IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN   CASE NO: JS1267/02

2003-02-05

In the matter between

MOFFAT G MHLONGO   Applicant

and

FIDELITY SPRINGBOK SECURITY SERVICES   Respondent

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J U D G M E N T

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REVELAS, J:

1. The applicant referred a dispute about an alleged unfair dismissal to the Commission for Conciliation, Mediation and Arbitration ("the CCMA"). It was in dispute before the Commissioner who conciliated the matter, that the applicant was indeed dismissed.

2. It was the case of the respondent that the applicant had resigned. The respondent tabled a copy of a resignation letter, which was signed by the applicant, was placed

before the Commissioner, Mr R D Fitzcharles. According to his ruling, he listened to the evidence, during which the applicant submitted that he had not signed the letter of resignation and that the signature on the letter was not his.

3. The applicant was disbelieved and it appears from the ruling, that his evidence was rejected as he changed his version as to the signing of a 7.11 referral form "as compare to the signing of the letter of resignation." The Arbitrator added, that he was not persuaded either, that a dismissal in fact took place.

4. The applicant argued, that he would not be able to obtain the relief that he sought if the Arbitrator ruled that a dismissal did not take place. The respondent argued, that it would be prejudiced if the Arbitrator ruled that a dismissal had taken place, in that it had provided the necessary documentary evidence that a dismissal had not taken place.

5. If the applicant was aggrieved about this ruling, and to have it set aside, the correct procedure to follow is to bring an application for the review and setting aside of the ruling, in terms of section 158(1)(g) of the Labour Relations Act tt of 1995 ("the Act").

6. It is not open to a party, who is not satisfied with a CCMA ruling, to simply proceed to the Labour Court and

file a statement of case as if there were no ruling of the CCMA. The ruling of the Arbitrator is binding, in terms of the Labour Relations Act and it will stand, until set aside.

7. Consequently I make the following order:

8. The application is struck from the roll.

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E. Revelas