

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

Case no: C 641 / 2009

In the matter between:

GORDON ROBERT LAMASTRA

Applicant

and

THE NATIONAL COMMISSIONER OF POLICE **First respondent**

THE PROVINCIAL COMMISSIONER OF POLICE **Second respondent**

RULING ON LEAVE TO APPEAL

STEENKAMP J:

[1] On 19 November 2010 I made an order in the following terms:

- 1.1 The second respondent's application for condonation for the late filing of his answering affidavit and heads of argument is dismissed.
- 1.2 The first respondent's award dated 1 April 2009 is reviewed and set aside in terms of section 158(1)(h) of the Labour Relations Act.
- 1.3 The award on sanction is substituted with the following award:
"The second respondent (i.e. the employee, Gordon Robert Lamastra) is dismissed with effect from 1 April 2009".
- 1.4 There is no order as to costs.

[2] As appears from the order, the second respondent in the matter was the employee, Lamastra. He has now applied for leave to appeal.

- [3] The application for leave to appeal is directed at my findings on condonation as well as the merits. I do not think it would be sensible for me to separate the two. Were I inclined to grant leave on either aspect, it would make sense for the Labour Appeal Court to address both aspects of the judgment.
- [4] The test for granting leave to appeal is by now trite. The applicant must show that he has reasonable prospects of success on appeal.¹ It has also been stated as the question whether another court could come to a different conclusion.
- [5] The background facts are set out fully in the judgment, which I enclose. In short, Lamastra, who is a police officer, stole darts from a shop. In an internal disciplinary hearing, the chairperson imposed a sanction of a “suspended dismissal” for six months and a fine of R500. I found that, given the facts of the case, this was so lenient that no reasonable decision maker could have come to the same conclusion.
- [6] I think it is doubtful that another court would come to the conclusion that it could be expected of the South African Police Services to keep a thief in its employ. However, in paragraphs [27] – [39] of my judgment, I set out the anomalous situation with regard to the review of internal disciplinary hearings that has arisen in the light of the judgments of the Constitutional Court in *Chirwa v Transnet*² and *Gcaba v Minister of Safety and Security*³; and that of the Supreme Court of Appeal in *Ntshangase v MEC for Education, KwaZulu-Natal*.⁴
- [7] Given that anomaly, it may be possible that another court could come to a different conclusion on the question of reviewability.
- [8] The application for leave to appeal is therefore granted. Costs are to be costs in the appeal.

¹ *Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering* 1986 (2) SA 555 561 E.

² 2006 (4) SA 367 (CC)

³ (2010) 31 ILJ 296 (CC)

⁴ 2010 (3) SA 210 (SCA)

STEENKAMP J

Date of judgment: 4 February 2011

For the applicant: Attorney Dave Heggie

For the respondents: Adv Ewald De Villiers - Jansen

Instructed by The State Attorney