

Sneller Verbatim/ASS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1197/02

2003-03-01

In the matter between

SATELLITE DATA NETWORK

Applicant

and

C MOLLENTZE

Respondent

J U D G M E N T

LANDMAN J: This application has been brought by Satellite Data Network (Pty) Limited against three respondents, including a former employee, Ms Mollentze, to review and set aside a recission ruling handed down by the 2nd respondent, the Commissioner, on 2 June 2002.

Two issues were raised regarding this matter. The first one related to whether or not Satellite Data was in wilful default. It was conceded, for purposes of this application, that Satellite Data was not in wilful default. This then gives rise then to consideration of the second issue.

It is alleged that the rescission ruling is reviewable because the Commissioner failed to apply the correct legal tests in determining whether or not Satellite Data had reasonable prospects of success on the merits of the matter.

The Commissioner in his ruling devoted most of his time to a consideration of whether or not Satellite Data was in wilful default and then, in a paragraph, he deals with the question of whether Satellite Data showed that it had a *bona fide* defence. He says the following:

"The submissions of both the applicant and the respondent in so far as prospects of success is concerned, without getting into detail, there is a lot of dispute of facts which makes it difficult to say in whose favour the prospects are. However, since the onus are on the applicants in this regard it is my view that the benefit of doubt should favour the respondent (employee). In *M M Steel Construction CC v Steel Engineering and Allied Worker's*

Union of SA and others (1994) 15 ILJ 1310 (LAC) the court held that the door will not be closed for a litigant who can show that he has a defence of some merit which he genuinely wishes to pursue. I am not satisfied that the applicant has shown this defence."

Thereafter the Commissioner ruled that Satellite Data has failed to show good cause and he dismissed the application.

This is followed by the following paragraph:

"Notice be further taken that the quantum of the compensation on the award rendered on 26th March 2002 is hereby amended and/or corrected to R220 400,00 (Two hundred and twenty thousand four hundred rand) in stead of R24 600,00 (Twenty four thousand six hundred rand)."

In my opinion the ruling constitutes a gross irregularity and is reviewable. First, if the Commissioner was unable to determine what the facts were then he was obliged to apply the well-known test in *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (AD). Had he applied this test, he would have come to the conclusion that he must decide whether there is a *bona fide* defence on the facts as set out by the respondent together with the facts that the respondent could not deny. Had he done so he would have

concluded that there was a *bona fide* defence. Alternatively he could have referred the matter to oral evidence. Thirdly, he could have concluded that the disputes of fact indicate that there is a *bona fide* defence.

In so far as the Commissioner decided that the quantum awarded was incorrect and *mero motu* decided to amend the original award this too is indicative that there was a *bona fide* defence at least as regards the quantum of compensation. Furthermore on the basis of the concession that there was no wilful default, this is clearly a case where Satellite Data should be afforded the opportunity of stating its case fully as it could have done, had it had proper notice to attend the arbitration proceedings.

In the circumstances, therefore, I am of the view that the ruling should be reviewed and set aside. I make the following order:

1. The rescission ruling handed down by the 2nd respondent on 17 July 2002 is reviewed and set aside.
2. The CCMA is directed to convene an arbitration hearing to consider the merits of the matter.
3. The 3rd respondent is ordered to pay the costs of this application.

SIGNED AND DATED AT BRAAMFONTEIN ON 14 APRIL 2003

A A LANDMAN

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

Date of hearing: 20 February 2003

Date of judgment: 20 February 2003

For applicant: Celeste Allan Attorneys

For respondent: R C Christie Inc