

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J5140/99

2001-10-09

In the matter between

RECKITT & COLMAN SA (PTY) LIMITED

Applicant

and

CCMA AND OTHERS

Respondents

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J U D G M E N T

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LANDMAN, J: Mr Marcus James was employed by Reckitt & Colman South Africa. He was dismissed by his employer on the grounds of incapacity. He was constantly ill and was obliged to take sick leave. It appears that the applicant had a history of absenteeism. He had been issued with disciplinary warnings in the past, on that and other accounts.

He took sick leave in 1994. He was away for a period of 106 days, between 1994 and 1996. In 1997 he was away for 33 days. Between 25 October 1998 and 16 February 1999 he was away for 18 days.

His employer discovered that his absenteeism problem was due to alcohol

abuse. Mr James received treatment for this on an in-patient basis during the course of 1997. Mr James also received counselling on various occasions. He was notified in writing during the course of 1998 that the excessive sick leave he was taking had brought about an intolerable situation. If this continued his employment would be terminated. There was a temporary improvement, but then Mr James relapsed into his old ways.

The employer attempted to accommodate Mr James over an extended period of time. His employer did all that they could to assist him to improve the situation. Nothing availed. The employer terminated the services of Mr James on 16 February 1999.

The dispute was referred to the CCMA for arbitration. It came before a commissioner who heard the evidence and rendered an award in favour of Mr James. In terms of the award the employer was ordered to pay him R21 600. The principal reason for coming to this conclusion, according to the award, is that it was clear that Mr James was dismissed on the basis of incapacity arising from ill-health. The commissioner concluded that the employer did not follow the guidelines set out in items 8(10) and 8(11) of Schedule 8 to the Labour Relations Act, 66 of 1995. The commissioner appears to have come to the conclusion that the company did not investigate the possible alternatives short of dismissal, and whether or not Mr James was capable of performing the work.

In the light of all the evidence that was before the commissioner the commissioner had come to the conclusion that the employer had tried to do all that was possible in the circumstances. Although this case was viewed by the commissioner as one relating to incapacity, it could just as well have been a case of misconduct. Insofar as it was a case of misconduct the commissioner should have, on the material before him, concluded that the necessary steps were taken

and the final written warning was issued in respect of his alcohol abuse.

If, as the commissioner did, one confines oneself to incapacity as a ground for dismissal, then it is clear that the dismissal was the last resort. The employer had done all that it could. The commissioner's award is not rational in regard to the material that served before him. The award falls to be reviewed and set aside.

I make the following order:

1. The award made by the second respondent on 29 November 1999 is reviewed and set aside.
2. The award is replaced with an order that the dismissal of Mr James was fair.
3. The first respondent is ordered to pay the costs of the application.

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A A Landman

Judge of the Labour Court of South Africa

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