

Sneller Verbatim/HDJ

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR680/02

2002-10-16

In the matter between

TUBE SEGAETSHO ARCHIBALD

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION

1ST Respondent

2ND Respondent

3RD Respondent

RKS

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J U D G M E N T

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REVELAS J:

1. This is an application for a review of an arbitration award of the second respondent, who found that the dismissal of the applicant by the third respondent, by whom he was employed, was substantively and procedurally fair. At the arbitration hearing both

parties were represented and there was an agreement to the effect that the arbitrator would decide the matter on the documents presented by the parties. In other words, no other evidence was required or led.

1. 2. It appears from the award of the arbitrator, that the applicant was charged with three offences, namely (a) misappropriation of a government vehicle (- to which he pleaded guilty -) and (b) that he drove recklessly and negligently. He was involved in a car accident on the same day, (c) that he obstructed of the course of justice by driving away from the scene of the accident and (d) that he was drunk whilst so driving.
3. Blood alcohol tests were taken but no collision report was obtained.
4. It is not apparent what was before the arbitrator or by way of evidence, or what the full record before the arbitrator comprised of. For instance, the arbitrator had sight of minutes of a disciplinary inquiry which is not complete. The transcript of the evidence is also incomplete. A certain document, called "Annexure F", was also before the arbitrator in which the following is said at paragraph 7.2:

"There is an excessive high tendency of misappropriation of especially government vehicles in this province, resulting in unnecessary and unwarranted depreciation of the value of

these state assets, fruitless expenditure, due to the fact that the taxpayer's money and interests are directly involved, and in the light of the well publicised policy of the administration to stamp out the type of occurrence. There rests a strong duty upon the government towards the community to act against the employees who are using these vehicles, *inter alia*, to ensure that it will be utilised correctly and to erase the perception of irresponsible government."

5. In his finding the chairman of the disciplinary inquiry held, that offences of which the applicant was found guilty, are aggravated by the following factors.

"7.4.1: He misused his senior position in order to obtain possession of the vehicles.

7.4.2: He had consumed liquor, well knowing that he was going to drive a government vehicle.

7.4.3: He had endangered the life of a colleague as well as innocent members of the public.

7.4.4: He had endeavoured to escape the consequences of his actions by speeding away and he attempted at the last moment, absolving himself with an incredible explanation."

6. According to the arbitrator, the result of the alcohol test was before him and he referred to a document called "Annexure A", which has notably been omitted from the applicant's papers. I do not have the full record in front of me. It is extremely difficult for

me to interfere with the award when the applicant has only selected certain portions of the record to place before the court. The applicant also pleaded guilty to all the charges after the evidence by the respondents had been led at the disciplinary inquiry. This was observed by the arbitrator as well.

7. The main and essential dispute before the arbitrator was that the applicant was prejudiced because the third respondent had instituted a disciplinary hearing after a considerable period had elapsed.
1. 8. It was submitted by the third respondent that the delay in the procedure was caused by a complicated investigation into the misconduct and the third respondent had to rely on outside sources to provide the alcohol report and the collision report. The latter report was not obtained.
9. The appeal of the applicant also was referred from one department to the next. A condonation application also failed and the ruling on that aspect was subsequently set aside. There have been several causes for delay, not all to be blamed on the third respondent.
10. The arbitrator found in respect of the delay **"that the period of the delay between the discovery of misconduct and the disciplinary hearing was proportional to the amount of time the respondent had been under investigation and the**

accumulation of evidence." And that the respondent had to depend on outside sources over which he had no control.

11. The arbitrator concluded that the sanction of dismissal was appropriate because the applicant knew about the third respondent's rule against misuse relating to the control of motor vehicles and as a senior employee he should have acted more responsibly.
12. He further took into account that the applicant had pleaded guilty to the offences and was legally represented by a representative who acted on the instructions of the applicant.
1. 13. It was also argued that there were certain mitigating factors which outweighed the aggravating features of the misconduct. It was argued that the applicant was remorseful as he reimbursed the third respondent for the damage caused by his misconduct to the vehicle and pleaded guilty.
14. However, I have to take into account that he only pleaded guilty to the more serious charges after he heard what evidence was presented. This does not constitute remorse. Furthermore, there was the finding of the presiding officer at the disciplinary hearing, that the applicant justified his actions with what he termed "an incredible version".

15. In my view the third respondent considered all the evidence he was required to take into account and made his decision based on that evidence. It may have been better if oral evidence was led, but the parties were legally represented and they agreed that the arbitrator decide the matter on the documentation presented to him.

16. In the circumstances I make the following order:

1. The application is dismissed.

E. Revelas