

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

Before Revelas J on 23/05/2001

CASE NO: J2816/98

In the matter between:

1st Applicant

2nd Applicant

and

1st Respondent

2nd Respondent

3rd Respondent

JUDGMENT

REVELAS J:

1.This is an application which concerns a review of an award made by the second respondent, the arbitrator, in which the arbitrator held that the second applicant who is the erstwhile employee of the third respondent, had failed to discharge the ones placed on him in terms of section 192(1)(a) of the Labour Relations Act 66 of 1995, the act in that he had not established the existence of the dismissal. He had, however, invoked the dispute mechanisms of the CCMA to arbitrate what he says was a dismissal.

2.It is common cause that on altercation occurred at the mine of the third respondent which culminated into an assault which ended in the second applicant, Mr. Mothobi, pouring bucket full of boiling water of Mr. David Cohen, his supervisor, causing severe injuries. That much was found by the arbitrator.

3. Mr. Mothobi, who is the second applicant, fled the scene and approached the offices of the National Union of Mine Workers about the altercation and according to him, he was advised by them to approach the third respondent to recover his outstanding monies.
4. On the first applicant's version the second respondent had disappeared, fled the mine and removed his belongings from the hostel. The work force then went out to look for him. At some stage the second applicant thereafter approached the manager of the mine, Mr. Weltsman to report the incident. Harsh words were exchanged and a scuffle broke out. Mr. Weltsman then directed a gun in the direction of the second applicant in an attempt to force him into a vehicle. He wished to apprehend the applicant. The arbitrator also found that Mr. Weltsman's actions constituted an attempt to apprehend the second applicant.
5. Mr. Weltsman also testified that he attempted to protect himself as he feared an attack by the second applicant and he wanted to turn him in to the police for the assault on Mr. Cohen.
6. The arbitrator, in making her award, was not persuaded on the facts lead before her that there had been a dismissal and consequently that the applicant had not discharged the onus of proving such a dismissal.
7. The first and second applicants argued before the arbitrator that the combined facts amounted to a dismissal. Much reliance was placed on the fact that Mr. Weltsman had at some stage said there "was nothing more to discuss".
8. In my view, there is nothing on the papers before me which would suggest the arbitrator is guilty of any misconduct, any gross irregularity in the conduct of the proceedings or that she had exceeded her powers or that the award had been improperly made, or that her decision was irrational. In the circumstances the application should fail.

9.I am not prepared to grant a cost order against the applicant. The respondents' did not file heads of argument despite two occasions on which it was granted the opportunity to rectify the position.

10.I therefore make the following order:

1.The application is dismissed.

E. Revelas