

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA
BRAAMFONTEIN
2001-11-13

CASE NO: JR745/01

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In the matter between
10 THOMAS NETSHIFHEFHE Applicant
and
CCMA Respondent

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J U D G M E N T

REVELAS, J: This is an application in terms of section 145 of the Labour Relations Act, 66 of 1995 ("the Act"). The applicant was
20 dismissed by the third respondent, his former employer, subsequent to a disciplinary hearing held on 23 March 2001. The applicant felt that his dismissal was unfair, and referred a dispute to the Commission for Conciliation Mediation and Arbitration ("CCMA"), where conciliation failed, and the matter was arbitrated by the second respondent ("the
25 arbitrator").

The charges which gave rise to the applicant's dismissal were gross insubordination, creating tension in the workplace, not following procedures, jeopardising the Standard Bank contract, and bringing the company into disrepute. The applicant and his colleague were found
30 guilty after the testimony by Mr de Villiers, the bank manager, the evidence of the supervisor, and other employees. According to Mr de Villiers, he could no longer work with the applicant whom he required to trust when he was at the bank.

The factual background to this incident was that the third
35 respondent provided services to Standard Bank. The applicant had worked in the printing department, where it was of importance to observe priorities and to ensure that printing was done on time. The applicant had worked the night shift, when the production was under the control of the bank supervisor.

40 On the evidence, on the morning of 14 March, the bank manager phoned, one of the witnesses said that no production had taken place that morning, and the witness had told the manager that he would come in the next day as the employees had already left. A meeting took place on Wednesday, 15 March, during which Mr de Villiers took statements
45 from the parties.

The allegation was that the applicant and his colleague refused to take production instructions during the shift, which had the effect of creating tension in the workplace, and also placing the respondent in jeopardy with its client.

The arbitrator listened to all the evidence by various witnesses, summed it up in his award, and found as follows, and it is necessary to quote in this regard from his award:

"In this case the applicant is charged with a number of offences and ultimately dismissed. He denies the charges. The supervisor and the manager testified that he refused to work and to obey an instruction to work. A number of questions, I believe, require to be answered. Why did Mr Derbyshire telephone de Villiers on the morning of the 13th if there was no problem? Why did he phone again on 16 March? More critically, why did he feel the need to phone the bank at 4 am to enquire if everything was alright, if indeed everything was alright as the applicant had me believe? 4 am is not a time when people normally phone to enquire. Why, if there was no problem with production did de Villiers hold two meetings with his staff if everything was normal? Applicant does not deny these meetings. Why did Patrick feel the need to call the superintendent at 12 am if production was proceeding normally? Unfortunately the applicant is not able to answer any of these questions satisfactorily. He says:

On the one hand, he did not refuse to carry out any instructions. On the other, he said that his work was finished. Yet on the other hand he says the printer was down. Not one of these versions gels with the evidence tendered by the respondent.

I find that the respondent's version therefore is more probable, and I find that the applicant did refuse to comply with the instructions to work when instructed by the supervisor and the manager. In the circumstances I find that there is no justification for the allegation that the dismissal was unfair. I find that the procedure followed by the respondent was fair, even considering the criticism made in relation to the appeal.

Accordingly the application is dismissed."

On the grounds raised by the applicant I am to interfere with this award. However, before I can interfere with an award made by an arbitrator I have to be satisfied that the conclusion the arbitrator came to was reasonably and rationally disconnected to the facts.

The applicant has put forward no grounds in support of such a finding. Furthermore, the applicant has presented its matter in the form of an appeal, or rather a rehearing of the matter which I, sitting as a court of review, am not entitled to do.

In the circumstances the application is dismissed.

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