

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case Number: D823/98

In the matter between

**The National Education Health and
Allied Workers Union**

Applicant

and

The University of Transkei

1st Respondent

A.T. Moleah

2nd Respondent

M.K. Dekida

3rd Respondent

JUDGMENT

LANDMAN J

[1] The University of the Transkei, like other South African universities, is under immense financial pressure. This prompted the university's council to mandate the management committee: "to commence the process of restructuring as soon as possible so as to reduce manpower costs" and to make a report to the council. The assignment of this function is authorised by s 9(1) of the University of the Transkei (Private) Act 81 of 1996.

[2] The management committee engaged in a process which, for present purposes, I will assume followed the procedures relating to retrenchment laid down in the Labour Relations Act 66 of 1995. This process culminated in letters, dated 21 September 1998, to about 600 non-academic members of staff. The letters informed them that their services were being terminated as they had become redundant.

[3] NEHAWU, the union representing these members of staff, complained, in a letter dated 19 October 1998, that the right to dismiss the employees vested in the university's council and that the management committee was not empowered to terminate the services of the employees.

[4] The university did not respond and an application was launched in this court for a declaratory order to the effect that the non-academic members of staff had not been fairly dismissed, and for ancillary relief.

[5] At the outset of the hearing it was agreed that the application would be argued in two stages as the first stage might dispose of the matter. The first stage relates to the validity of the dismissal or, more accurately, whether in law there has been a dismissal. The second relates to the fairness of such a dismissal, if there has been one.

[6] The jurisdiction of this court to consider a question whether employees have been dismissed by their employer arises from the Labour Relations Act of 1995, especially by virtue of the provisions of s189 which confers jurisdiction on this court to adjudicate on dismissals for operational requirements. The power to grant a declaratory order stems from s158(1)(a)(iv) of the Act. Where a dispute about a dismissal for operational requirements can be decided at an early stage then it is clearly within the objects of the Act and in the interests of all concerned for the court to pursue this avenue.

[7] The university's response to the union's complaint is twofold. First, it says that on 3 May 1998 the council instructed the management committee to vigorously and steadily implement the resolutions of 17 April 1998, and this, it submits, means that council approved of and instructed the implementation of the restructuring process including possible dismissals based on operational requirements. Second, it says that on 27 November 1998 the council will be requested to ratify the decision of its committee in respect of the dismissals.

[8] If the council has approved of the dismissals then it need not ratify them. If it has not approved of the dismissals then they need to be ratified in terms of s9(4) of the University of the Transkei Act.

[9] The minutes of 3 May 1998 record that the council reaffirmed all resolutions passed at its meeting of 17 April, which states that:

All preliminary work on restructuring is about to complete. The Disclosure Document is completed and delivered to the relevant structures. The Consultation Team is in place and will begin consultation 18 May 1998.

(See Annexure "ATM 9", at p.336 of the Bundle)

[10] Although not couched in the most appropriate wording, it is clear that, at the least, the council was aware of and approved a process which would culminate in the termination of services of non-academic staff if the consultations could not avoid this result. A decision that the non-academic members of staff who could not be accommodated would be dismissed was not made. Nor, on my assumption, could it have been made as at that stage it would have been premature.

[11] The consultations, I assume, ran their course, and shortly before 21 September 1998 a decision was made by the management committee to dismiss the non-academic members of staff.

[12] The management committee does not have authority to dismiss employees of the university. This power vests in the council. This may properly be inferred from the provisions of s12 of the University of the Transkei Act, which empowers the council to appoint employees at the university and, by necessary implication, to terminate the services of employees.

[13] The management committee seems to recognise this. It proposes that its decision to dismiss the non-academic employees be ratified by council on 27 November 1998.

[14] Section 9(3) of the Transkei University Act makes it clear that the council is not divested of the responsibility for performance of a function assigned to a committee. This is further affirmed by s9(4), which provides that:

Any decision taken by such a committee in the performance of any function so assigned shall be presented for ratification to the council ... at its first meeting after the decision was taken.

[15] It was submitted by Mr Soni, who appeared for the union, that ratification means that the university could exercise a discretion to ratify the decision or refuse to ratify the decision. In the latter case the decision would fall away. He also contended that until it was ratified by the council it did not have any legal effect. Mr Quinn, who appeared for

the university, submitted that ratification did not mean this. He pointed to the difficulty of the council “micro-managing” the university and submitted that the management committee’s decision was that of the council and that ratification meant that the council had no power other than to approve it. This cannot be so. Ratification means that an act has no legal effect *vis-a-vis* the council unless and until it is adopted or confirmed by the body in question. See **S v Hotel and Liquor Traders’ Association Transvaal** 1978 (1) SA 1006 (T) at 1014B-C.

[16] The council may of course ratify it with retrospective effect. I am also of the opinion that ratify does not mean reverse the legal consequences of a decision of the committee. This is incompatible with the meaning of the verb “ratify”. Ratify is defined in the **New Shorter Oxford Dictionary** as “Confirm or validate (an act, agreement, etc., esp. one made in one’s name) by signing or giving formal consent or sanction.” See also **S v Hotel and Liquor Traders’ Association Transvaal**, *supra*, at 1012H-1013A regarding the meaning of approve *viz*:

According to the Shorter Oxford English Dictionary, 3rd ed., p. 88, [approve] means (I) “to make good”, “to attest with some authority”, “to confirm authoritatively”, “to pronounce to be good”. According to Webster, New International Dictionary, 3rd ed, p. 111, it means “to sanction officially, to ratify, to confirm”. According to Woordeboek van die Afrikaanse Taal, vol. III, p. 337, the Afrikaans equivalent “goedkeur” means: “na ondersoek of beoordeling verklaar dat iets aan gestelde eise voldoen, formeel instemming betuig,

bekragtig”.

[17] The decision to dismiss the non-academic members of staff has been taken by the management committee. It, however, has no legal effect unless and until the council ratifies it. This means that the non-academic staff members have not been dismissed within the meaning of the concept as it is used in s186 of the Labour Relations Act. The union is therefore entitled to a declaration to this effect. The union does not require further relief.

[18] There is every reason why, in the exercise of law and fairness, the university should pay the costs of the application.

[19] In the premises the following order is made:

1. It is declared that the services of the non-academic members of staff of the University of the Transkei have not been terminated for purposes of the Labour Relations Act 66 of 1995 by the management committee decision conveyed in the letters dated 21 September 1998 unless and until the Council of the university ratifies the decision of its management committee to terminate their services.

2. The first respondent, the University of Transkei, is to pay the costs of the application.

A A LANDMAN

Judge of the Labour Court

DATE OF HEARING: 11 November 1998

DATE OF JUDGMENT: August 14, 2007

For the applicant: Adv V. Soni

Inbstructed by: MA Gumbi Inc

For the respondent: Adv R.P. Quinn

Instructed by: Smith, Tabatha-Barnes and Ross Inc