

| Sneller Verbatim/MLS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR 229/01

2002-08-03

In the matter between

ROWANS CONSTRUCTION

Applicant

and

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

1ST Respondent

MATEE D, NO

2nd

Respondent

LOGGENBERG A M

3RD Respondent

J U D G M E N T

EX TEMPORE

REVELAS J:

1. This is an unopposed application for review of an arbitration award in terms of which the third respondent was reinstated in the employ of the applicant who had previously dismissed the third respondent for alleged misconduct.

2. A dispute for an alleged unfair dismissal was referred to the Commission for Conciliation, Mediation and Arbitration, ("the CCMA"), where the first respondent, the arbitrator, held the dismissal to be unfair on the basis that the third respondent committed no misconduct whatsoever.
3. The grounds upon which the applicant submits that the award should be interfered with on review is that the arbitrator who conducted the arbitration proceedings under the auspices of the CCMA had made himself guilty of gross misconduct.
4. On the facts before me, which are not in dispute, this submission appears to be correct. The arbitrator, according to the founding affidavit, had an "intense discussion" with the third respondent during a forty minute break taken during the arbitration proceedings.
5. At no time during this break did the arbitrator have any discussion with the applicant's representatives and there was no indication why the second the arbitrator entered into these discussions.
6. An application was brought for his recusal but the first respondent dismissed the application without providing adequate reasons. The arbitrator also made certain statements in his award which tend to support to the applicant's complaint of perceived bias.

7. The following are examples thereof and I quote from the award on page 60 of the record:

"The explanation by the applicant's representative in that the respondent was very rude and even threatened him during ... is to my mind, more probable than not. It came out clear during the arbitration hearing in my presence again, albeit hearsay."

I quote further:

"The charges of insolence and deliberate reduction of production are far-fetched in this instance. Let alone the respondent's failure to state what were the grounds for the dismissal in the in house hearing."

8. This is factually incorrect simply because there is a record of the disciplinary hearing where such allegations were put forward.
9. These and other statements to which I am not inclined to quote in this judgment, demonstrated the second respondent's attitude to the matter.
10. In the circumstances the arbitration award should be set aside and referred to the CCMA to be arbitrated by a different commissioner.
11. I make the following order:
1. The award made by the second respondent is set aside and the dispute is referred to the CCMA for arbitration before a different commissioner.

E. Revelas