

| Sneller Verbatim/MS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1090/01

2002-12-06

In the matter between

SHOPRITE CHECKERS (PTY) LTD

Applicant

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

1st Respondent

COMMISSIONER PHILIP COHEN

2nd Respondent

THE RETAIL AND ALLIED WORKERS UNION

3rd Respondent

TJIKANA D

4th

Respondent

J U D G M E N T

REVELAS, J:

1. This is an application in terms of section 145 of the Labour Relations Act 66 of 1995 as amended. The applicant does business in the retail sector sells

groceries and prepares food. There is a deli section on the premises of this particular store of the applicant. The fourth respondent was an employee of the applicant until her services were terminated for allegedly eating chicken in the deli section. The applicant based its observation on video footage where the fourth respondent was seen eating a chicken leg and a bit of rice.

2. At this stage it is not important to decide whether or not she ate giblets or which is a leg in question. What is common cause is that she indulged in eating (or tasting) food. The question is whether she breach a disciplinary rule and whether dismissal was the appropriate sanction. The Commissioner who arbitrated the dispute relating to the alleged unfair dismissal of the fourth respondent, made certain findings which do not seem to be rationally connected to the facts before him at the arbitration hearing.
3. Unfortunately there is no record in this matter. In certain circumstances an application for review should fail, but based on certain statements made by the Arbitrator, it is my view that this matter should be referred back to the Commission for Conciliation Mediation and Arbitration to be arbitrated by a different Arbitrator. It is common cause in this matter that the Commission lost the tapes of the proceedings and that no record could be transcribed.

4. In the circumstances I make the following order:
 1. The award of the second respondent is set aside and the matter is referred back to the Commission for Conciliation Mediation and Arbitration to be arbitrated before a different Commissioner.
 2. There is no order as to costs.

E. Revelas