

Sneller Verbatim/MC

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J230/01

gment: 2001-01-30

In the matter between

NYOKA SINDISIWE PATRICIA VENON

Applicant

and

NATIONAL RESEARCH FOUNDATION

Respondent

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J U D G M E N T

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REVELAS J:

1.This is an urgent application in which the applicant, the former employee of the respondent, seeks relief to the effect that the respondent be interdicted from:

1. participating in any conduct in contemplation or in furtherance of any disciplinary action against the applicant.
2. carrying to completion it's disciplinary action against the applicant.
3. participating in any conduct in contemplation or in furtherance of it's disciplinary action against the applicant.
4. making any disciplinary decision, verdicts, findings and or sanction/sentence against the applicant in this matter.

2.The applicant also seeks costs against the respondent.

signed and

subsequent to her resignation was informed that she had been suspended and she was notified to attend a disciplinary inquiry. She was suspended pending this inquiry.

3. Further notification received by the applicant from the respondent was a notice to attend a formal inquiry on 31 January 2001, which is tomorrow. It is this event, which the applicant by way of interdict seeks to prevent from taking place.
4. Although the applicant has in her notice of motion set out the relief sought in the form of an interim rule, the nature of the relief she seeks is final.
5. Whereas it is so that a disciplinary inquiry should normally not be held when an employee has resigned, this principle is only applicable in law in certain circumstances which in my view do not apply for purposes of the present matter.
6. In the present case the applicant has alleged that she left the employ of the respondent because of the manner in which she was treated and could no longer in circumstances, tolerate working for the respondent.
7. Firstly I have to examine whether the applicant has established a clear right to entitle her to the relief she seeks.
8. In the circumstances of this case she does not have a clear right. Whereas it would be perhaps undesirable in certain circumstances to have a disciplinary inquiry or an inquiry in respect of someone who has resigned previously from an employer's employ, the former employee does not have a right to insist that the inquiry does not proceed in their absence, simply because they are no longer employed.
9. This is so because, there are many other reasons why an employer would choose to proceed with such an inquiry.
10. The purpose of the inquiry might have changed because the respondent considered the fact that the applicant has resigned. Reference was made to the notice to the applicant to attend "a formal inquiry" not a disciplinary enquiry, as it was termed before. Be that as it may there is no guarantee that the applicant would be found guilty of fraud or any

of the other charges levelled against her.

11.I also considered whether the applicant had established that she has no alternative remedy but to approach this court on an urgent basis to interdict the inquiry from taking place.

12.By it's nature, an inquiry into fraud falls within the ambit of the managerial prerogative. The fact that the employee had resigned does not diminish that prerogative. Furthermore, if the applicant should be found guilty and a dismissal is imposed, she may later attack the dismissal, on the basis that she had resigned and that the dismissal was of no effect, or she could attack any of the findings of the disciplinary inquiry. Her remedy is not to prevent it from taking place. The applicant has await the outcome of that inquiry, and should need be, refer it to the appropriate forum which would be the Commission for Conciliation, Mediation and Arbitration.

13.It was also argued that the applicant made out a case that there was an injury actually committed or reasonably apprehended on the part of the applicant.

14.The inquiry has not yet taken place.

15.There is no indication of what the outcome would be and there is also no indication that the respondent may or may not inform prospective employers of the applicant's alleged conduct or of the disciplinary inquiry or the outcome thereof as suggested.

16.It also appears that this application was designed rather to escape the consequences of an inquiry than to prevent it from happening as would appear from the reasons set out by the applicant.

17.In the circumstances the application must fail. Costs should follow the result.

18.The application is dismissed with costs.

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Revelas J

nt: Adv. J Maphahlane instructed by

M M Baloyi Att.

ent: Adv. Boda instructed by

Perrott, Van Niekerk & Woodhouse Inc.