Sneller Verbatim/ms CASE NO. J476/99

IN THE LABOUR COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

PRETORIA

2000-09-18

In the matter between:

HILLARY COSTIN Applicant

versus

VAN TRANSPORT Respondent

J U D G M E N T

PILLAY, J: The issue in dispute in this matter is whether the applicant resigned or was retrenched. The applicant was employed by the respondent to render bookkeeping and administrative services. One of her responsibilities was to attend to the insurances on aircrafts owned by Mr Van der Merwe a member of the respondent. On 23 August 1998 one of the aircrafts crashed in Sudan. On Monday 24 August 1999 Mr Van der Merwe instructed the applicant to fax him a letter confirming the increase in the insurances in respect of the aircraft. It transpired that the insurances had not been increased.

There was a dispute as to whether the applicant had been instructed to arrange for the increases in the

insurances. /...

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insurances. Whatever the position was it was common cause that Mr Van der Merwe was angry about the under insurance of the aircraft and the fact that he had sustained a loss of about R1,5 million.

Mrs Naude testified that on or about 24 August 1998 the applicant telephoned her to request that the insurances on the aircraft be increased and backdated to 3 July 1998. Mrs Naude agreed to do so, until she discovered that the aircraft had crashed and that a claim had already arisen. The applicant denied ever knowing Mrs Naude.

After denying that she had such a discussion, the applicant, under cross-examination enquired when such a discussion had taken place. The question was strange in the circumstances. If the discussion had never occurred then it mattered not when respondent alleged that it had taken place. It was in the interest of the applicant and the respondent to have the insurances backdated and not in the interests of Mrs Naude or the insurance company's interest. The probabilities therefore favour the version of Mrs Naude.

Mrs Naude testified that the date on which the telephone call was made was 27 July. She was obviously mistaken as it is common cause that the crash only occurred a month later. There was also some debate as to whether Mr Van der Merwe returned from Kenya on 24 or 27 August. However, it was common cause that on the date on which he returned he summoned the applicant to a discussion.

On Mr Van der Merwe's version he intended to hold a disciplinary enquiry to dismiss the applicant for the loss he

had/...

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had sustained and her poor performance. However, when he confronted her with the allegation that she had failed to attend to increasing the insurance cover which resulted in the substantial loss, she admitted her fault and offered to resign.
Mr Van der Merwe testified that he had accepted the resignation and at her request allowed her to remain until December or until she found another job.

The applicant's version was that she denied liability for not increasing the insurance and accordingly the loss that ensued. She testified that Mr Van der Merwe had allegedly pressured her to admit liability. Eventually she offered to resign. Mr Van der Merwe told her not to act over hastily. The applicant concluded that Mr Van der Merwe had not accepted her resignation.

These two versions are mutually destructive. I turn therefore to the probabilities of each version. It is common cause that the applicant offered to resign. It is also common cause that Mr Van der Merwe was angry. His evidence that he intended to dismiss her summarily was not challenged. Whether such a dismissal would have been fair or not is not relevant to this case. It seems highly unlikely that in these circum

stances/...

stances that Mr Van der Merwe would not have accepted her resignation. If the suggestion is that Mr Van der Merwe relented during the discussion there is no evidence to that effect. On the contrary, the applicant testified that after the incident

"the work situation was not nice any more." This does not accord with her testimony that Mr Van der Merwe had adopted the attitude of letting bygones be bygones.

Then there is the testimony of Mary Kekana and Janine Smuts. Both of them were not cross-examined on the gist of their evidence that the applicant reported to them that she would be resigning.

The respondent's version is further corroborated by the applicant's efforts subsequently of finding another job and her request for a reference which was prepared shortly before 26 October 1998 when she left the employ of the respondent. Theapplicant also did not claim notice pay which she would have been entitled to if she had been summarily retrenched.

With regard to her discussion with Mrs Van der Merwe on 19 October one aspect is common cause that is that Mrs Van der Merwe had asked her for the books. In order to decide whether Mrs Van der Merwe knew that the applicant's services would be

terminated/...

terminated on 26 October I have only the applicant's version. However, in view of my finding that after the discussion on the day that Mr Van der Merwe returned from Kenya there was a mutual acquiescence that the relationship would be terminated before December, and that she had informed Messrs Kekana and Smuts of intended resignation, it is not necessary to take this aspect further.

In the circumstances the matter is dismissed with costs.

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Counsel for the applicant Ian Mclaren

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Counsel for the respondent C De W Van der Merwe

instructed by J P A Swanepoel

Date of Hearing	2000-09-18