

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

CASE NO JR 1190/2008

In the matter between:

PALE ERIC LESIBA

Applicant

and

**NATIONAL BARGAINING COUNCIL
FOR THE ROAD FREIGHT INDUSTRY (NBCRFI)**

First Respondent

COMMISSIONER D.M. AFRICA N.O.

Second Respondent

STAFF INITIATIVE (PTY) LTD

Third Respondent

JUDGMENT

COETZEE AJ:

Introduction

1. The Applicant seeks to review and set aside a ruling dismissing his application to rescind a dismissal of his case before the Bargaining Council for failure to attend the Conciliation proceedings.

Background

2. The Applicant failed to attend the conciliation.
3. The Commissioner dismissed the matter.

4. The Applicant filed an application to rescind the dismissal ruling.

Analysis of the facts

5. Applicant in a short affidavit explained that he did not attend the conciliation meeting as he was not notified of the date.
6. He also contended that his Legal Advisor was not informed of the conciliation meeting.
7. The Employer on an affidavit submitted proof that the matter was properly set down and that the notice of set down had been faxed to Applicant's Legal Advisors.
8. The Employer, in addition, submitted (hearsay evidence) that the Case Management Officer at the Bargaining Council had received a telephone call from the Applicant's Legal Advisors informing her that the Applicant was critically ill in hospital, and explanation different from the one tendered in the affidavit.
9. The Applicant did not deal with the prospects of success in his Application while the Employer contended that a fair disciplinary hearing resulted in the dismissal of Applicant.

Analysis

10. Applicant's founding affidavit in the Review Application does not specify a specific ground for the review of the ruling.
11. Applicant however in his supplementary founding affidavit seeks to set out further grounds of review. Again, no specific recognised ground of review is formulated.
12. The Second Respondent clearly considered the representations and evidence before him.

13. Second Respondent held:

13.1. That proof was submitted that the notification had been sent to Applicant's Legal Advisor and that Applicant had tendered two conflicting explanations for not attending the conciliation meeting.

13.2. That Applicant had not been truthful about the reason for not attending the Conciliation meeting.

14. Second Respondent's ruling is not one that a reasonable Commissioner could not have made.

Order

15. The application is dismissed.

16. There is no order as to costs.

COETZEE AJ
ACTING JUDGE OF THE LABOUR COURT

DATE OF HEARING: 21 DECEMBER 2010

DATE OF JUDGMENT: 21 December 2010

APPEARANCES:
FOR APPLICANT: In Person

FOR THE RESPONDENTS: No appearance