

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

Case

no: J3637/98

In the matter between

Applicant

and

1st Respondent

2nd Respondent

JUDGMENT

Delivered on 23 April 2002

REVELAS J:

1. The applicant commenced employment with the second respondent on 1 May 1997 and remained in its employ until 31 October 1997. The applicant referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (“the CCMA”). Conciliation failed and the matter was referred to Arbitration. Mr. Feizal Saint conducted the arbitration proceedings and found in his award, that the applicant was employed on a temporary basis and that no reasonable expectation had been created by the second respondent in respect of the

employment of the applicant on a permanent basis. The applicant's claim was dismissed.

2. The applicant now seeks to review the award of the commissioner.
1. 3. The second respondent has raised a point *in limine*.
4. As an annexure to its founding affidavit, in support of its application for leave to file answering papers in the review application, the second respondent has attached two important documents.
5. The first document is a letter from the second respondent's attorneys to the SACCAWU legal union wherein the second respondent's attorneys of record, with reference to the matter in question, wrote:

"We confirm that we settled the matter on the basis that the applicant withdraws the application, each party to pay their own costs."

This letter is dated 12 December 2000.
6. On the same day, SACCAWU addressed a letter to the second respondent's attorneys, (the second document) stating the following:

"We accordingly wish to advise you that the abovementioned matter will no longer be withdrawn. The applicant has decided to pursue it further on the 21 Dec 2000 at Labour Court (sic).

We apologize for any inconvenience."
7. The second respondent's argument is, that based on the aforesaid two letters a compromise had been reached and that the matter has become *res judicata*.
8. The second respondent has also brought an application for condonation for the late filing of its papers, which is granted on the basis that the second respondent's

prospects of success in the review matter are good.

9. The arbitrator, found that on the probabilities, and on the documentation before him, the applicant's contract of employment had expired on 28 October 1997 in terms of her contract of employment. A copy of the contract was also attached to the review application and clearly states that the contract is "**terminated on 28/10/97. If you work longer than this period or are offered an extension or renewal of this contract, your status as a temporary employee shall not automatically change.**" The applicant was also paid commission on a monthly basis.
10. The applicant testified that she was employed on a permanent basis from the onset. She stated that she signed a document reflecting her employment as being temporary in nature, under duress. She was told that if she did not sign the document she would be summarily dismissed.
11. The arbitrator made a credibility finding by accepting the version of Mr. Hloma of the second respondent, that there was no duress.
12. The applicant has not demonstrated upon which grounds I should interfere with the award. The nature of the applicant's grounds of review, reminds one of an appeal, which a review application is not.
13. Insofar as the offer of compromise is concerned, I am unable to find on the papers, that a firm settlement agreement was reached between the parties. Since both parties were successful in this application, there is no order as to costs.
14. The following order is granted:
 1. The application for leave to file opposing affidavits in the review application is granted.
 2. The point *in limine* is dismissed.

E. Revelas

Adv. WG la Grange

Instructed by Hofmeyer Herbstein & Gihwal Inc.

ndent:

Mr. A. Motane from SACCAWU