural fairness of this dismissal before the Directorate of Dispute Prevention and Resolution (DDPR) in A 0111/10. The matter was however referred to this Court for want of jurisdiction. A closer evaluation of the dispute has revealed that applicant's cause of action revolves around an unfair dismissal which this Court has no jurisdiction to determine. The learned Arbitrator had referred this matter here on the basis that it is a sexual harassment case. As it is, sexual harassment constitutes an unfair labour practice in terms of Section 200 of the Labour Code Order, 1992. The Section provides that:

any person who offers employment or who threatens dismissal or who threatens the imposition of any other penalty against another person in the course of employment as a means of obtaining sexual favors or who harasses workers sexually shall commit an unfair labour practice.

3. Clearly, the Section covers an employee who complains of having been sexually harassed. It is an empowering Section for victims of sexual harassment and not alleged perpetrators.

4. The applicant has lodged a case against a dismissal he deemed unfair which was based on sexual harassment. The learned Arbitrator's role in the circumstances is to examine whether the employer had a valid reason to dismiss and whether in doing so he followed a fair procedure. He/she has to determine whether the facts upon which the employer relied in dismissing the applicant were substantiated and followed a proper procedure. He/she will be able to determine this from the record and any evidence that may be tendered.

5. On the above premise, the case is remitted to the DDPR for determination. It is an unfair dismissal case that falls under Section 226 (2) (d) of the Labour Code (Amendment) Act, 2000 which empowers the DDPR to *inter alia* resolve by arbitration "*an unfair dismissal for any reason other than a reason referred to in subsection (1) (c)*".

THUS DONE AND DATED AT MASERU THIS 22ND DAY OF MARCH, 2011.

F.M. KHABO
DEPUTY PRESIDENT

FOR THE APPLICANT : MR. K.K. MOHAU, NTHETHE & CO.,

FOR THE RESPONDENT : MR. MABULA, ASSOCIATION OF

LESOTHO EMPLOYERS & BUSINESS