

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR533/02

2002.09.25

In the matter between

GOVERNMENT COMMUNICATION AND

INFORMATION SYSTEMS

Applicant

and

CCMA AND OTHERS

Respondent

J U D G M E N T

EX TEMPORE

REVELAS, J:

1. This is an unopposed application in terms of section 145 of the Labour Relations Act, 66 of 1995 ("the Act").
2. The applicant seeks to set aside the award made by the second respondent in favour of the third respondent, the erstwhile employee of the applicant, who was dismissed by it.
3. The grounds upon which the applicants dismissed the third respondent was for poor performance but also

misconduct in the sense that she absented herself from work on several occasions without explanation, and was often absent from her work-station.

4. During the disciplinary inquiry the applicant was not called by her representative to lead evidence although she pleaded not guilty to the charges. She exercised her right to appeal, and it was indicated that at the appeal hearing new evidence was to be led. This was not done. The arbitrator took a very strong view against the representative of the third respondent, who elected not to give evidence.
5. The third respondent's job description included the management of certain aspects of the applicant in its exhibition studio, in a professional cost effective and efficient manner to government clients, including the office of the President of South Africa, the National and Provincial Governments, the GCIS Head Office and the GCIS Regional Offices.
6. It was not disputed at the arbitration hearing and it was indeed found by the arbitrator that there was some form of counselling conducted with the third respondent at least.
7. There is also a comprehensive list, drafted by the applicant, about the charges and allegations of misconduct. In the report written by the disciplinary inquiry chairman the chairperson took into account that the third respondent is a mother, but that nonetheless she was given sufficient opportunity to

mend her ways and he held the view that the third respondent had illustrated that she no intention to mend her ways. The chairperson found that the aggravating factors far outweighed the mitigating factors as provided by the third respondent.

8. The arbitrator seemed clearly very sympathetic towards the third respondent and found that she had an abusive relationship since 1996, and that this "could have affected work performance", and that was the applicant's case. The arbitrator found that on the evidence before him, it has been established that the third respondent was assessed on a number of occasions and the assessment results were that she was not "doing well". The arbitrator then rhetorically asks: "Did the employer establish the reason why the employee performed?" (*sic*). The arbitrator then answers the question: "Whoever is before me does not say so, yet the applicant performed poorly, but why?"

9. Finally, after expressing criticism about the third respondent's representative, the arbitrator concludes:

"I hold therefore that respondent ... not proved that it has established the reason for poor performance. Applicant had an abusive domestic relationship. Management of respondent knew about this. Employees' system programmes were not used to help applicant in her situation. Applicant was only helpful after the dismissal. Is this not like closing the stable door after the horses had bolted?"

10. It was argued that the arbitrator took into account irrelevant evidence.
11. My criticism of the arbitrator's finding is that she laid great emphasis on an abusive relationship, yet it is not apparent how this influenced the applicant's work situation. The third respondent did not bring this to the attention of the presiding chairperson of the disciplinary inquiry, and neither did she attempt to show how this influenced her work performance at any stage, when she was counselled or otherwise. In my view the arbitrator's conclusion is not rationally or reasonably connected to the facts before him.
12. In the circumstances his award is set aside.