

IN THE LABOUR COURT OF SOUTH AFRICABRAAMFONTEIN

CASE NO: J3332/00

2000-03-22

In the matter between

D G B (PTY) LTD

Applicant

and

1ST Respondent2ND Respondent3RD Respondent4TH Respondent

J U D G M E N T

REVELAS, J:

- 1.This is an application for a review in terms of section 145 of the Labour Relations Act, 66 of 1995 ("the Act") in which the applicant seeks an award made by the second respondent to be set aside.
- 2.The third respondent was dismissed by the applicant for alleged theft. The third respondent then referred the matter to the Commission for Conciliation, Mediation and Arbitration ("the CCMA"), where conciliation failed, and the matter was set down for arbitration before the second respondent ("the arbitrator").
- 3.The arbitrator made an award in favour of the third respondent, reinstating him in the applicant's employ.
- 4.For purposes of this application the award needs to be quoted in full:

"Having heard all the evidence and after due consideration of all the relevant aspects of

the following aspects the following decision has been reached:

The dismissal of the applicant is unfair as the respondent has failed to discharge the onus proving that the applicant committed the alleged offence as contemplated in section 188(1) read with schedule 8 item 2(1) and item 3 of the LRA. Accordingly the respondent is ordered to reinstate the applicant retrospectively to the date of dismissal.

The reasons being briefly that the aforesaid decisions are as follows:

All evidence (sic) does not support the respondent's argument that they did not only lie on the Polygraph test in finding the applicant guilty for the alleged offence, I am satisfied that even on the respondent's own version I could not find any conclusive evidence that linked the applicant to theft except for a Polygraph test, and the subsequent dismissal of the applicant. It is therefore fair and equitable to reinstate the applicant on the same terms and conditions prevailing at the time of his dismissal, without loss of benefits. The retrospective order is equivalent to R30,708-35. The order is to be effective 7 days from the date of the issue of this award whilst the applicant is to be reinstated after 14 days of receipt of this award.

FURTHER TAKE NOTICE THAT COMPREHENSIVE REASONS FOR THE DECISION ABOVE WILL FOLLOW IN DUE COURSE. (My emphasis)."

5.The reasons given for the decision of the second respondent, are scant. In terms of the section 138(7), arbitrators are enjoined only to give brief reasons. Fairness demands that reference to some relevant facts should at least be made to indicate which facts were relied upon in arriving at a conclusion. A bald assertion that the arbitrator was not satisfied, on the evidence, that a certain offence was committed, would fall short of a proper award in most circumstances. Whether, in some circumstances, a bald assertion may suffice as a proper award, would depend on the facts.

6.The arbitrator was requested, in writing, on three occasions, to provide the "comprehensive reasons" which he had promised, in his award but he failed to do so.

7.When dealing with the CCMA, public, employers and employees are entitled to

expect enquiries and requests to be followed up and answered. Where undertakings have been given, to furnish comprehensive reasons for an award, they should be honoured. As matters currently stand, no proper award was given in this matter as the arbitrator's reasoning is still outstanding. The award is thus incomplete. Therefore the award falls to be set aside.

8. The first respondent has indicated that it would oppose the matter. In the notice of motion there is an indication that costs would be sought against the first respondent. Neither the first respondent nor the second respondent appeared at court when the matter was called. They were jointly responsible for the fact that the award is incomplete. In the absence of any submissions to persuade me to the contrary, I believe that a costs order against the first and second respondents would be appropriate.

9. Accordingly I make the following order:

1. The arbitration award made by the second respondent on 7 April 2000 under case number GA55320 is set aside.
2. The dispute which gave rise to the award as aforesaid, is referred back to the CCMA for determination by an arbitrator other than the second respondent.
3. The first and second respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved.

E. Revelas

ant: Danie Erasmus from Danie Erasmus Korten Inc.

ent: Adv. Loyson instructed by Masilela Attorneys