

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

Case No: JR 1530/04

In the matter between:

JET MASTER (PTY) LTD

Applicant

and

**CENTRE FOR DISPUTE RESOLUTION
METAL AND ENGINEERING INDUSTRY**

BARGAINING COUNCIL

1st

Respondent

COMMISSIONER K. KLEINOT

2nd

Respondent

COMMISSIONER J. MPHAPHULI

3rd

Respondent

NATIONAL CANVAS UNION OF

SOUTH AFRICA

4th

Respondent

VINCENT R SHORTRIDGE

5th

Respondent

JUDGMENT

REVELAS J

- [1] The applicant seeks to set aside the third respondent's ruling in terms of which he refused to rescind an arbitration award obtained in the absence of the applicant.
- [2] The fifth respondent, Vincent Shortridge ("Shortridge"), had been in the employ of the applicant as a welder when he was dismissed by the applicant for alleged theft of copper from the applicant's premises.
- [3] Shortridge, represented by the National Union of Metal Workers of South Africa ("NUMSA") referred a dismissal dispute to the first respondent, and the matter was eventually set down for an arbitration hearing on 25 March. Shortridge was represented by Mr M Ngwenya ("Ngwenya") of NUMSA. Before the matter proceeded, a settlement agreement was reached in terms whereof the applicant would pay Shortridge compensation in an amount equal to one month's remuneration. Ngwenya signed the settlement agreement on behalf of Shortridge.
- [4] Shortridge was aggrieved with the settlement agreement and wished to resile from it. He simply had the matter set down again for an arbitration hearing on 5 May 2004. The applicant also received the notice of set down for that day.
- [5] The applicant immediately wrote to the first respondent ("the Centre for Dispute Resolution" or, "the Centre") and brought to its

attention that an agreement of settlement had been reached with Shortridge, and that it was not going to entertain the matter any further. The Centre then sent the applicant a copy of a letter from Shortridge requesting the Centre to review the settlement agreement because he said, Ngwenya had not represented him at those proceedings. The matter then proceeded on 6 May 2004, and the arbitrator then made an arbitration award in favour of Shortridge, having effectively set aside the settlement agreement. Shortridge was also represented by NUMSA at these proceedings, albeit by a different official.

[6] In my view, the arbitrator committed a gross irregularity in proceeding with the matter in the absence of the applicant. In the absence of a substantive application to have the agreement set aside, there was no obligation on the applicant to attend at the Centre to attend a new arbitration hearing which was set down in terms of an irregular procedure. Consequently, the third respondent failed in his duties as a commissioner in refusing to rescind the default award made by the second respondent. Clearly the applicant had a reasonable explanation for not attending the so-called “arbitration” hearing. Furthermore, it had a *bona fide* defence. The refusal to rescind the award in question, constituted a serious misdirection.

[7] Awards and settlement agreements become enforceable only once they are made orders of court. Except for default awards, which can be rescinded by the Centre, CCMA or Bargaining Council,

awards can only be reviewed by the Labour Court. The same should apply to settlement agreements. Even if a commissioner indeed has the necessary powers to set aside a settlement agreement, (if such a power is perhaps incidental to the nature of a commissioner's duties), such an agreement can only be set aside if a substantive application is brought on notice to the other party. It should never be dealt with as was the case in this matter.

[9] In the circumstances, I make the following order:

1. The third respondent's ruling is set aside and substituted with the following:

“The award of the second respondent (Commissioner K. Kleinot) is set aside”

2. The fourth respondent is to pay the costs of this application.

Elna Revelas
Judge of the Labour Court

Date of hearing: 12 May 2006

Date of Judgment: 16 May 2006

On behalf of the applicant:

Mr Brian Bleazard

On behalf of the fourth to fifth respondents:

Mr C Leeuw of NCUSA