

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

DATE: 19 June 2000

CASE NO. J3256/99

In the matter between:

URBAN SECURITY CC

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION AND OTHERS

Respondents

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J U D G M E N T

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LANDMAN, J:

- [1] Urban Security CC dismissed Mr Johannes Semanya some time ago. He was reinstated and an agreement was reached at the CCMA with the Transport and General Workers Union that "in an event that the employer encounter problems with regard to shop stewards' behaviour, the employer will inform the union in writing and thereafter both parties would have a meeting to discuss the situation". Mr Semanya was a shop steward at the

time.

[2] Some time later Urban Security again had cause to institute disciplinary proceedings against Mr Semenya. Mr Semenya was still a shop steward. The complaint was triggered by a client at whose premises Mr Semenya was stationed as a security guard. It also came to the attention of Urban Security that Mr Semenya had been convicted by a Magistrate's Court of assault with intent to do grievous bodily harm. At least that is what it was believed at the particular time. However, as will be shown later it would appear that he had merely been charged with assault.

[3] On 5 December 1998 Urban Security informed Mr Semenya that a disciplinary enquiry would be held on 14 December. Notice of this enquiry was given to the union. On the same day Mr Semenya was suspended pending the outcome of this enquiry.

[4] When the enquiry convened Mr Semenya was charged with: being absent without permission on 3 December 1998; insubordination; failure to obey rules and regulations and unsatisfactory work performance. The enquiry was postponed from time to time and various attempts were made to inform the union of the matter.

[5] The enquiry resumed on 14 December. It is Urban Security's case that Mr Vorster chaired the enquiry but did not finalise the proceedings. He became ill and Mrs Nursey was appointed to chair the enquiry. The hearing was commenced afresh.

[6] On 26 January 1999 Mr Semenya was found guilty of all the charges and

dismissed. The union referred the dispute to the CCMA. The first respondent, a commissioner of the CCMA, arbitrated the dispute and found the dismissal to be substantively and procedurally unfair and reinstated Mr Semenya with five months back pay.

[7] Urban Security seeks to review the award. It alleges that the commissioner committed 12 gross irregularities. These are set out in its papers. A record was filed but Mr Coetzee who appeared on behalf of the Urban Securities did not refer me to its contents. I have had great difficulty in determining whether the version set out in the founding affidavit is the version which was presented at the arbitration. I also presume that some of the annexures to the founding affidavit correspond to the pages of a witness bundle which served at the arbitration and which was referred to in the record. No steps were taken to identify the documents referred to in the record in relation to the documents which served before me.

[8] The commissioner considered case law in regard to double jeopardy and concluded that it would be unfair to subject an employee to a disciplinary enquiry a second time. The commissioner proceeded to investigate whether the first enquiry had been completed. He found that it had been completed and that Mr Vorster had decided that should Mr Semenya be found guilty by the criminal court he would be dismissed. The criminal court in fact found him not guilty and discharged him. It therefore followed, reasoned the commissioner, that he should not have been dismissed by his employer. The commissioner went on to find that it was therefore improper and unfair to hold a second enquiry.

[9] The notes of the proceedings before Mr Vorster were recorded by Mr Ledwaba. Mr Ledwaba notes that charge 2 was withdrawn and that, in his summing up, Mr Vorster decided "to ignore" charges 2 and 4. He gave Mr Semenya a warning on charge 3. Curiously Mr Vorster is recorded as saying "on charges 1, 2 and 4 Johannes' services should be suspended until the court case is finalised". Mr Vorster added "and should Johannes be found guilty by the court he will be dismissed from Urban Security". By implication if he is found not guilty, he will not be dismissed by Urban Security.

[10] The commissioner's finding that Mr Semenya faced double jeopardy which is unfair and that he was entitled to be found not guilty in terms of Mr Vorster's ruling is rational and justifiable. The commissioner apparently thought that an agreement to conduct the enquiry de novo was not effective and I find no reason to interfere with such a view, particularly as the union was not invited to attend the so-called second enquiry.

[11] In the premises the application to review and set aside the commissioner's award must fail and accordingly the application is dismissed.

DATED AT JOHANNESBURG ON THIS 21<sup>st</sup> DAY OF JUNE 2000

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A A LANDMAN  
JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

: 13 June 2000

t: 19 June 2000

nt: Mr. J. J. Coetsee of Stemmet & Coetsee Inc

ent: Winston Mukansi union representative