

# IN THE LABOUR COURT OF SOUTH AFRICA

CASE NO D817/98

In the matter between

Applicant

and

**COMMISSIONER NEIL VAN DOKKUM  
AND OTHERS**

Respondents

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## JUDGMENT

LANDMAN J:

1. Metrorail experiences major problems of theft and fraud. Many passengers do not pay for their tickets and ride for free while some Metrorail personnel steal fares from their employer. The rules applicable to access controllers provide, inter alia, that all passengers passing thorough their gates must be in possession of a ticket. This rule is immediately followed by rule 11 to the effect that “under no circumstances must cash be collected from passengers”. The trainees were instructed to tell a passenger who did not have a ticket to get one from a ticket officer or to refer the passenger to a security guard who would escort the passenger to a ticket officer. The functions of ticket officer and access controller were kept separate to reduce the incidence of theft. If a ticket officer or security guard was not available the access controller was instructed, during induction, to let the passenger pass rather

than jeopardise his or her job by accepting money.

2. Mr Mntambo, an access controller, took money, marked money, from two passengers who were traps posing as passengers who had not purchased their tickets. Mr Mntambo took their fare and asked them to stand on one side while he collected tickets as no ticket officer or security guard was in sight. He was then investigated and the marked money was discovered in his pocket.
3. Mr Mntambo was dismissed for theft and after hearing evidence the matter proceeded to arbitration before the first respondent, a commissioner of the CCMA.
4. The commissioner found the Mr Mntambo had infringed rule 11 which was a reasonable rule and that, although the amount was small and in spite of a long service and an unblemished record, he should be dismissed. Mr Mntambo was aware that Metrorail was conducting entrapment exercises but nevertheless he broke the rule and took the money.
5. Mr Mntambo seeks to review and set aside the award. He sought to justify his conduct with reference to what was termed the two confusing and conflicting rules. Assuming that this line of attack were to be permissible, which it is not, the rules are clear. Mr Mntambo was under orders not to take money in any circumstances. He took money notwithstanding his knowledge of the rule. It is true that two traps were used but the record of events, which I have outlined above, is based solely on the Mr Mntambo's version of events. The traps did not give evidence but the commissioner was justified in finding him guilty on his own version.
6. I have considered whether the sanction was so shocking so as to permit me to intervene, even though it was not raised as a ground, but in the circumstances it cannot be said to be inappropriate.
7. In the premises the application is dismissed.

SIGNED AND DATE AT DURBAN THIS 9TH DAY OF AUGUST 2000.

A A Landman  
Judge of the Labour Court

8 August 2000

: 10 August 2000

Mr Mbatha of Mbatha and Company