

A Holocaust survivor's case

By Steve Adler

THIS CASE took place in the 1980s when I was a trial court judge in Jerusalem. The bench consisted of two public representatives, one from the labor sector and one from the employer sector, and myself. It was the first time for me that surviving the Holocaust was relevant in a labor law case.

Shlomo (not his real name) worked for two years at the Moriah Hotel (today the Dan Panorama), was dismissed, and sued in the Jerusalem Regional Labor Court to receive severance pay.

Shlomo worked in the hotel's kitchen and was caught leaving work with a bag of food that the guests had not eaten. Workers were forbidden to take food out of the hotel, and therefore management wanted to dismiss him. According to the hotel workers' collective agreement, a union-management disciplinary grievance committee was held, with Shlomo present. After Shlomo said that he understood the hotel's policy that workers could not take food out of the kitchen and promised not to do so, management agreed to cancel the dismissal, but it was agreed that if he were caught again, he would be dismissed without severance pay. A few months after the disciplinary hearing, Shlomo was again caught taking food, and as previously agreed, he was dismissed and denied severance pay.

Shlomo sued the hotel in the Jerusalem Regional Labor Court for severance pay. Israeli Severance Pay law entitles a dismissed worker severance pay of one month's salary for every year worked. However, if the dismissal is for a serious disciplinary violation, the labor court can deny or reduce severance pay. The issue in this case was whether Shlomo's disciplinary violation justified denying him severance pay.

The burden of proof to justify denial or reduction of severance pay is on the employer. The hotel's human resources manager testified and explained the rule preventing theft by kitchen workers, who should not put aside food for themselves instead of serving it to guests. Leftover food is not wasted but given to charity. Workers in the hotel are served meals and there is no reason for them to take food. The manager explained that theft is a serious offense in hotels, and the protection of



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The Dan Panorama, formerly the Moriah Hotel.

guests' property is vital. Many valuable items are in the hotel, guests leave their belongings in their rooms, hotel workers enter the rooms to make up the room, and therefore the hotel management takes great care to prevent theft anywhere in the hotel, including in the kitchen and dining room.

The union person who represented Shlomo did not deny the dismissal agreement, but requested that the court consider his personal situation, which is what made this case special.

Shlomo testified that he grew up in the area of Russia that was occupied by the Nazis in World War II, and being Jewish, was incarcerated in a concentration camp. He suffered terribly, and survival was dependent on stealing food. After liberation by the Red Army, he was sent to Siberia, where conditions were terrible. It was cold, the living quarters were like a prison, and again survival was dependent on stealing food.

Finally, he was allowed to immigrate to Israel, received an immigrant's apartment in Jeru-

salem, and began working at the hotel. There was food left over at the hotel kitchen that the guest didn't eat and was thrown away, so he stole some cooked potatoes the first time and a few pieces of chicken the second time. He acknowledged that it was not the right thing to do, but he was short of money and needed it and was used to stealing food in order to survive. His financial situation was difficult, and the severance pay would be a big help for him and his wife.

There were no further witnesses, and as the parties were not represented by attorneys, there were no summaries. Labor Court trials are less formal than in the general court system, and parties can represent themselves. When cases are not complicated or the parties do not have the funds to hire an attorney, they can represent themselves. I told the parties they could wait in the courtroom, and if possible, we would hand down the judgment after a recess.

The judge's discussion in chambers was like a history lesson. Many Holocaust survi-

vors and Russian immigrants who live in Israel suffered terrible conditions in camps that the Germans established to murder Jews, and in the Russian Gulag, where theft was often a way these people could survive. The case was during a period of mass Russian aliyah, when Israel was absorbing hundreds of thousands of immigrants who had to adjust to life in a new country. Shlomo had suffered in the concentration camps and the Russian Gulag.

On the other hand, the hotel industry is an important economic sector, and there is no question that both employers and unions support a strict policy to prevent theft. Hotel guests had to be assured that management will do their utmost to protect them and their belongings while they are at the hotel. It was not practical to condone theft of food while prohibiting theft from guests' property. Small thefts could easily lead to large serious thefts. Preventing theft in the kitchen was important, and workers must know that the hotel's food is only for guests. Allowing workers to take food home might encourage them to withhold some from guests.

The public representatives had different opinions. The labor sector PR emphasized the difficulty of preventing employee theft in the hotel industry. The worker was warned and given a second chance, and it would be a bad workplace policy and precedent if we gave him severance pay, which could be seen as a reward for theft. The employer PR was sympathetic to the worker who was a Holocaust and Gulag survivor. He felt that dismissal was punishment enough, and the court should not deprive Shlomo of the severance pay set by law. He added that the worker was a new immigrant who had no resources, was short of money because he was dismissed and had to look for another job, and therefore very much needed the severance pay.

I told them that the section of the Severance Pay law and collective agreement that we were applying foresaw situations like this, where there were significant reasons to deny the worker severance pay but also mitigating factors that justified granting him part of the severance pay to which he is entitled by law. The hotel's policy was justified, management



Illustrative photo of World War II veterans attending a wreath-laying ceremony at Yad Vashem.

had given the worker a second chance, and the union agreed to the dismissal.

However, justice is both law and mercy. The dismissal was a serious punishment for the worker. Until he found another job, Shlomo and his wife had income only from unemployment benefits. The law enabled the court to consider the worker's personal situation and grant partial severance pay.

I suggested that since this worker had worked two years at the hotel and was entitled to severance pay of two months' salary by law, we should reduce it to one month. The employer sector PR agreed, but the labor sector PM said that we should deny the worker all his severance pay. We returned to the courtroom and announced the majority judgment: the worker's serious disciplinary violation, theft, warranted cancellation or reduction of the severance pay set by law. However, the court takes into account the personal history of this worker and decides that the worker's severance pay would be reduced to one month's salary. ■

The writer is a former president of the National Labor Court.