

IN THE LABOUR COURT OF SOUTH AFRICAHELD AT CAPE TOWNCASE NO:

C373/2006

DATE:

7 MAY 2008

5 In the matter between:

THE CRAZY STORE (PTY) LIMITED

APPLICANT

and

THE COMMISSION FOR CONCILIATIONMEDIATION AND ARBITRATION1st RESPONDENT10 COMMISSIONER LUNGILE MATSHAKA2nd RESPONDENTCLARA ISABELLA SOPHIA SWIEGERS3rd RESPONDENT

JUDGMENT

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PILLAY D, J:

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[1] The applicant employer contends that the second respondent, the Arbitrator, committed gross irregularities which render her reward reviewable. The first irregularity alleged is that the arbitrator refused to postpone the arbitration to enable the employer to secure the attendance of its witness who refused to attend the proceedings despite being subpoenaed.

[2] The arbitrator weighed the rights and prejudices to the parties at pages 17 and 18 of the record. Of note, the employee had incurred flight and other expenses to attend the arbitration. The employer had other witnesses, namely Felicia Arendse and the Chairperson of the internal enquiry whom it could have, but did not call.

[3] This ground must fail as the arbitrator's refusal of the postponement was eminently reasonable.

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[4] The second ground of review alleged was that the arbitrator took into account evidence that the employee lied at the previous arbitration which had since been rescinded. The arbitrator's finding of procedural unfairness was based entirely on the evidence, especially the cross-examination of Ms Benning.

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[5] The second ground of review must also fail.

[6] The third ground of review was that the arbitrator considered documentary evidence that was not properly tendered in evidence. The evidence referred to was a letter of commendation which was firstly, peripheral to the issue. Secondly, arbitration is conducted with the minimum of legal formalities. If the employer did not want the letter or any

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other documents to be considered without formal proof, it should have informed the arbitrator during the proceedings.

[7] The third ground of review must also fail.

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In the circumstances the APPLICATION FOR REVIEW IS DISMISSED WITH COSTS.

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PILLAY D, J

15 Date: 11 August 2008

APPEARANCES

For the Applicant: Brendan Guy –Guy and Associates

For the Respondent: Adv A de Wet instructed by CJ Ballan

20 Attorneys