

Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J4861/00

2001-10-02

In the matter between

ANNA KHULALEKANI TSHABALALA

Applicant

and

IRIS MOTORS CC t/a GRANT AVENUE

Respondent

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J U D G M E N T

Delivered on 2 October 2001

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REVELAS J:

- 1.This is an application brought by the applicant for the review of an arbitration award made by a commissioner, Advocate D J Pienaar of the Dispute Resolution Centre. The applicant was represented by a Union, but today she appears on her own behalf.
- 2.The applicant was dismissed by Iris Motors CC trading as Grant Avenue, following an incident of alleged theft.
- 3.The evidence before the arbitrator, was that Mr Mphulo of the respondent testified that he watched a video monitor on 18 April 2000. He then observed that the applicant had sold to a customer a tin of insecticide and did not follow the proper till procedure.
- 4.She apparently pressed the key that shows the price of the product at the behest of the customer, yet did not follow the procedure that would have registered such transaction as a sale when the customer eventually paid

for it. He did not confront her immediately, as he felt he had to confirm what he had observed.

5. A proper day checking stock ending was conducted, which confirmed what was seen on the video monitor. Stock had been counted on the morning of the 18th and again on the morning of 19 April. It was found that one tin of insecticide was unaccounted for.
6. Two notices for a disciplinary inquiry was given to the applicant personally and to the applicant's sister. The applicant did not attend the disciplinary hearing and the respondent proceeded with the enquiry in her absence.
7. The chairman at the disciplinary inquiry reviewed the evidence - including the video tape - which according to the applicant was not shown at the arbitration hearing and the relevant computer printout and found the applicant guilty of dishonesty and theft and dismissed her.
8. The applicant decided to refer a dispute about the dismissal to the CCMA.
9. The commissioner concluded that the evidence against the applicant was overwhelming and as she was a cashier and her conduct irreparably damaged the trust relationship between herself and the applicant. He found that her dismissal was substantively fair. He was also found that her dismissal was procedurally fair as the respondent had done all in its power to secure the applicant's attendance at the disciplinary hearing, and had complied with schedule 8 of the Act.
10. The applicant submitted that at the arbitration that she was not able to present her case properly because she was not shown a proper printout from the till. In response thereto Mr Mphulo stated that the print-out produced at these proceedings simply contained more detail than the print-out she was referring to. Mr. Mphlo offered to show her where it differed from the one she was referring to, but the applicant declined to accept this offer, according to the arbitrator.

11.The grounds of review put forward by the applicant was *inter alia* that the video camera on which Mr Mphulo relied, was not present during the arbitration hearing. In this regard the arbitrator concluded that Mr Mphulo himself gave evidence at the disciplinary inquiry as to where the video tape was and what he had observed. It would probably have been more desirable if the video tape had been shown. However, the arbitrator was of the view that Mr Mphulo gave evidence of what had happened and the video tape on it's own, was not what led to the finding at the disciplinary inquiry that she was guilty of theft, or the arbitrator=s finding that the dismissal is substantively fair.

12.As long as the commissioner in question came to a conclusion which was reasonably connected to the facts, the court may not interfere with that conclusion. The applicant has proffered no ground upon which I could set aside these findings on review.

13.In the circumstances the application for review is dismissed.

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E. Revelas