

JR1569.01Sneller Verbatim/HVDM

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1569/01

2003-02-10

In the matter between

LUCAS MACANDA AND ANOTHER

Applicant

and

SINGE TECHNOLOGY (PTY) LTD

Respondent

---

–

J U D G M E N T

---

–

LANDMAN J: Mr Lucas Macanda was employed by Serge Technology (Pty) Ltd in Randburg. Mr Macanda and another employee left their place of work to go to the bank. Mr Macanda believed that his companion had also obtained permission for him to leave the workplace. On his return he was called to the managing director's office. Mr Macanda explained how it came about how he left the premises and apologised to the managing director. The managing director said that he didn't want to listen to him or his story and added

"get out just now, otherwise if you don't want to go out I will kick you out". Mr Macanda said: "So I did try my best to talk to him but he didn't want to listen to me. So finally I decided to go. Mr Macanda clocked out and left, but the production manager's secretary, one Vicky, called him to sign a letter. He did so and he left. The letter is a letter in terms of which Mr Macanda resigns with immediate effect. Mr Macanda says that he thought the letter was one regarding a suspension preparatory to a disciplinary hearing. Later Mr Macanda signed a letter in full and final settlement and received a cheque. He says he thought that he was signing this as a receipt for the cheque. He later phoned his manager, who was not the production manager, and his manager reported to him that he had spoken to the MD but the company would not change its stance.

Mr Robertson, the only witness called by the company said that looking through a glass window he saw Mr Macanda signing the letter of resignation. He was unable to hear what was being said. He also said that he knew that Mr Macanda could read and indeed Mr Macanda acknowledged this at the arbitration hearing.

The issue confronting the commissioner was whether

Mr Macanda had been dismissed by the company. The onus of proving this lay upon Mr Macanda. The commissioner found for Mr Macanda and ordered his retrospective reinstatement.

The company seeks to review and set aside the award on the following grounds:

- (a) The commissioner committed a misconduct in relation to his duties as an arbitrator, or
- (b) the commissioner committed a gross irregularity in the conduct on the arbitration proceedings, or
- (c) the commissioner exceeded his powers, or
- (d) the award was improperly obtained.

There no suggestion that the award was improperly obtained or that the commissioner committed misconduct. The commissioner's finding that Mr Macanda could not read runs counter to Mr Macanda's own evidence, but is not so material as to constitute a gross irregularity. The commissioner's finding that the company failed to prove on the balance of probabilities that there was no dismissal while Mr Macanda has proved the contrary is an unfortunate choice of words, that the commissioner is of the view that Mr Macanda proved on a balance of probabilities that he had been dismissed.

It is important to appreciate that it was Mr Macanda's case that he was actually dismissed by the managing director. It was not his case that he had been constructively dismissed. He, as the commissioner found, did not initiate the letter of resignation. It was a document prepared by Vicky, the secretary, presumably at the instance of the managing director. It was not a voluntary resignation, he had already been fired before he signed it.

The commissioner's finding that Mr Macanda did not intend resigning is also justifiable. Neither the managing director nor Vicky testified. Mr Macanda's version regarding the managing director and what he said is set out clearly in the form LRA711. The company was therefore alerted to the issues and that they would feature during the arbitration.

There are a few matters such as the allegation that Mr Macanda was dismissed for drunkenness, which are puzzling, but this allegations appears to have been raised at the conciliation meeting by the company's representative. Her name has not been recorded. She too did not give evidence.

None of the other grounds of review have any merit. Once the commissioner found that the company had dismissed Mr Macanda the company bore the onus of proving that the

dismissal was fair. This onus was not acquitted.

In the result the application to review the award is dismissed with costs.

---oOo---

PRESIDING OFFICER: LANDMAN J

ON BEHALF OF APPLICANT:

ON BEHALF OF RESPONDENT: