

Sneller Verbatim/HVDM

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR999/01

2002-03-05

In the matter between

JAMES DLONGOLO

Applicant

and

THE COMMISSION FOR CONCILIATION,

1st Respondent

2nd Respondent

PRIMA INDUSTRIAL HOLDINGS

3rd

Respondent

J U D G M E N T

Delivered on 5 March 2002

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REVELAS J:

1. This is an application for the review of an arbitration

award dated 28 July 2001 in which the arbitrator had found that the dismissal of the applicant by the third respondent was fair. The applicant was charged with the theft of scrap metal from the respondent's premises. Apparently he handed the scrap metal bars over the wall of the premises to a person (who later testified against him) and he was apprehended in the act of receiving the scrap metal outside the wall. The commissioner found that the dismissal was for a fair reason and that the dismissal was effected in accordance with a fair procedure.

2. The applicant is now seeking to review that finding on the grounds that he is not guilty of theft because the stolen goods were not found on his person.
3. It appears to me that the major level of criticism of the arbitrator's award is that the applicant's guilt, according to him, was determined by circumstantial evidence and not direct evidence. He believes that since he was not caught red-handed no inference can be drawn that he was not guilty and that he ought to have been found not guilty.
4. The arbitrator gave a long and well-reasoned award. He found that on this evidence the applicant was guilty of the offence as put forward by the respondent's witnesses, whose evidence he accepted.

5. With regard to the sanction of dismissal, the arbitrator held that he was unable to conclude on the basis of all the evidential material before him, that the third respondent's decision to dismiss the applicant was unreasonable. He referred to the fact that in principle, an employer is entitled to set standards and to decide on which sanctions should be imposed for non-compliance with those standards and found that dismissal was the only sanction that could be imposed in the circumstances.

1. 6. In order to interfere with this finding on review, it had to be demonstrated that the arbitrator came to a conclusion which was not rationally connected to the facts. In my view, the applicant put forward no such grounds to demonstrate the aforesaid. The setting aside of an award is not simply just for the asking. There is also a difference between an appeal and a review.

7. The applicant simply seeks a different outcome. The outcome which was reached by the arbitrator, I am unable to criticise in any respect. No irregularities were committed.

8. In my view, the arbitrator did not fall foul on any of the provisions of section 145 of the Labour Relations Act.

9. In the circumstances the application for review is dismissed.

E. Revelas