

Sneller Verbatim/PJ

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J1161/00

2001-06-15

In the matter between

MAESTRO HOUSING [PTY] LTD

Applicant

and

1<sup>st</sup> Respondent

2<sup>nd</sup> Respondent

3<sup>rd</sup> Respondent

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EX TEMPORE JUDGMENT

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REVELAS, J:

- 1.The third respondent was employed by a company called Bessemer Steel Construction [Pty] Ltd. ["Bessemer"]. Thereafter, he was employed by the applicant who is a labour broker and who then hired his service to Bessemer Steel to do work there.
- 2.In terms of the contract with the third respondent there were no guarantees that the third respondent would always be given work by the applicant.
- 3.
- 4.Evidence was led before the arbitrator, whose award (in favour of the third respondent), the applicant now seeks to have set aside, that Bessemer became unhappy with the third respondent's performance. Warnings were given to him by Bessemer although Bessemer was not his employer, but the applicant, ("Maestro Housing") held disciplinary hearings. Because Bessemer was unhappy with the third respondent's performance, the

applicant then wanted to transfer the third respondent or to engage his duties at some other company within the new group of companies that was formed. The position held less favourable conditions of employment and was unacceptable to the applicant. He insisted that he wished to work for Bessemer Steel. The arbitrator found as follows in his award:

**"This effectively attempts to allow Bessemer to get rid of employees it is not happy with without giving such employees the right to defend themselves at the level of their effective employment. The fact that Bessemer and Maestro are both controlled by the same holding company and have certain members of management incognant, makes it highly unlikely that Maestro would contest a finding made by a manager of Bessemer whether the employee was guilty of not rendering satisfactory services or misconduct or not abiding by any rules, regulations, policies, procedures or standards. The fact that Mr De Klerk just accepted Mr Hoogenhout's allegations against the applicant without a proper investigation corroborates this. This makes the playing field doubly uneven. The fact that the applicant was technically a temporary employee in terms of his contract with Maestro, makes no difference to his right to fair treatment in terms of the act.**

**In these circumstances I believe I am entitled to pierce the corporate in order to unveil the true situation which exists in this case."**

5.The arbitrator then, after considering the relevant law on the subject, found that the applicant, in order to attempt to circumvent the requirements of the act, did not treat the third respondent fairly. The arbitrator also found that a constructive dismissal took place because the respondent made continued employment intolerable and that this dismissal was unfair. The third respondent was then reinstated.

6.In order to interfere with this award, the applicant needs to demonstrate that the conclusion arrived at by the arbitrator was not justifiable or reasonable in terms of the reasons given for it.

7. In a well reasoned award, the arbitrator gave, in my view, a justifiable award.
8. In his analysis of the evidence he did not overlook any relevant factors and on the facts before him, I am of the view that he could not have come to another conclusion. (not that is the test.)
9. The applicant's case is couched in the form of an appeal, and in my view, has failed to demonstrate that the award is reviewable. Consequently the application should fail.
10. The arbitrator reinstated the applicant. Both parties have submitted that compensation instead of reinstatement should be granted if the review fails. It is however not within my province to amend an award, which I am not prepared to interfere with. The parties should make their own arrangements in this regard.
11. In the circumstances the application for review is dismissed with costs.

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E. Revelas