Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: JR658/01

2001-09-11

In the matter between

WITHNEY WABELA MOROTA Applicant

and

DR LAURA NENE Respondent

J U D G M E N T

REVELAS J:

1. This is an application for the review of an arbitration award issued by the second respondent, an arbitrator who conducted an arbitration under the auspices of the first respondent, and made an award in favour of the third respondent, the erstwhile employer of the applicant. The applicant was employed by the third respondent as a security guard.

2. She stated at the arbitration hearing that she employed a security guard as she was very concerned with her safety, and that the applicant had performed very well as a security guard. She testified that in an incident which occurred prior to the one giving rise to the dismissal that the applicant had once, apparently in a moment of losing his temper, pointed a gun at the third respondent's secretary. She had dismissed both of them at the time, but felt sorry for them when they later asked for their positions back, and re-employed them. This, she stated, she did regretfully.

3. At the beginning of 2000 the applicant received a phone call and

subsequently had a meeting with members of Crime Stop, and they informed her that the applicant, and a person employed by the third respondent as a cleaner, had conspired to assassinate her and make it look like a robbery.

4. Subsequently the third respondent hired a private investigator, Mr Slang van Zyl, to investigate the matter. During his investigations a polygraph test was conducted on the cleaner and the applicant. The findings of the polygraph test was that the two parties scrutinised were *"deceptive"*. The third respondent decided to suspend the applicant, but towards the end, as she stated, she impulsively dismissed him.

5. The applicant attacks the fairness of his dismissal both on procedural and substantive grounds on review.

6. Insofar as the substantive fairness is concerned, I am aware that guilt on the part of an employee may not be established solely on the findings of a polygraph test, and in most cases it should not be admitted as evidence, because of the inherent unreliability in such tests.

7. However, on the facts of this case, the second respondent listened to evidence, rejected the version of applicant, and therefore it cannot be said that he did not apply his mind to the facts.

8. It must also be remembered that there was a previous occasion on which the applicant had pointed a gun at an employee in the presence of the third respondent. The third respondent did not make up her mind in favour of dismissing the applicant, based solely on the findings of the polygraph test conducted, but on what an informant had told her. She was phoned by the police and given the information and warned about the conspiracy.

9. It has been held that an employer who suspects an employee of theft has adequate grounds to dismiss. In the circumstances of this case the second respondent cannot be criticised for finding that there were enough facts present on which to find the dismissal to be the

appropriate sanction.

10. With regard to the question of procedure, it is so that there was a complete absence of procedure. But it would be a sad day where if an employer who believes, on sound information given to him or her, that the employee who has conspired to kill her should be entitled to 12 months remuneration as compensation.

11. I therefore also decline to interfere with the decision of the second respondent, that the dismissal was procedurally unfair.

12. In terms of Schedule 8 of the Labour Relations Act, 66 of 1995, there should normally be an investigation, but there could be exceptional circumstances where a hearing cannot be held.

13. My view is in these circumstances there was ample reason not to have a disciplinary inquiry.

14. In the circumstances the application is dismissed.

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E. Revelas