

Sneller Verbatim/HDJ

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J3408/01

2002-10-16

In the matter between

CHEMICAL CONVERTORS (PTY) LTD

Applicant

and

1<sup>st</sup> Respondent

THE COMMISSION FOR CONCILIATION

2<sup>nd</sup> Respondent

3<sup>rd</sup> 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 of the Labour Relations Act 66 of 1995 ("the Act"), as amended. The application is to review and set aside an award of the first respondent, to whom I shall refer to as "the arbitrator", where he decided that the

dismissal of the third respondent was substantively unfair.

1. 1.2. The alleged misconduct which gave rise to the dismissal was that the applicant had been absent from work for 41 days in a period of some three months. For some of these days he could provide an explanation by producing sick notes, and for some not. One sick note was produced which proclaimed that the applicant was fit to work. Another sick note described the third respondent as being "mentally perturbed". All in all, it is difficult to establish from the few sick notes what in fact was wrong with the third respondent.
3. The arbitrator found, without any supporting evidence of a medical nature, that the third respondent was ill, despite the fact that the first respondent was unable to define what his illness was. The third respondent had a history of absenteeism. The third respondent was counselled, given a warning and after a hearing, dismissed.
4. The first respondent observed in his award, that the applicant was "only interested in sick notes" and had no sympathy for the third respondent.
5. In my view the first respondent's findings and final conclusion was not rationally connected to the evidence which was before him. He further exceeded his powers

in concluding that the third respondent was ill. He also created a new policy for the applicant, as to how tolerant it should be with excessive absenteeism.

1. 6. The employment relationship demands that an employee should at least be at work to comply with his or her obligations in terms of the employment contract. If an employer has demonstrated that it counselled and warned an employee for continuous absenteeism and that there is no real reason for that employee to be absent, and it has acted fairly, it is not open for a commissioner of the CCMA to create new policies for absenteeism at a particular workplace.
7. In the circumstances I make the following order:
  1. The award of the third respondent under case number GA95055 is set aside and the award is substituted with the following: The dismissal of the third respondent was fair. There is no order as to costs.

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E. Revelas