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IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN CASE NO: JS 481/02

2003-04-22

In the matter between

ROBERT SPILLMAN Applicant

and

GLOBAL COMMUNICATIONS (PTY) LTD Respondent

J U D G M E N T

LANDMAN J: The applicant, Mr Robert Spillman, was employed on 7 August 2000 as a national sales manager of PGG Radio Communications (Pty) Limited. This company became Global Fleet Management (Pty) Limited and still later became a division of Global Communications (Pty) Limited, the respondent in this case.

Mr Spillman was retrenched and his effective date of leaving GFM was 28 February 2002. The present application, which takes the form of a trial, is limited to compensation for a procedurally unfair dismissal.

It is necessary to set out chronologically the factswhich GFM took or allegedly took to ensure that the dismissal of Mr Spillman was proceeded by a fair procedure which complied with section 189 of Labour Relations Act 66 of 1995.

I base this summary chiefly on the evidence of Mr Werner , the managing director of the company. Mr Spillman was not a good witness. To the extent that his evidence differs from that of Mr Werner I prefer that of Mr Werner.

(a) Mr Spillman and Mr Solarsh made an offer in January 2002 to buy out the business from the shareholders of GFM. Their plan was brought about as a result of the financial position in which GFM found themselves. They intended restructuring the company. This would have involved the retrenchment of more than half the staff. It would have been done to regain profitability.

(b) Prior to 8 February 2002 the management of GFM rejected the offer. This was conveyed to Mr Solarsh who in turn, I assume, passed this information on to Mr Spillman.

(c) On 8 February Mr Werner met with Mr Spillman, Mr Werner offered to consult personally and privately with Mr Spillman regarding the proposed restructuring of GFM and the possible retrenchment of Mr Spillman. Consultation was to take place

on 22 February.

(d) Notices were sent out that a general staff meeting would be held on 15 February. This meeting would be about restructuring.

(e) Mr Spillman was aware of the date and the nature of the meeting to be held on 15 February. He did not attend it. Nor did he seek out Mr Werner to hear what had transpired. He did, however, receive a letter which had been handed out to the attendees.

(f) About this time Mr Spillman started seeking other employment.

(g) A further staff meeting was scheduled for 21 February. Mr Spillman attended this meeting and again letters were handed out to various members.

(h) Mr Spillman did not meet with Mr Werner on 22 February. Mr Werner did not seek to find out why Mr Spillman did not attend the meeting . Mr Spillman did not arrange a new date or to agree that they would not continue with the intended private consultations.

(i) On 25 February, a last consultation meeting was held with members of staff. Mr Spillman arrived when the meeting was over. Mr Werner gave him a letter which informed him that he

had been selected for retrenchment. No exchanges took place about the content of the meeting.

(j) Mr Spillman signed form LRA7.11, referring a dispute relating to an alleged unfair retrenchment to the CCMA. Mr Spillman indicates in the form that a dispute arose between him and his employer on 20 February 2002. At this stage Mr Spillman was assisted by his attorneys of record.

(k) Mr Spillman wrote two letters to Mr Werner. One of these letters is relevant. In it he proposes four means of saving his job. Although dated 26 February, the letters were faxed on 27 February.

(l) The referral of the dispute to the CCMA was also faxed to Mr Werner on or a day after 27 February.

(m) GFM did not deal with these proposals. Mr Spillman was dismissed with effect from 28 February. He was, however, entitled to one month's notice.

(n) Mr Spillman commenced employment with Geotab on 1 March.

(o) Mr Werner and Mr Spillman met on 8 March. Mr Spillman wanted a better severance package, Mr Werner said that this would be considered. Later Mr Spillman was informed that the company would not meet his request.

(p) Very much later the severance package, which seems to include notice pay, was paid out to Mr Spillman.

I am of the view that there were three processes running parallel during the period 8 February to 28 February. The first was to be a private personnel retrenchment consultation between Mr Werner and Mr Spillman. Neither of them cared for this process as evidenced by their failure to meet or to discuss its implementation.

The second was an unsuccessful attempt to comply with what has been described as “due process” by implementing a process of consultation and letter writing mapped out by GFM's attorneys and a Durban advocate. The letters were provided to the recipients at incongruous times. This was a pro forma and seriously flawed attempt to comply with section 189 of the LRA.

The third process, if it can be described as a process, was the response of Mr Spillman to the general and private processes. Mr Spillman was disinterested in both. He knew what the financial situation of GFM was. He knew, or at least had a very good idea, that he would be retrenched. He did not participate in the processes. His belated participation, as set out in his letter of 26 February, which was delivered on 27

February, was nothing more than an attempt to eliminate his failure to engage with his employer on the terms which had been put forward by GFM.

The primary obligation to comply with fair procedure in accordance with section 189 of the LRA rests upon the employer. It was conceded by Mr Wesley, who appeared for the respondent, that this process was flawed. A secondary obligation rests upon the employee to engage with the employer, at appropriate times in response to a disclosure of information and proposals which the employer may make in the course of consultation.

Mr Spillman did not want to participate in the process. But the disclosure and consultation process, which would have triggered the obligation to respond, was so flawedd that this obligation arose only in a vague and ill -defined manner.

I would have awarded an amount equivalent to two months remuneration as a *solatium* for the procedurally deficient dismissal but I must take into account:

(a) Mr Spillman's disinterest in the process;

(b) His attempt to pad his case at the last moment, (although I consider this in the context which I have outlined above); and

(c) His search and successful attempt at finding employment the

day after he had been dismissed.

In the circumstances I am of the view that an amount equivalent to one month's remuneration would be adequate and reasonable compensation in the circumstances.

I do not intend to make an order regarding costs. Mr Spillman's conduct regarding his dismissal and his unsatisfactory performance in the witness box leads me to this decision.

In the premises:

1. The respondent is ordered to pay to the applicant R24 011,25 as compensation for his procedurally unfair dismissal.
2. The amount in paragraph 1 is to bear interest at the prescribed rate as from 23 April 2002 until date of payment.
3. There is no order as to costs.

SIGNED AND DATED AT BRAAMFONTEIN ON 27 MAY 2003

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A A LANDMAN

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR APPLICANT:

FOR RESPONDENT