

Sneller Verbatim/YvA

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JS63/03

2003-02-07

In the matter between

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1<sup>st</sup> Applicant

2<sup>nd</sup> Applicant

and

TFMC (PTY) LIMITED

Respondent

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J U D G M E N T

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REVELAS, J:

1. The second applicant, a member of the first applicant, brought an application, seeking a rule *nisi* to be issued for a decelerator to the extent that:

**"The actions and intended actions of the respondent constitutes an occupational detriment as intended by the Protected Disclosures Act, (Act 26 of 2000), section (3)."**

2. The applicants further seek an order interdicting and

restraining the respondent from, and I quote:

**3. "Implementing intended actions and refraining (*sic*) the respondent from continueing with actions as set out in the founding affidavit that will constitute occupational detriment in that the provisions of section (3) of the Protected Disclosures act (Act 26 of 2000) had not been complied with."**

4. The facts, which I may mention are rather few and which gave rise to the applicants bringing this application is briefly that the second applicant was instructed or requested by someone from the respondent, to go home. This happened approximately two weeks ago. The second applicant has been at home for the last two weeks. Apparently the applicant had made allegations or disclosures regarding fraudulent conduct or corruption amongst the senior management members of the respondent. He had been asked by the respondent to give further details relating to his allegations. He seeks full immunity to make disclosure and alleges that he has not been given full disclosure as members of management of the respondent, consistently requested for more information.

5. For all I know, this could be a matter where the applicant has made scurrilous allegations against members of management and steps are being taken to discipline

him. One simply does not know because there are not enough facts to support the very wide relief sought by the applicant. Furthermore, even if there were facts, the relief sought by the applicant is too wide and unspecific.

6. The first applicant's representative informed me that there is a draft order which is more specific. However, this was not served on the respondent, and it is simply in no party's interest, particularly not that of the respondent, to be brought to court on 24 hours' notice and then to be faced with a completely different case to meet with no further facts to support even the amended notice of motion or draft order seeking the different relief.

7. Regarding the question of urgency, it might be that the matter has become urgent, due to the fact that the representative of the second applicant attempted to resolve whatever the situation was with the respondent and to clarify the second applicant's position. But it could be that the urgency was created by the second applicant's representatives.

8. The applicants have alternative remedies. This dispute could have been referred to the Commission for Conciliation Mediation and Arbitration in the normal course. This has not been done. The applicant could

also be compensated for any unfairness perpetrated against him. At this stage there has not even yet been a dismissal. In the circumstances the application is dismissed.

9. However, the applicants are not precluded from approaching this court again on proper papers, seeking proper relief in connection with this matter.

10. In so far as costs are concerned, the second applicant and first applicant were advised by a labour consultant who is unknown to me and is not a party to this court. He clearly advised the applicants rather poorly. Through their poor advice, the respondent was required to come to court, instruct counsel and it is not the respondent's fault that the applicants were ill advised as described by Mr Volschenk.

11. In the circumstances the application is dismissed with costs.

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E. Revelas