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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J884/00

2001-08-02

In the matter between

CITY EXPRESS STORES (PTY) LTD

Applicant

and

ERNESTJOHANNES MOKHOTHU

Respondent

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J U D G M E N T

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LANDMAN J: City Express Stores (Pty) Ltd dismissed two of its employees for theft. These two employees were Ernest Johannes Mokhothu and a lady referred to as Sylvia.

Mr Mokhothu was dissatisfied with his dismissal and he referred a dispute to the CCMA. The dispute came before Commissioner Molotsi who heard evidence and then made an award in terms of which he found that the dismissal of Mr Mokhothu was unfair. He ordered City Express to pay compensation to Mr Mokhothu in the sum of R10 228,00.

Subsequently an application for review has been filed on behalf of City

Express Stores. This application has been opposed by FEDCOR, a union acting on behalf of Mr Mokhothu.

I have examined the award carefully and it appears that the Commissioner found that Mr Mokhothu had the keys to the safe as did Sylvia, that money was missing from the safe in the amount of R18 577,00. The commissioner appears to have accepted that, that money was stolen by Mr Mokhothu. However, he finds that the manageress of the store, one Bernadette Seturumane, was demoted because it was considered to be negligence on her part to hand the two keys, one to Mr Mokhothu and one to Sylvia. He viewed the fact that the manageress was merely demoted whereas Mr Mokhothu was dismissed as being an inconsistency in imposing a sanction. This led him to conclude that Mr Mokhothu was entitled to compensation.

During the course of argument I raised the question with counsel and with the union representative whether it had been proved that Mr Mokhothu had stolen the money. I raised this question because on the evidence which was presented at the arbitration it is not clear and it does not appear to have been proven that money in the sum of R18 577,00 was placed in the safe. It is not clear whether any money was placed in the safe. The most that one can find is what the area manager said, on page 68 of my papers. She was asked:

"On the 24th before the store was closed the money that was put in the safe, are you aware that it was not counted?"

Mrs Rantimo replies:

"I am not aware that it was not counted but what I know is that daily takings from the computer stated clearly what was the amount of money put in the safe. Apart from that Bernadette, the manager, can only verify that, not myself."

Quite clearly the evidence of Ms Rantimo is hearsay evidence. She was not

present. Furthermore to say that the computer indicates what amount of money was put in the safe is palpably incorrect. The computer can only indicate what money was received that day but it cannot indicate what happened to that money. It certainly cannot indicate that the money was put in the safe. The only person who can verify that is the person who counted the money, put it in the safe and closed it. That, according to Ms Rantimo, was the manageress, Bernadette.

For reasons which are not clear and which the union very carefully pointed out in its papers, the manageress was not called to give evidence at the arbitration inquiry.

The difficulty with which I am faced is that the union has not taken this point. However, the heads of argument make it clear that the question of the theft is placed in issue.

In the circumstances I am not convinced that the theft has been proven on a balance of probabilities. This is a gross misdirection on behalf of the Commissioner who should have investigated that question. And secondly, if there was indeed theft, then it appears to me that the Commissioner misdirected himself in saying that the fact that the manageress was demoted indicates inconsistency in sentencing.

In the circumstances it appears to me that justice will only be done by reviewing and setting aside the award dated 21 January 2000 and remitting the matter to the CCMA for a rehearing.

The first and second respondents are ordered to pay the costs.

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Judge A A Landman

Judge of the Labour Court of South Africa

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