

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

(NOT REPORTABLE)

CASE NO: **D823/05**

In the matter between

10 **UNIVERSITY OF KWAZULU-NATAL**

Applicant

and

ELMS

Respondent

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**JUDGMENT DELIVERED BY
THE HONOURABLE MADAM JUSTICE PILLAY
ON 25 MAY 2007**

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PILLAY D, J

[1] In this review the first respondent employee was dismissed for gross insubordination, in that he is alleged to have made malicious and false statements against Mr Temple, the head of the department.

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[2] It was not disputed that the statements alleged to have been made were offensive, malicious or false. The issue was whether the employee made the statements at all.

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[3] The arbitrator was faced with two mutually-destructive versions – did he or did he not make the statements? Two witnesses for the applicant, David and Joseph, testified that he did. The arbitrator rejected their testimony. He found, amongst other things, that they

had reason to fabricate their evidence against the employee. The arbitrator preferred the evidence of the employee and his witnesses, despite finding the following:

- 5 (1) The employee had tried to establish a false alibi as his defence at the disciplinary inquiry.
- (2) The employee changed his alibi defence when computer evidence showed that he left the main campus at about 23:48.
- 10 (3) Moodley's evidence that the employee urged him to support his alibi defence was acceptable.
- (4) The employee lied when he denied asking Moodley to corroborate his alibi defence.
- (5) The employee had "scant regard for the truth and (was) prepared to manipulate evidence in order to secure his job".
- 15 (6) The employee's witness, Dlamini, did not hear the conversation between the applicant and David. He could not say therefore, that the employee did not make the offensive statements.
- 20 (7) The employee's witness Hadebe was not present when the applicant allegedly made the statements.
- (8) Ntuli had had a grievance against Temple in the past and was no less open to fabricating evidence than David and Joseph, assuming that they had an axe to grind with the employee.

[4] In all the circumstances, the award is irrational and unjustified by the evidence presented at the arbitration.

[5] The application for review is granted with the first respondent paying
5 the costs.

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PILLAY D, J

10 DATE OF HEARING: 24/05/07

DATE OF JUDGMENT: 25/05/2007

FOR THE APPLICANT: MR CHADWICK OF SHEPSTONE & WYLIE

ATTORNEYS

FOR THE RESPONDENT: MR BRUCE OF BARRY BRUCE ATTORNEYS