

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR74/01

2001.10.18

In the matter between

L D J MOODLEY

Applicant

and

THE BARGAINING COUNCIL FOR THE

RESTAURANT CATERING ALLIED TRADES

First Respondent

E S HUTCHINSON

Second Respondent

BAR SUPPORT SERVICES

Third Respondent

J U D G M E N T

EX TEMPORE

REVELAS, J:

1. This is an application in terms of section 145 of the Labour Relations Act, 66 of 1995 ("the Act"), to review and set aside an award made in favour of the third respondent by the second respondent, a commissioner appointed by the first respondent.
2. The applicant was dismissed by the third respondent on 7 January 2000 following a disciplinary inquiry into certain misconduct of the applicant relating to alleged drunken behaviour, albeit off duty. The applicant was employed by the third respondent as a manager.

3. The only grounds for review relied upon by the applicant in his papers read as follows:

"I am not satisfied with the outcome of the arbitration award. The company and the Bargaining Council was [sic] not acting fully in their rights of the Labour Relations Act concerning a dispute. No fair procedures was [sic] followed during my hearings. I should also have considered my case to be arbitrated by the same commissioner as the Bargaining Council. A private (part-time) arbitrator was appointed. It clearly indicates [sic] that the commissioner did not consider any matters I raised. The Bargaining Council dismissed my case and award me nothing. Allegations against me were made up and I was dismissed unfairly. It seems that there was some corruptions [sic] and the code of conduct was not applied."

4. The applicant provided no further detail in support of his grounds of review. The sparseness of appropriate allegations in his affidavit was pointed out to the applicant by the third respondent's legal representatives in two affidavits filed by the third respondent at various stages. The applicant failed to respond to these indications of a lack of particularity on his part.
5. The applicant also did not put forward a record of the arbitration proceedings.
6. The third respondent's view on affording the applicant a further opportunity to rectify his papers, was to the effect that the applicant had several opportunities to rectify or supplement his papers, and furthermore that the applicant could not amend his case on the record, after the respondent had already opposed the matter in response to the allegations made by the applicant in his applications before me.
7. In this regard I was referred to the matter of *Skjelbreds Rederi and Others v Hartleys* 1982 (2) SA 739 (W), at 742C per Vermooten J.

8. The arbitrator summarised the evidence led at the arbitration as follows:

□The applicant was the sole representative and witness for his case. He

called no further witnesses in support of his case. A Miss Dorasamy presented evidence on the appropriateness of the sanction applied, being dismissal. A Mr Ncgobo testified as to the alleged acts of misconduct, such as acting in a loud manner unbefitting of a manager, making a nuisance, interrupting the service flow, swearing and being under the influence of liquor. Mr Ncgobo's evidence was supported by the evidence of Mr Joubert, who confirmed that the applicant was under the influence of alcohol, aggressive, used bad language, and that the employment relationship between the parties had broken down.□

9. The arbitrator in effect made a credibility finding by accepting that cross-examination by the applicant did not materially challenge the evidence led by Mr Ncgobo and Mr Joubert. He also found that the two persons concerned were credible witnesses. The applicant's behaviour, as explained on the day in question, was held to be unbecoming and reprehensible in the extreme. □The minutes of the disciplinary inquiry were accepted and indicated, in the view of the arbitrator, and found that the third respondent had followed fair procedure in dismissing the applicant from its employ.□
10. A proper reading of the award, and the grounds of review, leads me to come to the conclusion that there is no basis upon which I can interfere with the findings and conclusion of the arbitrator. On the face of it, the conclusion seems to be a reasonable one, and not disconnected to the evidence placed before the arbitrator which, even though there is no record before me, some reference to such evidence is made in the award itself. Furthermore, the applicant himself has illustrated the gist of his complaint against the award,

and that is that he feels that the sanction of dismissal is too harsh. I have explained to the applicant that this is a review application and not an appeal.

11. The arbitrator held that dismissal is an appropriate sanction for the offence.

Whether or not I am of the opinion that the dismissal was too harsh in the circumstances is of no consequence.

12. In the circumstances the application is dismissed. There is no reason why the applicant should not pay the costs of this application. He had launched an application with no merit, causing the third respondent to incur the expense of opposing the matter. Despite being referred to the deficiencies in his case, he still proceeded therewith, without rectifying matters. Furthermore, serious allegations of corruption were levelled against the respondents.

13. In the circumstances the applicant is to pay the third respondent's costs.

ORDER

The application is dismissed with costs.

ON BEHALF OF THE APPLICANT:

(In person)

ON BEHALF OF THE THIRD RESPONDENT: MR M SCHOTTLER

Of Brink, Cohen, Le Roux and Roodt.

E. Revelas