

Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J1996/01

2001-12-05

In the matter between

WORKSHOP 510

Applicant

and

1st Respondent

2nd Respondent

DIRECTOR: COMMISSION FOR

CONCILIATION, MEDIATION &

3rd Respondent

J U D G M E N T

Delivered on 5 December 2001

REVELAS J:

- 1.This is an application for review of an award made by the second respondent in favour of the first respondent, the erstwhile employee of the applicant.
- 2.
- 3.The applicant dismissed the first respondent, following certain charges relating to failing to carry out instructions, absenteeism and making an alleged false statement about the state of his health.

- 4.The applicant has attacked the award of the second respondent in this review application on two bases.
- 5.The first being bias on the part of the second respondent and the second being on the merits of the arbitration award. At this stage I can say that there is no justification for my interference in this award on the merits nor can I find that there was any misconduct on the part of the second respondent in her reasoning, or that she came to a conclusion that which was not rationally connected to the facts.
- 6.The application was not opposed by the first respondent in that he did not file an answering affidavit. Therefore, the evidence before me I have to accept.
- 7.The matter first came before a commissioner, Mr McCormack. He clearly lost his temper with the applicant's representative, Mr Bosch and made remarks which were to some extent threatening. In my view, the incident did not seem particularly serious, but there could have been a reasonable apprehension that Mr. McCormack was biased. Mr McCormack then recused himself and the second respondent was appointed as the commissioner. She was also asked to recuse herself. After a discussion, Mr Bosch said he would continue with the matter. She was later again asked to recuse herself and did not.
- 8.Mr Bosch could not have had a reasonable apprehension that the second respondent was also biased. It would appear that Mr. Bosch had adopted a very confrontational approach to the matter.
- 9.In the circumstances the application is dismissed.

E. Revelas