

IN THE LABOUR COURT OF SOUTH AFRICA
BRAAMFONTEIN

CASE NO: J5519/00

2001-05-30

In the matter between:

Applicant

and

Respondent

EX TEMPORE JUDGMENT

REVELAS J:

- 1.This is an application in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995, as amended (“the Act”).
- 2.On 10 October 2000, Mr E.A. Potgieter, an arbitrator, appointed by the Commission for Conciliation, Mediation and Arbitration (“the CCMA”), made an award in favour of Mr S.W. Mapasa, the applicant in this matter.
- 3.Mr Mapasa was, found guilty by his employer (“Fidelity” or “the first respondent”) of not complying with certain security procedures. He was charged with carrying stopless fob without permission.
- 4.The arbitrator found that there was only one witness on behalf of the respondent, and only one side or the matter was presented before the disciplinary hearing held by the third respondent. He further found that it was a basic right of any party to face a witness and to be given an opportunity to cross-examine such a witness and only in exceptional circumstances can such a right be taken away from an employee in a disciplinary hearing. He reasoned as follows:

“I heard no evidence as to why the client (the respondent) did not testify in person and there was also no indication as to why any of the fellow crew members of Mr Mapasa on 2 October 1999 did not testify in the disciplinary hearing.”
- 5.The commissioner consequently found that Mr Mapasa’s dismissal was both substantively and procedurally unfair and ordered the re-instatement of Mr Mapasa **“Without any loss of pay or benefits from the date of his dismissal 6 October 1999, Mr Mapasa must report back for duty within seven days of the receipt of this award.”**
- 6.Since the third respondent failed to comply with the terms of the arbitration award, the applicant brought an application in terms of section 158(1)(c) of the Act.

7.This application is opposed. The respondent filed an affidavit, the sum total of which reads as follows:

“3. The respondent received a Notice of Motion in terms of Section 158(1)(c) of the Labour Relations Act 66 of 1995 as amended from the applicant.

4.The respondent in turn filed an application for rescission with the CCMA on 17 November 2000 as this award was made in the absence of the respondent.

5.In the light of the above the respondent requests this Honorable Court that this matter be held over until the outcome of the application for a recission of the award is made known by the CCMA.”

2.The respondent gave no explanation for its absence at the CCMA.

3.The respondent should at least have provided proof that the matter was indeed being entertained by the CCMA. I believe it would be wrong to simply as a matter of course, and for the sole reason that an application for recission has been lodged with the CCMA, deny the applicant the relief he seeks, should I do so, based on the sparsely worded affidavit of the respondent, the doors to an abuse of the procedures provided for in the Act would be opened wide.

4.In the circumstances the application should be granted

5.I make the following order:

1.The arbitration award dated 10 October 2000 under case GA94516, is made an order of court.

E. Revalas