

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

DATE: 14 June 2000

CASE NO. J1330/98

In the matter between:

FIDELITY GUARDS HOLDINGS (PTY) LTD

Applicant

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION AND OTHERS

Respondents

J U D G M E N T

LANDMAN, J:

- [1] Fidelity Guards Holdings charged Mr Russell Starfield, an operational manager, with six charges, found him guilty of four charges and discharged him. He referred a dispute to the CCMA. The matter proceeded to arbitration before the first respondent, a commissioner of the CCMA.
- [2] The commissioner heard the evidence and found that charges (e) and (f) were the most important charges. He found that Mr Starfield was not

guilty in respect of the misconduct alleged in those charges. However, the Commissioner found that Mr Starfield was guilty of misconduct regarding three other charges. These were:

- A(a) You started at the Spar on the 26th March 1997 without invoicing the client and/or signing a guarding agreement up to 30.6.97.
- (b) Over-posted a five day guard, Grade C, at Falcon Bros, Amandelbult for an extended period without receiving any income for his service.
- (c) Posted guard with firearms without issuing them with the necessary permits and/or licences resulting in a guard being arrested by mine security at Amandelbult for illegal possession of a firearm on 30.6.97.≡

[3] The commissioner said in relation to charge (a) that Mr Starfield had been grossly irresponsible in the performance of his duties. As regards charge (b) the commissioner said that Mr Starfield did not perform his duties with the necessary due diligence as would have been expected of any person in his capacity. The commissioner remarked that charge (c) ought to have been the most important charge as there are certain legal requirements to be met surrounding the issuing of firearms.

[4] The commissioner considered the overall situation and made certain remarks in regard to the attitude of Fidelity Guard Holdings towards Mr Starfield. He came to the conclusion that the facts did not justify the dismissal of Mr Starfield. He awarded compensation to Mr Starfield in the amount equivalent to six months salary.

[5] Fidelity Guard Holdings is dissatisfied with this award and has sought to review it. One of the grounds on which Fidelity Guards relies is that the commissioner had no jurisdiction to entertain the dispute. The

commissioner disputes this and has filed an affidavit in which he appears to oppose the granting of the relief. I must, however, point out that his affidavit is defective. His affidavit was signed before the registrar of the CCMA with whom he obviously has a relationship in his capacity as a commissioner. Not only that, but the registrar is also an employee of an interested party, namely the second respondent. Be that as it may, it is necessary for me to consider whether or not the commissioner had jurisdiction to entertain the dispute.

[6] Fidelity Guard Holdings points out, in its founding affidavit, that the dispute was referred some 44 days outside the expiry of the 30 day period within which a referral may be made. See section 191(1)(b) of the Labour Relations Act 66 of 1995. No application was made at the conciliation stage for the condonation of the late referral and no application was made in this regard at the commencement of the arbitration proceedings. It is submitted that as a result the CCMA and the commissioner had no jurisdiction to entertain the arbitration proceedings as they had no jurisdiction to entertain the conciliation proceedings. The certificate which had been issued did not cure that deficiency.

[7] This point has been considered in a few decisions in this court. In Shoprite Checkers (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others (1998) 10 ILJ 891 (LC) it was decided by Pretorius AJ that where the CCMA has no jurisdiction to conciliate a dispute an arbitrator would also have no jurisdiction. In a later decision, Tiani Franco Hair Stylists v Howard and Others (2000) 21 ILJ 361 (LC) Soni AJ came to the conclusion that condonation may only be granted by the commissioner conciliating the

dispute. If this is not done any further steps are a nullity. I am bound by the decisions of this court unless I am convinced that they are clearly wrong. There is nothing which I can find which indicates that these decisions are clearly wrong although it is possible that they could have been decided differently.

[8] In the circumstances, I am bound to find that the commissioner in this matter had no jurisdiction to entertain the matter. For this reason the application must succeed. The award of the first respondent, under Case No. NW2941 of 19 March 1998 is therefore reviewed and set aside. There will be no order as to costs.

DATED AND SIGNED AT JOHANNESBURG ON THIS 21ST DAY OF JUNE 2000.

A A LANDMAN

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

: 13 June 2000

t: 14 June 2000

nt: Mr S Snyman of Snyman Van Der Heever Heyns Inc

ent: No appearance