

Sneller Verbatim/MB

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J5902/00

2001-04-24

In the matter between

DAVID M BOMELO

Applicant

and

THE COMMISSION FOR CONCILIATION

1<sup>st</sup> Respondent

2<sup>nd</sup> Respondent

3<sup>rd</sup> Respondent

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## J U D G M E N T

Delivered on 24 April 2001

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REVELAS J:

- 1.The applicant, the erstwhile employee of the third respondent, was dismissed following charges of alleged drunkenness during working hours.
- 2.A disciplinary hearing was held on 4 June 1999 and the applicant was dismissed. He referred a dispute to the Commission for Conciliation, Mediation and Arbitration, (Atthe CCMA≡) where conciliation failed and an arbitration hearing was consequently conducted before the second respondent, a commissioner appointed by the CCMA.
- 3.The arbitrator heard the evidence of the applicant, Mr Bouwer, who is the managing director of the third respondent, as well as Mr J G Peters a

manager.

4. Mr Peters testified at the arbitration hearing that he had found the applicant in a drunken state when he inquired from him about a certain aspect of the applicant's pay slip.

5. The applicant denied that he was drunk.

6. It is necessary to in full quote from the arbitrator's award, what the arbitrator found under the heading **Analysis of Evidence and Argument**:

**"The applicant was aware that being under the influence of liquor whilst on duty was a punishable offence. He had signed a contract of employment in which his offence was expressly highlighted. Furthermore he had been previously disciplined for being under the influence of alcohol and had received a final written warning. Both Bouwer and Peters testified under oath that the applicant was intoxicated on the day in question. Both witnesses claimed that his eyes were bloodshot, that he was unsteady on his feet and he smelt of liquor. Peters took the applicant to a private clinic to have his blood sample drawn and he refused to submit to this on the grounds that the attending sister was white. In stead he walked out of the doctor's rooms on the pretext of phoning his attorney. Bouwer testified that his company could have lost the contract of the Germiston City Council if the applicant had been found to be working on their project whilst under the influence of alcohol. In the light of the above I am satisfied that the applicant was under the influence of alcohol on the day in question and I find that the respondent in a substantively fair manner in terminating his services. Furthermore the sanction of dismissal was appropriate in the circumstances given the fact that the applicant had received a final written warning for a similar offence."**

7. The applicant now seeks to review the award of the arbitrator.

8. The applicant has put forward no grounds which would persuade me to interfere with the arbitrator's award. The arbitrator took into

account, and this is reflected by the award, all the relevant evidence and circumstances in coming to his finding.

9.The applicant has approached this matter on a basis of a hearing *de novo*. A review application does not permit this. He also attacked the award as if it was some form of an appeal, which he is not permitted to do either.

10.The applicant has also informed me, thought not under oath, that the arbitrator refused to permit him to call witnesses. There is no record to reflect what exactly happened during the proceedings, but on a proper reading of the award it would appear that this is unlikely.

11.The other grounds as contained in the applicant's founding affidavit to the application, are unconvincing and in the circumstances the application fails.

12.The application is dismissed.

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E. Revelas