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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR 1150/01

2002-11-20

In the matter between

STANDERTON BUTCHERY

Applicant

and

CCMA

Respondent

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J U D G M E N T

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LANDMAN J: The Standerton Butchery dismissed Ms Johanna Tshabalala for stealing meat from the refrigerator. The dispute was referred to the CCMA. The commissioner who heard the evidence and handed down an award ordering the butchery to pay her compensation equivalent to 12 months' remuneration.

Mr Khimshener appears to have justifiably found that Ms Tshabalala was guilty of theft or attempted theft. The commissioner interferes with the sanction and replaces it with the one described above.

The award consists of four pages, the last sentence on page 3 is incomplete but the pages are numbered and therefore it must be accepted that the entire award is being placed before me.

In any event, the commissioner was served with the papers and had an opportunity to point out any deficiencies or omissions had there been any.

The butchery seeks to review and set aside the award. The grounds on which the review is based are set out in paragraph 32 of the founding affidavit.

I need not set them out for purposes of this judgment although I do take them into account.

The commissioner accepts that Ms Tshabalala stole or attempted to steal the meat. He also accepts that the trust relationship between the parties had irretrievably broken down. The commissioner was concerned that the butchery had not inconsistent in its application of the rule against theft and a disciplinary penalty for theft.

It is true that Mr Carelse, the proprietor of the butchery, testified that he had not on a previous occasion when Ms Tshabalala and others had been involved and had been accused of stealing knives and meat, dismissed them. But the butchery had preferred criminal charges against other employees although they had been discharged by the criminal court because it had been found that the employer's search of their bags was unconstitutional.

However, the commissioner overlooked the fact that Ms Tshabalala was most certainly aware of the consequences of theft. Indeed, there cannot be an employee who does not know that theft is morally wrong, that theft is in breach of contract and that theft can lead to severe disciplinary consequences.

Her employer's leniency to urge her in the past does not constitute condonation of her actions. It is indeed an aggravating factor. There were no grounds to interfere with the employer's sanction.

The commissioner's award of compensation is therefore not justifiable having regard to the facts, it constitutes an unwarranted intervention in the sanction which was appropriate and fair.

In the circumstances therefore the award is set aside and replaced with the finding that the dismissal of the applicant in the

arbitration, Ms Tshabalala, was substantively and procedurally fair.

There will be no order as to costs.

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