

Sneller Verbatim/lks

IN THE LABOUR COURT OF SOUTH AFRICA
BRAAMFONTEIN

2005-05-18

CASE NO: JR1289/04

REPORTABLE

In the matter between

NKWANA SANNY

Applicant

and

BRENDA VAN DER WESTHUIZEN N.O.

First Respondent

BARGAINING COUNCIL FOR THE

MEAT TRADE

Second Respondent

WATLOO MEAT & CHICKEN Third Respondent

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J U D G M E N T

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REVELAS, J.:

[1] This is an application for review brought in terms of section 145 of the Labour Relations Act 66 of 1995 as amended ("the Act") wherein the applicant seeks to review an award made by the third respondent. In terms thereof it was found that his dismissal was procedurally and substantively fair.

[2] Briefly the facts are that the applicant was charged with insubordination or refusal to carry out a reasonable instruction, namely to put a plank under a certain machine used in the butchery department where the applicant had been employed as a blockman. The second charge was intimidation in that he allegedly threatened a certain Mr Mashoga, by stating that he would get his brother to kill the said Mr Mashoga, who allegedly wished to expose his theft of meat.

[3] The evidence of several witnesses were led at the disciplinary enquiry and at the arbitration hearing after the applicant had referred a dispute about an unfair dismissal to the Bargaining Council for the Meat Trade in Gauteng.

[4] In a very well reasoned award, the arbitrator set out why certain

credibility findings were made in favour of the witnesses for the third respondent. The applicant's version at the disciplinary enquiry and at the arbitration hearing was one of denial.

[5] On grounds of review, it was argued on behalf of the applicant that a certain Maria who was a tea lady, was the only witness that overheard Mr Mashoga being threatened. It was argued that in the work area where the applicant had been working at the time, there were other employees and they must have heard what was said but there were no such witnesses.

[6] I have listened very carefully to the submissions made on behalf of the applicant by Mr Khoza for the union, and I have come to the conclusion that there are no grounds for me to interfere in the credibility findings made by the arbitrator. It must be remembered that this was after all a review application and not an appeal. However, the arbitrator failed to appreciate the enquiry she was supposed to conduct in respect of the procedural fairness. It was common cause in the proceedings that the applicant received notification to attend a disciplinary hearing but that notification did not set out the charges. There were witnesses who stated that the applicant was told what the enquiry would be about, but there is also one witness who stated that this did not happen. Therefore, there is a dispute of fact and in those circumstances the arbitrator should have found that the procedure was flawed. Instead, the arbitrator found that the applicant had willingly participated in the hearing and that during the hearing it became clear to him what the charges were. In my view, there should have been some form of compensation for that procedural unfairness, but not a significant sum, as the flaw was of a less serious nature.

[7] In the circumstances the arbitrator's award is set aside and substituted with the following:

1. The dismissal of the applicant was procedurally unfair.
2. The third respondent is to pay the applicant compensation equal to two months' remuneration.
3. There is no order as to costs.

E. REVELAS

DATE OF HEARING: 17 May 2005

DATE OF JUDGMENT: 18 May 2005

ON BEHALF OF THE APPLICANT: Retail and Allied Workers Union

ON BEHALD OF THE RESPONDENT: Snyman's Attorneys