

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR676/01

2001.10.16

In the matter between

SUSAN J PHELPS

Applicant

and

CCMA

Respondent

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J U D G M E N T

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LANDMAN, J: Susan Phelps applies to review and set aside a ruling of a CCMA commissioner.

It appears that Susan Phelps was dismissed by her employer. She referred a dispute to the CCMA. The matter came before the first respondent, a commissioner of the CCMA, for conciliation. The employer took the point that there was no dispute because a settlement agreement had been signed. Ms Phelps claimed that her retrenchment was procedurally and substantively unfair, and that she had signed the settlement agreement under duress. If indeed she had signed the settlement agreement under duress then the dispute was alive and

should have been the subject of an attempt at conciliation.

The commissioner, however, precluded herself from determining whether or not a settlement agreement had been concluded without duress. She concluded that the CCMA did not have the jurisdiction to decide contractual disputes. This could only be done by the Labour Court. In consequence she dismissed Ms Phelps' referral to the CCMA.

The commissioner has committed a gross irregularity because the dispute before her was not about the validity of the contract. The validity of the contract was merely peripheral in determining whether or not a dispute regarding an alleged unfair dismissal was alive or not. It was competent for the commissioner to have decided the matter.

In the circumstances the ruling is reviewed and set aside. The matter is referred back to the CCMA to determine whether or not the dispute is alive, and if it is alive, to attempt to conciliate the dispute.

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A A Landman

Judge of the Labour Court of South Africa

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