

Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: J4469/99

2002-09-05

In the matter between

MPUMALANGA DEVELOPMENT CORPORATION

Applicant

and

THE COMMISSION FOR CONCILIATION,

1ST Respondent

2ND Respondent

3RD Respondent

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J U D G M E N T

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REVELAS J:

1. This is an application in terms of section 145 to review an arbitration award made by the second respondent in favour of the third respondent. The respondent made an award to the effect that the applicant is to pay the third respondent an amount

equivalent to two months of his normal salary in respect of the months of February and March 1999.

1. 1.2. The evidence before the arbitrator was that the third respondent was employed by the Mpumalanga Development Corporation as a commercial development councillor in the FMME division where he had been employed for almost 11 years. Before the arbitrator was the undisputed fact that the third respondent's salary was R6 095 per month.
3. At some stage the applicant offered a voluntary severance package to its employees. It made it clear to employees that those members who would be retained for their skills, would not be eligible for the voluntary severance package.
4. The third respondent applied for a voluntary severance package and there was agreement between his superior that he would remain in the applicant's employ until 31 March as his services were still required since a co-employee or the person to whom he reported had resigned from the corporation before.
5. The applicant informed the arbitrator that had it been indicated to him that he had to leave immediately, he would not have applied for a voluntary severance package.
6. His services were terminated on 11 December 1998. The

letter of termination was faxed to him just before 16:00 on 11 December 1998, the same day. Prior thereto he was not consulted that his services would end on that day and he concluded his evidence by stating that he had expected, or he reiterated that he had expected to work till 31 March 1999.

1. 7. The arbitrator upheld the third respondent's version of the agreement reached. It was argued on behalf of the applicant that the main reason of the respondent for pursuing the matter, was an attempt to unfairly enrich himself. The arbitrator did not share this view.
8. In order to be successful in a review application, the applicant is obliged to demonstrate that the arbitrator came to a conclusion which was not rationally or reasonably connected to the evidence which was led before him.
9. There are no facts in support of the application for review which justifies such a finding. Consequently the application for review falls to be dismissed with costs.
10. An application in terms of section 158(1)(c) of the Labour Relations Act, 66 of 1995 has also been set down for the same day. The matter was postponed to the opposed roll by JAMMY J on 18 December 2001.

11. The legal representative for the applicant was not in a position to argue the matter and asked me to postpone the matter on the instructions of his client. I refused the application since this matter has continued for a long time and I do not believe that there were any prospects of success and there would have been no point in postponing the matter further. There was no formal application for a postponement nor a proper explanation from the bar as to why a postponement was necessary, no matter how many questions I asked in this regard.

12. Labour disputes should be resolved as expeditiously as possible. I am enjoined by the Act to keep that in mind. This court is burdened with many cases and at all costs it should be avoided that matters be remitted to the system for no apparent reason.

1. 13. On the evidence before the arbitrator and in support of the application in terms of section 138(1) (c) of the Act, the third respondent is entitled to payment of R9 839.23 multiplied by two (two months remuneration as awarded by the arbitrator) which amounts to R19 678,46.

14. Consequently I make the following order:

1. The award of the second respondent is made an order of court.

2. The applicant (Mpumalanga Development Corporation) is ordered to pay the third respondent (Mr Leon Smalman) an amount equal to two months' remuneration, being R19 678,46 (R9 839,23 x 2).
3. Interest is to accrue on the aforesaid amount at the rate of 15,5% per annum, calculated as from 18 May 1999 to date of payment.
4. The applicant (Mpumalanga Development Corporation) is ordered to pay the third respondent's costs in this matter.

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E. Revelas