

REPUBLIC OF SOUTH AFRICA



THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not reportable

Case no: P360/12

In the matter between:

**AIR TRAFFIC AND NAVIGATION SERVICES
COMPANY LIMITED**

Applicant

and

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

DANIE OOSTHUIZEN N.O

Second Respondent

SOLIDARITY obo BLACKETT, J

Third Respondent

JUSTIN BLACKETT

Fourth Respondent

Heard : 16 May 2013

Order : 16 May 2013

JUDGMENT-REASONS FOR ORDER

AC BASSON J

[1] On 18 May 2013 this Court gave the following order:

1. The application for review is granted but only in respect of the finding on sanction.
2. The award is substituted by an order that the applicant pays the fourth respondent compensation in the amount of eight (8) month's salary.
3. No order as to costs.

[2] The applicant in this matter is the Air Traffic and Navigation Services Company Limited (hereinafter referred to as "the applicant" or "ATNS"). The fourth respondent (Mr Blackett) was employed as an Air Traffic Service Assistant. It was not in dispute that that applicant fulfils a statutory responsibility of controlling air traffic throughout the Republic of South Africa. For this purpose the applicant employs a number of Air Traffic Controllers responsible for the safety and control of air traffic. The applicant fulfils its functions within a highly security conscious environment where it is of paramount importance that the employees can be trusted with sensitive information which they may come across in the performance of their day to day duties.

[3] Mr Blackett was given a previous verbal warning for making a comment on the social network Facebook regarding certain information that he became aware of by virtue of the performance of his duties with the applicant. The remarks made by Blackett were also reported in a newspaper in the Eastern Cape and caused considerable embarrassment to the applicant. The applicant viewed these actions in a very serious light and accordingly issued a verbal warning to Blackett.

[4] A few months later Blackett posted video footage of an emergency landing of an aircraft on the social network YouTube. The applicant viewed this in a

serious light and charged Blackett with misconduct. According to the applicant it regarded the actions of Blackett as unpredictable and irresponsible. Further according to the applicant, the trust relationship between the applicant and Blackett has, as a result of this incident, suffered severe deterioration to the point where Blackett can no longer be trusted to refrain from breaching its communication policy. Blackett was subjected to a hearing and was dismissed.

- [5] Blackett referred a dispute about his unfair dismissal to the Commission for Conciliation, Mediation and Arbitration ("the CCMA").
- [6] The CCMA Commissioner evaluated the evidence and came to the conclusion that the applicant was not guilty as charged and consequently found that the dismissal of Blackett was substantively unfair. The commissioner ordered his reinstatement.
- [7] The CCMA Commissioner, however, also recognized in his award that he may be wrong in his conclusion that Blackett was not guilty of misconduct and proceeded, on the premises that Blackett was guilty as charged to consider the question of an appropriate sanction. The Commissioner concluded that even if he was wrong in his assessment of the evidence, he is nonetheless not persuaded that dismissal was the appropriate sanction. In this regard the Commissioner took into account that Blackett displayed remorse in emails sent to his manager. The Commissioner further concluded that the incident was not that serious because Blackett was not even suspended after the incident. The Commissioner accordingly concluded that dismissal would, in any event, not have been an appropriate sanction even if Blackett was guilty as charged.
- [8] I have considered the evidence and I am of the view that the Commissioner's finding that the dismissal was substantively unfair is reasonable against the evidence led at the arbitration. I must, however, point out that the basis for this finding was the fact that the Commissioner was of the view that the posting of the video did not constitute ATNS activity. The Commissioner also did not regard the publication of the video as contravening the directive of the applicant which prohibits the publication of confidential information. What is, however, clear from the award is the fact

that the Commissioner was not absolutely convinced that he has interpreted the evidence correctly, hence his alternative finding that, even if the dismissal was substantively fair, dismissal was not the appropriate sanction.

[9] The only issue that therefore remained was the issue of an appropriate remedy or put differently, was it reasonable for the Commissioner to have reinstated Blackett.

[10] The issue of an appropriate remedy was debated at length during the hearing. It is clear from section 193(2) of the Labour Relations Act¹ that although reinstatement is the preferred remedy for unfairly dismissed employees, compensation should be granted when one or more of the exceptions mentioned in paragraphs (a) to (d) apply. In deciding whether or not to grant reinstatement the Commissioner must have regard to the circumstances and the evidence that were placed before him. In this regard it was submitted on behalf of the applicant with reference to the nature of the business of the applicant and the legislative environment within which it operates, that reinstatement was unreasonable in the circumstances. The applicant therefore submitted that reinstatement was not the appropriate remedy in the circumstances and submitted that the Court should find that compensation was more appropriate in the circumstances. I have considered the evidence and I am of the view that the finding of reinstatement was unreasonable. The Commissioner ought to have taken into account the fact that Blackett has caused embarrassment to the applicant and that the applicant has lost confidence in Blackett following the incident. The applicant operates in a very specific environment and the evidence was that the applicant had to trust an employee to obey all lawful and reasonable orders and that he or she will carry out such functions and that he or she will protect and promote the business and interest of ATNS and preserve its reputation and goodwill. Blackett clearly disregarded the previous instructions and this caused the breach in the trust relationship.

[11] I have considered the record and it is clear in my view that the trust relationship between the applicant and Blackett had broken down and that the Commissioner has ignored the evidence in respect of the breakdown of

¹ Act 66 of 1995

the trust relationship. I am therefore in agreement that the Commissioner's failure to apply his mind to this evidence caused him to arrive at an unreasonable decision regarding sanction.

[12] I am therefore of the view that the award in respect of sanction should be replaced with an order that the fourth respondent is awarded compensation equal to eight months' salary. I make no order as to costs.

AC BASSON J

Judge of the Labour Court

24 July 2013

LABOUR COURT

APPEARANCES:

For Applicant : Advocate A A Mphahlele

Instructed by : Snail Attorneys

For Respondent : Advocate A Redding SC

Instructed by :