

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case Number: D247/97

In the matter between

Mr D Nzama

1st Applicant

Mr P Ngcobo

2nd Applicant

and

Naughis

Respondent

JUDGMENT

MASERUMULE AJ

1 This is a referral in terms of section 191(5)(b)(ii) of the Labour Relations Act, No. 66 of 1995 (“the Act”), in terms of which the applicants, Dennis Nzama and Petros Ngcobo, seek a determination that their dismissal by the respondent for alleged operational requirements was unfair.

2 The matter has come to Court by way of default judgment.

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3 The respondent was served with the referral on 30 October 1997 and the acknowledgement of the receipt of papers was signed by a company representative. Although the signature is illegible, a stamp appears next to the acknowledgement of receipt. I am therefore satisfied that the respondent was properly served but, for reasons best known to itself, has chosen not to contest these proceedings.

4 Mr Dennis Nzama gave evidence in support of his case. His evidence was to the effect that he was employed by the respondent on 1 February 1997 as a security guard and that he was dismissed on 14 May 1997.

5 In terms of his letter of dismissal, which appears as Annexure A to the referral, Mr Nzama was advised on 14 May 1997 that his services would be terminated with immediate effect due to the parking lot being almost empty. The letter goes on to say that Mr Nzama is thanked for his services and that he will be contacted in due course.

6 A similar letter was written to Mr Petrus Ngcobo on the same date, with the contents being almost identical, save for the fact that in the case of Mr Ngcobo, the letter stated that he was being dismissed because the cleaning services were to be contracted out to another company.

7 Mr Nzama testified that there were no consultations with him prior to receipt of the letter dated 14 May 1997 which terminated his services on that day. His version is, even in the

absence of the respondent, supported by the letter to which I have referred, dated the same day on which his services were terminated.

8 Mr Nzama testified further that prior to the receipt on that date, he was never informed of the possibility of retrenchment, nor was he spoken to by his employer about that possibility until 14 May 1997.

9 From the above facts it is patently clear that the respondent did not comply with its obligations in terms of section 189 of the Act. On the evidence before me, I am not satisfied that there was a valid reason for the termination of Mr Nzama's services, nor am I satisfied that there was compliance with the appropriate procedures set out in that section. The respondent has an onus in this regard, which it has not discharged.

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10 it follows that Mr Nzama's dismissal by the respondent is unfair both with regard to the reason given for it, and the procedure followed in effecting it.

11 The second applicant did not give evidence and was not present in Court. Other than the letter which was addressed to him by the respondent dated 14 May 1997, containing the same information as the one addressed to the first applicant, I have no further evidence with regard to what happened to Mr Ngcobo.

12 Accordingly, I deem it appropriate not to make any order as regards his dismissal.

13 The first applicant, Mr Nzama, has subsequently found alternative employment, and is still employed by his new employer.

14 It appears that the reason why there was a delay in having this matter referred to Court is because it was initially referred to the Commission for Conciliation, Mediation and Arbitration for arbitration. At that arbitration, the Commission established that the dismissal was due to alleged operational requirements of the employer. The matter could not therefore be arbitrated, and was referred to this Court. That was in September 1997. Had the matter been properly referred to Court, it would not have taken as long as it has for it to be heard.

15 In my view, and having regard to the provisions of sections 194(1) and (2) of the Act, I deem it fair and equitable to award the first applicant compensation in the amount of R3 000.00, which is the equivalent of six months' pay.

16 The respondent is also ordered to pay the applicants' costs.

MASERUMULE AJ

Judge of the Labour Court

DATE OF HEARING: 29 September 1998

DATE OF JUDGMENT: 29 September 1998

For the Applicant: Mr IBG Ngcobo of IBG Ngcobo & Partners

For the Respondent: No Appearance