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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J1224/98

2001-08-02

In the matter between

MACSTEEL (PTY) LTD

Applicant

and

CCMA & OTHERS

Respondent

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J U D G M E N T

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LANDMAN J: MacSteel (Pty) Ltd (Germiston-South) dismissed a driver, Mr Gideon Ngabom. Subsequently he referred the dispute to the CCMA where it was arbitrated. The Commissioner came to the conclusion that the dismissal was substantively fair but procedurally unfair and as a result he ordered MacSteel to reinstate the employee.

The Commissioner exceeded his powers for it is not competent for him to order reinstatement in a case where the sole effect relates to a defect in procedure.

However, the reasoning which is set out in the award indicates that the

Commissioner did not understand the difference between substantive issues and procedural issues. The question whether a sanction such as dismissal in this case, is an appropriate sanction, is a matter relating to substantive fairness.

It was argued on behalf of the employee that the sanction imposed on him for driving a truck while under the influence of alcohol was inappropriate if compared to the sanction which was imposed on other employees who were found to be under the influence of liquor. I may mention that some of those employees, who were found to be intoxicated at the stage that they entered the company's premises, were not allowed to work. However, the exact circumstances of the other examples which were raised by the union is unclear. This is particularly so as no record of the proceedings before the Commissioner has been filed in this court.

There is some evidence to suggest that there are material differences between the circumstances of Mr Ngabom and the other employees referred to by the Commissioner. However, the Commissioner's award is not justifiable having regard to the material before him, taking also into account his misconception of the issues which served before him. It follows therefore that it is appropriate that the award be reviewed and set aside.

I was asked in these circumstances to make the order which the Commissioner should have made. I regret, however, that in the absence of a record I am not possessed with sufficient facts to come to such a conclusion.

1. In the circumstances therefore the award of Commissioner Mbileni dated 26 March 1988 is reviewed and set aside.
2. The matter is remitted to the CCMA for arbitration before another Commissioner.
3. The third and fourth respondents are ordered to pay the costs of this application save the costs incurred on 25 May 2001.

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Judge A A Landman

Judge of the Labour Court of South Africa

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