

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Case No: J273/99

Applicant

and

First Respondent

Second Respondent

JUDGMENT

Bruinders AJ

This is an application for a review of an arbitration award delivered by second respondent on 4 December 1998 after a referral of a dismissal dispute to the Council for Conciliation, Mediation and Arbitration (CCMA) in accordance with the provisions of the Labour Relations Act 66 of 1995 ('the Act'). The application is unopposed and proceeded before me by way of a default judgment application.

There are a number of grounds set out in the review application. It succeeds on the ground that second respondent committed a number of gross irregularities, none more gross than the following: he found in his award that "evidence before me clearly shows that the allegations cannot be proved in that the employer party has relied on hearsay evidence from the client on who (sic) the reflexology was performed. Evidence from this party was not led, save for the employer party to rely on the alleged altered account." The client referred to here was involved in the incident giving rise to first respondent's dismissal.

The record of the arbitration proceedings disclose an horrific lack of appreciation for the arbitration and adjudication process. After insisting that the unrepresented parties at the arbitration provide opening statements and after they completed their opening statements, second respondent says "Now you are going to the closing arguments." They then provide him argument after which the proceedings conclude.

Consequently, his finding against the applicant that she relied on hearsay evidence and failed to call a witness is a blatant misrepresentation. He repeated this misrepresentation in an affidavit which he filed. In addition he refers in his affidavit to 'corroboration during cross examination' and to 'evidence presented during the arbitration proceedings'. He could not possibly be referring to oral evidence although he does not bother to distinguish between it and documentary evidence, such as it was tendered at the arbitration.

In the result I find that second respondent's conduct at the arbitration, his findings in the award and the allegations made in his affidavit constitute conduct warranting a special costs order and bringing this judgment to the attention of the Director of the CCMA. There is simply no reason for employers or employees, among whom are numbered workers with little or no education who rely on the CCMA for a decent service, to have to tolerate this kind of conduct. In the result, I make the following order: the arbitration award by second respondent dated 4 December 1998 is reviewed, set aside and referred back to the CCMA for arbitration; second respondent is ordered to pay the costs of the application on the attorney and client scale; the registrar is ordered to cause a copy of this judgment to be served on the Director of the CCMA.

T J Bruinders

Acting judge of the Labour Court

13 February 2001