

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

CASE NO: J504/11

In the matter between:

JOHAN ARMSTRONG

Applicant

and

SOUTH AFRICAN CIVIL
AVIATION AUTHORITY

Respondent

JUDGMENT ON LEAVE TO APPEAL

LAGRANGE, J:

Introduction.

[1] This is an application for leave to appeal against a judgment handed down on 5 May 2011 in an urgent application to prevent the respondent from continuing with disciplinary proceedings against the applicant. The principal basis for the application was that the applicant contended that the employer had already decided not to proceed with disciplinary proceedings in the matter, which should have settled the matter. In the alternative, he asked the court to order the employer to postpone the disciplinary hearing until such time as it reviewed the 'decision' mentioned and, in the event that the disciplinary proceeding did take place, to replace the chairperson.

[2] I was not persuaded that the employer's initial action in not proceeding against the employee was equivalent to the dismissal of charges against an employee after an employee had been charged. I also found that the applicant had not demonstrated any exceptional circumstance that would be the basis for an intervention by the court in incomplete disciplinary proceedings in line with the principles set out in ***Booyesen v Minister of Safety and Security and others (2011) 32 ILJ 112 (LAC)***.

[3] In his application for leave to appeal the applicant essentially reiterates his argument that the former CEO's decision not to pursue charges against him is binding on the respondent unless set aside on review. The applicant suffered no prejudice as a result of the respondent revisiting that decision in the light of the subsequent complaints lodged against him, as the employer is not seeking to rectify deficiencies in a previous disciplinary process: no disciplinary process took place previously.

[4] The respondent rightly points out that the earlier deliberations of the respondent were in fact about what steps if any the respondent should have taken against a third party as a result of the applicant's own complaint.

[5] The only prejudice facing the applicant is that he is now facing the prospect of an enquiry for the first time, which does not detract from his right

to be subject to fair disciplinary procedures. The applicant has advanced no basis why the court's finding on the alleged apprehension of bias on the part of the chairperson was wrong.

[6] The applicant reiterates allegations about his rights to representation in the disciplinary proceedings, but never sought any relief in this respect in the original application. Consequently, it is not a matter that can be raised on appeal.

[7] I do not believe there is any reason why another court would have dealt differently with this application on an urgent basis, and accordingly the application must be dismissed.

Order

[8] The notice of the application for leave to appeal was signed on 23 May 2011, but was only filed on 14 June 2011, unnecessarily delaying the appeal process. I see no reason why in the circumstances, the respondent should have to continue incurring further legal costs in defending this matter when there is so little merit in the case.

[9] Accordingly, the following order is made:

- a. The application for leave to appeal is dismissed.
- b. The applicant is ordered to pay the respondent's costs of this application on an attorney own client scale.



ROBERT LAGRANGE

JUDGE OF THE LABOUR COURT

Date of judgment: 29 September 2011

(In chambers)

LABOUR COURT