

# **JUDGMENT**

## **IN THE LABOUR COURT OF SOUTH AFRICA**

### **HELD AT JOHANNESBURG**

Reportable: No

CASE NUMBER: J1076/98

Of Interest: No

DATE: 1999-04-08

In the matter between:

JUDITH XABA SIBIYA

Appellant

and

INTERACTIVE TECHNOLOGIES (PTY) LIMITED

Respondent

## **J U D G M E N T**

**BASSON, J:**

This matter came before Court for judgment by default.

The applicant, Mrs J X Sibiya, was retrenched by the respondent, Interactive Technologies (Pty) Limited, in August 1997 in terms of a letter dated 13 August 1997 (attached as ANNEXURE C to the papers), stating the following:

"Dear Judith

We have just been advised by Shoprite Checkers that they are taking the customer

care department inhouse and terminating their services with us. I am afraid that as a result of this I have to retrench a number of people and we have accordingly decided to reduce staff in the Johannesburg office. I am sorry to advise that your services are therefore terminated with immediate effect. You will be paid your full salary for this month August 1997 and we will pay you your full salary of the end of September as well. We will obviously pay any outstanding leave due to you at the end of September 1997. Thank you for all your hard work, loyalty and dedication which you have given to ATC and we wish you all the best for the future."

The applicant was in the employ of the company since June 1995. The applicant testified that absolutely no proceedings or consultations preceded the retrenchment letter dated 13 August 1997 (above). She was just given the letter and then had to leave the premises of the company.

Clearly the dismissal was procedurally unfair as none of the procedures prescribed by sec 189 of the Act were followed.

At the date of her dismissal the applicant earned an amount of R2 756,00 per month (as it appears from ANNEXURE A to the papers).

The applicant referred the dismissal dispute to the CCMA already in August 1997.

The conciliation hearing was held and the outcome of the dispute referred to conciliation (at ANNEXURE F to the papers) states that the dispute remained unresolved as at 16 September 1997.

The applicant then made arrangements to obtain legal assistance at the end of December 1997 and this was granted. The applicant's representative thereafter proceeded with the matter to the Labour Court. The applicant's legal representative stated from the bar that he only managed to secure a case number (after requesting at the beginning of January 1998) in May 1998. The papers were then filed with the Court in July 1998. In my view, none of the above constituted serious delays that can legitimately be held against the applicant in exercising my discretion in regard to compensation in terms of section 194(1) of the Labour Relations Act, 66 of 1995 ("the Act").

The applicant claims compensation on the basis of the procedurally unfair dismissal and in this regard I quote from section 194(1) of the Act:

"If a dismissal is unfair only because the employer did not follow a fair procedure the compensation must be equal to the remuneration that the employee would have been paid between the date of dismissal and the last day of the hearing of the arbitration or adjudication, as the case may be, calculated at the employee's rate of remuneration on the date of dismissal. Compensation may however not be awarded in respect of any unreasonable period of delay that was caused by the

employee in initiating or prosecuting a claim".

As pointed out above, there is no such unreasonable period of delay in the present matter.

It is also clear from the provisions of section 194(2) of the Act that compensation awarded to an employee must be capped to an equivalent of 12 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal. This is namely the maximum amount of compensation to be awarded where the dismissal is also substantively unfair.

It would, in my view, be anomalous if an employee can claim more in the case a dismissal which is only procedurally unfair than in a case where the dismissal is both procedurally and substantively unfair.

Accordingly, the compensation (also in regard to procedural unfairness) should be capped at an amount of 12 months' remuneration calculated at the employee's rate of remuneration on the date of the dismissal.

In the event I make the following order:

1. The retrenchment of the applicant by the respondent on 13 August 1997 was procedurally unfair.

2. I award the (applicant) compensation in terms of section 194(1) of the Act, to the amount of R2 756,00 times 12, that is, a total amount of R33 072,00. No order is made as to costs.

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**BASSON J**