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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR254/01

2001-10-18

In the matter between

ROBERT ALAN SAUNDERS

Applicant

and

ARNOLD CHATZ EDENVALE & OTHERS

Respondent

J U D G M E N T

LANDMAN J: This is an application brought by Robert Alan Saunders against Arnold Chatz Edenvale as the first respondent, the Dispute Resolution Centre of the Motor Industry Bargaining Counsel, the second respondent, and Commissioner Russel Moletsani the third respondent.

On 21 December 2001, an arbitration award was made by the commissioner in respect of a dispute between the applicant and Arnold Chatz Edenvale. The commissioner upheld the dismissal of the applicant on 21 June 2000.

The applicant was dissatisfied with this award and he seeks to review and set it aside in this court. He submits that the commissioner, in arriving in his findings, exceeded his powers and did not apply his mind to the proceedings. This is said *inter alia* in regard to schedule 8 of the Labour Relations Act, being the code of good practice. Item 9 provides that:

"Any person determining whether a dismissal for poor work performance is unfair should consider -

- (a) whether or not the employee failed to meet and performance standard, and
- (b) if an employee did not meet the required performance standard, whether or not
 - (i) the employee was aware or could reasonably be expected to have been aware of the required performance standard, and
 - (ii) the employee was given a fair opportunity to meet

the required performance standard, and

- (iii) dismissal was an appropriate sanction for not meeting the required standard."

The heads of argument set out in detail the items of evidence which the commissioner is alleged to have ignored or downplayed. It was submitted that this shows that the commissioner did not apply his mind to the evidence and that this constitutes a gross irregularity.

I have examined the record, the award and the heads of argument. Some of the points relied upon are immaterial to the proper decision of the commissioner. Other points have been considered by the commissioner in the sense that they are consistent with his finding. This points to their having been considered and disregarded in arriving at his final conclusion. Other alleged failings simply amount to an attempt to appeal the award. This, of course, is not permissible.

It is alleged that the commissioner erred in finding that it was suggested to the applicant that he should consider accepting the position of either a service advisor or a technician. It was submitted that there is no foundation for this in the record. During October 1999 the employer offered the applicant an alternative position. One which was more suited to his technical talents and to his apparent lack of

administrative skill. He did not accept this. There is no indication of why it was not accepted. The commissioner noted this to be the case.

I am disturbed about the portion of the evidence (which appears on page 45 of the record). Mr Coetzer is asked:

"Why was it necessary in the circumstances, Mr Coetzer, to terminate the applicant's services after this inquiry had concluded? --- Mr Saunders, after the inquiry was held changed his whole attitude towards the business. He threw stuff around in the workshop. It was brought to my attention and I just felt that the relationship of trust had been broken and we decided to terminate his services.

And that was based on the chairperson's recommendation? --- Correct.

Did you consider that recommendation carefully?

--- Yes, we did."

I am not able to evaluate this remark. It was not pursued in cross examination. The bundle of documents including the chairperson's recommendation has not been placed before me. It may be as stated by Mr Coetzer that the dismissal took place on the basis of the recommendation. Certainly nothing appears to have been made of this.

The commissioner's finding that the sanction of dismissal was fair is justifiable, having regard to the applicant's refusal to consider accepting a more suitable position the previous year; his inability to function as a service manager and the absence, at the time of his dismissal, of a suitable alternative position.

In the circumstances therefore the application to review and set aside the award is dismissed.

A A Landman

Judge of the Labour Court of South Africa

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