

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO: J 1507/99

In the matter between:

Applicant

and

1st Respondent

2nd Respondent

3rd Respondent

JUDGMENT

LANDMAN J

1. Ms Phyllis Bohale seeks to enforce an award made by a commissioner of the CCMA against her former employer, Schenker International (SA) (Pty) Ltd. Her employer in turn, seeks to review and set aside the award.
2. The employer complains, in its founding affidavit, that the commissioner permitted Ms Bohale's attorney to put leading questions to her witnesses. In heads of argument filed by Mr Krüger, who appears for the employer, it is submitted that the commissioner committed a gross irregularity by allowing legal representation without complying with s 140 of the Labour Relations Act 66 of 1995. See **Ndlovu v Mullins NO and another** 1999 20 ILJ 177 (LC). Mr McLaren, who appeared before the commissioner and in this court, submitted that this part had not been recorded. Assuming that this is the case, then one would have expected that the attorney would not have led his witness in such a manner and that the commissioner would have put an end to it as it would detrimentally affect his ability to judge the credibility of the witnesses.
3. A reading of the record shows that Ms Bohale's attorney objected to the use of leading questions by the employer's representative. It also shows that her legal representative resorted to leading questions on a great many occasions. Mr McLaren argued that the questions were not leading ones but, even he, admitted at least one might be perceived to be leading. Mr McLaren also took a point relating to the Computer Evidence Act which took the employer's lay representative by surprise, leading to a postponement and a cost order.
4. In my view the commissioner committed, at least one, gross irregularity by failing to rein in Ms Bohale's legal representative and was therefore not evenhanded in his supervision of the arbitration proceedings. The employer has legitimate ground for complaint.

5. A crucial issue in the case was whether an instruction to complete invoices was given on 18 December 1998 or on 8 January 1999. The commissioner's decision relating to whether Mr Cook was present on 8 January however reveals that he misunderstood that the completion of a leave form, in this case, after leave allegedly had been taken was evidence of a cover-up. It is a factor but would by no means be decisive. This is probably not a latent irregularity. The legislature, by opting for arbitration, has subjected the parties to the risk of wrong decisions which cannot be corrected by this court.

6. In the circumstances the award dated 19 February 1999 in case GA 30948 is reviewed and set aside and remitted to the CCMA to arbitrate the matter afresh. The application to make the award an order of court is accordingly dismissed. The applicant is ordered to pay the respondent's costs of both applications.

SIGNED AND DATED AT JOHANNESBURG ON THIS 26TH DAY OF JUNE 2000.

Landman J

23 June 2000.

26 June 2000.

Adv T. P. Krüger instructed by MacRoberts De Villiers Lunnon & Tindall Inc.

Mr I. McLaren of McLaren & Associates.