

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT CAPE TOWN)

CASE NO: C1026/02

DATE: 21-8-2003

In the matter between:

SOUTH AFRICAN TRANSPORT & ALLIED APPLICANT

WORKERS UNION

and

The Commission for Conciliation, first applicant

Mediation and Arbitration

COMMISSIONER P VAN STADEN Second Respondent

A DAVIDS t/a DAVIDS TAXIS Third Respondent

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LANDMAN, J:

The South African Transport & Allied Workers Union bring this application on behalf of one of its members, Mr G N van Boven. The first respondent is the Commission for Conciliation, Mediation and Arbitration (the "CCMA"). The second respondent is Commissioner Piet van Staden in his official capacity. Third respondent is Mr A Davids t/a Davids Taxis.

It appears from the record that Mr van Boven was employed by Mr Davids as a driver of a taxi and had been so employed for about two years. On 8 February, Mr Davids terminated the services of Mr van Boven. The Commissioner found that there had been a dismissal. He

then proceeded

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to deal with the question whether the dismissal was substantively and procedurally fair. The Commissioner decided that it was not substantively fair. The Commissioner was of the opinion that the very brief interchange before dismissal was sufficient. A fair hearing had been given.

In my opinion, the Commissioner's reasoning is not rational and the decision is not justifiable having regard to the material which served before him. It was incumbent upon the Commissioner to determine why Mr van Boven had been dismissed. The reason for doing this is because that would determine what procedure should have been followed prior to any termination. Indeed, if the proper procedure had been followed there may have been no termination.

In the circumstances of this case, it appears to me that the reason for dismissal can be found in the following facts. First, there was an incident referred to as the "Table View incident". This incident, it is common cause on the papers before me, but may not have been common cause at that stage, did not concern Mr van Boven. The second ground for the dismissal was the fact that Mr van Boven had been fined R200 by the Blaauwberg Taxi Association. He still owed R100. The effect is that he was not entitled to drive a taxi until he had paid the fine. It therefore seems to me that this was a case of temporary incapacity. Once Mr van Boven paid the balance of the fine he would be able to resume his employment. In these circumstances, it was incumbent upon Mr Davids to try and avoid the possibility of dismissal. According to Mr Davids he could have gone and spoken to the Blaauwberg Taxi Association about the matter. He says he might have been prepared to

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lend the R100 to Mr van Boven. Certainly, the least that he could have done was to put Mr van Boven on terms and say to him that he has a reasonable period of time within which to settle that debt so that he

could resume his services. None of this was done. There is an obligation on an employer to avoid dismissal wherever possible.

In the circumstances, I am of the view that the Commissioner should have found that the dismissal was neither substantively nor procedurally fair.

Mr Field, who appeared on behalf of the applicant, asked that this Court should make the order which the Commissioner should have made. He submitted that this Court should order the reinstatement of Mr van Boven in his employment with Mr Davids. On these facts set out before me, I am unable to determine whether or not Mr van Boven is still unemployed because it is apparent that he obtained employment some three weeks after he had been dismissed.

In the circumstances I do not propose to entertain the reinstatement of Mr van Boven. I am of the opinion that he would be sufficiently compensated if he were to be awarded compensation in the sum of an amount equal to two months his wages which are calculated on an amount of R300 per week.

Accordingly, the arbitration award of the second respondent issued under case number WE3371/02 is reviewed and set aside and replaced with the determination that the dismissal of Mr van Boven was substantively and procedurally unfair. Mr Davids is to compensate Mr van Boven for his unfair dismissal in an amount of R2 400 equivalent to two months' Mr van Boven' remuneration calculated at R300 per week. There is to be no order as to costs.

**SIGNED AND DATED AT BRAAMFONTEIN ON 17 SEPTEMBER
2003**

A A LANDMAN
JUDGE OF THE LABOUR COURT OF SOUTH AFRICA