



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

CASE NO. JR 2572/10

In the matter between:

PPC DWAALBOOM (PTY) LTD

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

First Respondent

COMMISSIONER SAM ALIDZULWI MUVHANGO N.O.

Second Respondent

NUM OBO PERCY MALEBYE

Third Respondent

Date of Judgement: 14 January 2014

JUDGMENT FOR LEAVE TO APPEAL

MOTHIBI AJ

- [1] The Third Respondent seeks leave to appeal against the decision of this court on 19 July 2013 in which an award of the Second Respondent was reviewed and set aside and the award was substituted with a ruling that his dismissal by the Applicant was fair (the judgment).

- [2] The application for leave to appeal was lodged with the Registrar on or about 23 September 2013. The application is approximately six weeks out of the time period provided for in terms of rule 30 of this court.
- [3] There has been no application for condonation.
- [4] The Applicant's appeal is limited only to the finding that his dismissal was substantively unfair. The Applicant does not challenge the Court's ruling that the arbitration award issued by the Commission for Conciliation, Mediation and Arbitration (CCMA) be set aside. The order sought is leave to appeal only in respect of the order substituting the award with an order that the dismissal of Malebye was substantively unfair. In this regard the Applicant contends that it ought to have been found by this Court that the dismissal of the Applicant as a sanction was too harsh under the circumstances and was inappropriate considering "the fact that the employer retained one of the employees that was involved in the fight". In effect based on alleged inconsistency.
- [5] Leave to appeal is refused. It is refused for the following two reasons:
- 5.1 The application for leave to appeal is late. There has been no application for condonation.
- 5.2 The Court is satisfied that there is not a reasonable prospect that another Court would come to a different conclusion. This Court having set aside the CCMA's ruling exercised its discretion to substitute the arbitration award. The court was furnished with a full record of the arbitration proceedings under review. The Court is satisfied that having regard to the record that dismissal was the appropriate sanction in the circumstances. It will be remembered that the

Applicant did not deny having committed the misconduct for which he was dismissed. Furthermore, the Court is satisfied that the inconsistency argument raised by the Application has no merit whatsoever in the circumstances that would justify a finding that the Applicant's dismissal was too harsh a penalty.

Order

- [6] Based on the foregoing two reasons the application for leave to appeal is dismissed with costs.

MOTHIBI AJ

Acting Judge of the Labour Court of South Africa