

Sneller Verbatim/PJ

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J4428/00

2001-06-05

In the matter between

POOLLO, RAYMOND

Applicant

and

EDGARS CRESTA

Respondent

J U D G M E N T

Delivered on 5 June 2001

REVELAS, J:

- 1.This is an application in terms of section 145 of the Labour Relations Act, 66 of 1995 ("the Act") to review and set aside an arbitration award issued by the second respondent, a commissioner appointed by the first respondent ("the CCMA").
- 2.
- 3.The applicant, a former employee and cashier employed by the of the third respondent, a retail store, was dismissed on 27 September 1999. The applicant alleges that his dismissal was unfair and that the third respondent did not follow a fair procedure in dismissing him. Consequently he referred the dispute about the dismissal to the CCMA where the matter was arbitrated by the second respondent ("the arbitrator") after conciliation had failed.
- 4.The charge levelled against the applicant was that he had an overbank of

exactly R499,99, the value of a cash credit and later when he cashed up at 16h58 his till balanced exactly. According to the applicant he had borrowed money from a colleague and that is why the till balanced.

5.The arbitrator found as follows in his award: **"Should I find Poolo guilty of this offence, notwithstanding the fact that he had a small clean disciplinary record and over four years service with the company, dismissal is an appropriate penalty."**

The second respondent then referred to the matter of *CCMA v Kabusa and Another 1991 [12] ILG40LAC* and *Anglo American t/as Bossendal Restaurant v Khumayo 1992 [13] ILG573LAC*.

6.The arbitrator was persuaded on a balance of probabilities that the applicant deliberately and intentionally processed the cash credit in question for the following reasons set out in his award:

"Poolo [the Applicant] did not dispute that he conducted the transaction, although he appear to deny that any procedures existed with regard to cash credit transactions. I accept the company's version that such procedures did exist and that Poolo should have been aware that these procedures existed.

Thinane in fact confirmed that in such instances there must be a customer who produces a receipt plus the merchandise and that the customer's details must be reflected on the docket. As stated previously I do not believe it necessary for the company formulate to an explicit rule to expect of its employees not to act with gross dishonesty in the performance of their duties. Paolo was unable to explain why the docket contained no customer details whatsoever except to say that the transaction was approved by his superior and he 'could not remember what happened on that day'. It is common cause that there was no authorisation by his superior on the docket. Poolo's explanation for an overbank some 15 minutes after the transaction took place, is furthermore unconvincing. It is just too improbable that he would have borrowed the exact amount of R499,99 from his colleague, Solly's till, when there was no reason to do so. If he had borrowed the money to hand to the customer who had ostensibly returned the merchandise for

R499,99 this money would have been given to the customer and not have been in Paolo's till at the time of the spot audit. In fact that no customer actually existed for the cash credit was further verified on video footage. I accept Thinanes's argument that it is conceivably possible to serve two customers at once. With respect, that is not the issue in this matter. What is highly improbable is for the customer to arrive at the till, be served, a transaction entered into the cash registered (sic) and then the customer leave within the space of one minute and thus not been captured at all on video, even fleetingly.

I have also taken into consideration the fact that the merchandise' stock number on the transaction was identical to that of merchandise, in a transaction that occurred earlier in the day. Poolo did not dispute the fact that no two items of merchandise had the same number or that the merchandise for the transaction in question was not found. He argued that the merchandise could have been used by a colleague, but no actual evidence was tendered regarding the whereabouts of the merchandise which had ostensibly been returned. Having weighed up the two contradictory versions before me on the balance of probabilities, I accept the company's version that this was a ghost transaction for which no corresponding customer nor merchandise existed."

7. Then with reference to the Labour Appeal Court decision in *De Beer's Consolidated Mines Ltd v CCMA (2000) 21 ILJ 1051 (LAC)* the arbitrator held the seriousness of the offence must be measured by the way it affects business and not the length of service. This view was also held in the matter of *Toyota South Africa Motors (PTY) LTD v Radebe and Others [1998] 11 BLLR 243 (LA)*. Accordingly the applicant's dismissal was held to be fair.

8. The applicant's representative contends that the arbitrator displayed bias by standing down the matter from 09:00 to 14:00 in the afternoon at the third respondents behest. Apparently the third respondent was also some 20 minutes late.

9. In my view, this submission is without any basis. The mere fact that a party is accommodated by an arbitrator, is not ***per se*** a form of bias. The applicant argues that the delay was calculated to prejudice the applicant. There is nothing before me to suggest that this was the motive of the arbitrator or to victimize him as argued.
10. The applicant has couched its review application in the form of an appeal which this is not. Reviews are not concerned with the result but the manner in which the evidence was adduced and whether the conclusion is reasonably connected to the reasons given for the outcome.
11. In my view, to interfere with the second respondent's findings in this matter would be tantamount to granting an appeal which an application for review may not be. Furthermore, I do not believe that even on an appeal the applicant would have succeeded in persuading a court to interfere with the findings of the second respondent.
12. In the circumstances the application for review must fail. The application is dismissed.

E. Revelas