

IN THE LABOUR COURT OF SOUTH AFRICA  
HELD IN DURBAN

**Case No. D1885/2001**

In the matter between:

**METCASH TRADING LIMITED**

Applicants

and

**THE COMMISSION FOR CONCILIATION MEDIATION  
AND ARBITRATION (CCMA)**

First Respondent

**COMMISSIONER A RAMDAW**

Second Respondent

**SOUTH AFRICAN COMMERCIAL CATERING AND  
ALLIED WORKERS UNION**

Third Respondent

**V BUTHELEZI**

Fourth Respondent

**H MAZIBUKO**

Fifth Respondent

---

**JUDGMENT**

---

1. This is a review application arising out of an arbitration award delivered by the Second Respondent, in the CCMA, concerning the dismissal of two employees (the Fourth and Fifth Respondents) from the employment of the Applicant.

2. The Fourth and Fifth Respondents were so dismissed, because, as the Second Respondent found, they committed gross misconduct for having stolen a tin of corned beef. In his arbitration award the Second Respondent found that :

*"It is quite evident from the evidence of the employer party that one x 300 grams Family Favourite Bully Beef was consumed by the two employees in the canteen area outside their official lunch break. In the absence of their producing a cash sale slip and proof that they had a label on the tin having gone through the security check, it is safely presumed and accepted that they obtained it from the store. They were found eating the same outside their official lunch break .... The employees' evidence was very unreliable and evasive in material respects. Their time-frames did not make sense nor did they explain why they could not produce a cash sale slip for the food they purchased at the very outset.*

*The employer party has proven them guilty on a balance of probabilities. Both employees have long service records in excess of eleven years and fifteen years with a clean disciplinary record.*

*Theft destroys the relationship of trust the very core of the employment relationship."*

3. Having found all of this, the Second Respondent nevertheless proceeded to upset the Applicant's dismissal of the two employees in question because he found that dismissal was not a fair sanction. The reasons for this appear to include the value of the corned beef (approximately R10,00) the long service of the Fourth and Fifth Respondents and their clean disciplinary record.
4. In regard to the appropriate sanction, the unchallenged evidence led by the Applicant in the arbitration was as follows :
  - 4.1. the Applicant had regular meetings with their employees about shrinkage;
  - 4.2. posters, known as the "*combat fraud posters*" were put up in the workplace in this regard;
  - 4.3. the employees were aware of these posters;

- 4.4. other staff who had misappropriated stock by taking it and eating it without paying for it had been dismissed, including a previous manager;
- 4.5. previously an employee had been dismissed for misappropriating 80 grams of polony which cost approximately 60 cents.
5. Not surprisingly, it appears from the recorded transcript of the proceedings, that the Fourth and Fifth Respondents' representative in the CCMA hearing did not dispute that the Fourth and Fifth Respondents were "*fully aware*" of the rule against misappropriation of stock (see page 175 of the record).
6. It appears from page 166 of the record that the Fourth and Fifth Respondents' representative attempted to introduce evidence through the Fifth Respondent that he had previously used company stock but had not been dismissed in that regard. The evidence is unclear, unconvincing and was in any event never put to any of the Applicant's witnesses and in my opinion takes the matter no further.
7. In view of all of this evidence, was the Second Respondent entitled to substitute his own sanction for that of the employer and, if not, does this render his award reviewable?

8. Our Labour Appeal Court has consistently held that summary dismissal is an appropriate sanction for gross dishonesty. Where CCMA Commissioners have held otherwise, both the Labour Court and the Labour Appeal Court have overturned those decisions on review. The reason is that an award upsetting a summary dismissal where gross dishonesty is proved is not justifiable.
9. In this matter there was overwhelming evidence before the Second Respondent as to the seriousness of the acts of dishonesty committed by the Fourth and Fifth Respondents. The Fourth and Fifth Respondents knew about the rule in question, they knew that shrinkage was a serious problem for their employer, they attended meetings where the shrinkage problem was discussed and yet, in those circumstances, they chose to steal from their employer. This is the context in which their misconduct must be viewed. In this context the low value of the stolen matter is not relevant. Any other finding will negate the Applicant's legitimate attempts to curb shrinkage problems.
10. In the context of this particular matter the Fourth and Fifth Respondents' long service cannot upset the sanction of summary dismissal. A contrary finding

will mean that every employee with long service is entitled to steal at least once from his employer before he is dismissed. That is not an acceptable situation and for all of these reasons the award of the Second Respondent is neither justifiable nor rational having regard to the evidence that was available before him.

11. Although the Third Respondent was cited as a party to these proceedings, it is not clear to me upon what basis this was done. The Third Respondent clearly represented the Fourth and Fifth Respondents in the CCMA but that does not make them a party to the proceedings. That sort of reasoning would make every firm of attorneys a party to proceedings in which they represented their clients. No order for costs can therefore be made against the Third Respondent but there is no reason why a costs order should not be made against the Fourth and Fifth Respondents. In the result I make the following order :

- 11.1. the award of the Second Respondent dated the 15<sup>th</sup> of October 2001 is reviewed and set aside;

- 11.2. the dismissal of the Fourth and Fifth Respondents was substantively and procedurally fair.

11.3.the Fourth and Fifth Respondents are directed to pay the costs of this application.

DATED at DURBAN this 24<sup>th</sup> day of APRIL 2003.

---

**N P WOODROFFE AJ**