

IN THE LABOUR COURT OF SOUTH AFRICA

(Held at Durban)

CASE NO D227/98

In the matter between:

ST MICHAELS SANDS HOTEL

Applicant

and

**HOTEL AND ALLIED RESTAURANT
WORKERS UNION OF SOUTH AFRICA**

First Respondent

MR S SETILAONE

Second Respondent

JUDGEMENT

REVELAS J:

[1] This was an application in terms of section 145 of the Labour Relations Act, 66 of 1995 (hereafter, "the Act"), to set aside the ruling by the second respondent dated the 23rd February 1998.

[2] The issue before the second respondent, a Commissioner appointed by the Commission for

Conciliation, Mediation and Arbitration (hereafter "the CCMA") was whether or not the parties had reached a settlement agreement.

[3] It was the case for the applicant that it had offered a cheque in the amount of R3 500,00 to the employee in question, over which a previous dismissal dispute was before the CCMA. The employee's name is Ms Ngcobo and she is not cited as a party in this matter.

[4] The second respondent, stated the following in the ruling complained of:

"It is not necessary for me to decide whether there was a valid agreement or not for the following reasons:

1. In terms of section 191 of the Labour Relations Act of 1995, the CCMA is the body that unfair dismissals are referred to for arbitration.
2. This matter was referred to the CCMA for arbitration, but was postponed at the request of the parties.
3. No one notified either the CCMA or Ms Ngcobo about an agreement. If they had, they would have been told to put the agreement into writing and state by which date the settlement money should be

given to the applicant. It is CCMA policy to put all settlement agreements into writing so as to obviate the events that have concerned in this matter occurring.

4. Mr Downes should have known better than to assume that there was an agreement based on the conversation on the telephone."

[5] The second respondent then made the following ruling:

"1. I rule that there was no verbal agreement between the parties.

2. The matter is adjourned to a date to be fixed by the Registrar."

[6] Much evidence was lead by the applicant about telephone conversations and notes that were made by Mr Downes in an attempt to prove that an agreement was reached. There was no evidence before me that Ms Ngobo accepted the cheque. The parties were in dispute about whether there was a settlement on the day of the arbitration. Such circumstances alone, seem to suggest that there probably could not have been a settlement agreement.

[7] The second respondent listened to the evidence of Mr Downes and to the arguments of Mr Skeef from the union. Mr Skeef apparently presented his evidence during argument. This allegation is made by the

applicant in its heads of argument and not on affidavit. I was urged to set aside the matter on the basis that there was a gross irregularity which occurred, in that the oath was not properly administered. The second respondent, did not rely on Mr Skeef's evidence to come to his findings if one reads the reasons for the ruling. Therefore in my view, no irregularity was committed in this regard either.

[8] It is quite correct that the second respondent did say that he need not decide the question of whether there was a settlement reached or not. However, he continued to give reasons why he ultimately comes to the finding that there was indeed no settlement agreement. It is, I believe a question of semantics, or he just made a *bona fide* error. I cannot fault his finding in this regard and, since this application is brought in terms of section 145 of the Act, which requires a very strict test for review, I can find no reason why I should set aside the award or ruling made by the second respondent.

[9] The Labour Court must be careful when considering review applications, not to fetter the discretion of Commissioners of the CCMA which they derive from the

Act.

[10] In the circumstances, the application is dismissed.

E REVELAS

ON BEHALF OF APPLICANT :

BARRY BOTHA & BREYTENBACH INC

L ANDERSON

ON BEHALF OF RESPONDENT : NO APPEARANCE

DATE OF JUDGMENT : 12 June 1998.

This judgment is available on the Internet at the
following website: **<http://www.law.wits.ac.za/labourcrt>**