

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO J143/01

In the matter between

THE NATIONAL UNION OF METALWORKERS OF SA

First Applicant

SEEPE AND THREE OTHERS

Second – Further Applicants

and

L DREYER

First Respondent

CCMA

Second Respondent

VRN STEEL (PTY) LTD

Third Respondent

JUDGMENT

JAMMY AJ

1. The Second and Further Applicants in this matter were dismissed by the Third Respondent for fraudulent timekeeping. In arbitration proceedings under the auspices of the Second Respondent, the First Respondent in her capacity as the Presiding Commissioner found that those dismissals were both substantively and procedurally fair in terms of the Labour Relations Act of 1995 and that the individual Applicants were not entitled to reinstatement.

2. In the unopposed application now before this Court the First Applicant, as their trade union, and the four individual Applicants seek an order reviewing and setting aside the First Respondent's award in question. The Court was advised, in the course of argument, that the application is however confined to the finding of procedural fairness and that the First Respondent's determination that the dismissals in question were substantively fair, is not challenged.
3. In that narrow context, the following uncontested allegations of fact emerged from the Founding Affidavit of Alfred Mashegoane, a local organiser of the First Applicant and who, it appears from the record of the arbitration proceedings which is before the Court, represented the Second and Further Applicants in the arbitration hearing:
 - 3.1 One of the four individual Applicants, Moses Seepe, was at all material times, a shop steward of the First Applicant.
 - 3.2 In purported compliance with the fair procedure requirements of paragraph 4(2) of the Code of Good Practice: Dismissal in Schedule 8 to the Labour Relations Act 1995, the Third Respondent faxed notification to the First Applicant of its intention to institute disciplinary proceedings against him.
 - 3.3 That telefax was transmitted to an incorrect fax number and was never received by the First Applicant.
 - 3.4 At the outset of the arbitration hearing the First Respondent refused to allow Moses Seepe to represent the other Applicants on the grounds that he himself was one of the accused employees. An application which then followed for postponement of the hearing to enable the Applicants to procure alternative representation was refused and the hearing proceeded with none of them represented.

4. Evidence on these procedural aspects was adduced in the course of the arbitration before the First Respondent who, in her award, dealt with them as follows:

“I agree with the union that some elements of the internal disciplinary enquiries were not perfect, although this was not sufficient to warrant compensation for procedural unfairness. The Applicants had the opportunity to state their case to the company prior to their dismissal. The company believed it had informed the union of intended disciplinary action against Applicant/Shop Steward Seepe, although it used the wrong fax number. The dismissal of the four Applicants was therefore fair”.

5. This superficial and dismissive assessment of what the Applicants submit were serious procedural derelictions on the part of the First Respondent, are in manifest conflict with certain of the provisions of Section 4(1) of the Schedule 8, the Code of Good Practice, to which I have referred and which, in that context, records that –

“The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee”.

The Third Respondent, it is submitted, is a substantial organisation, disqualifying it from any dispensation relating to the basic requirements of fair procedure and which might otherwise have been invoked by a smaller business. No “exceptional circumstances” justifying such dispensation with pre-dismissal procedures, as provided for in Section 4(4) of the Code, existed to justify it.

6. The First Respondent makes no attempt in her award to substantiate what she perceives as inconsequential imperfections in “some elements of the internal disciplinary enquiries” or her apparent acceptance as adequate, of the company’s

belief that “it had informed the union of the intended disciplinary action against the Applicant/Shop Steward Seepe, although it used the wrong fax number”.

7. The Applicants’ dissatisfaction with the First Respondent’s conduct of the arbitration in that regard, is in my view, understandable and reasonable. In dealing with these specific aspects of the matter which I have addressed, the First Applicant’s conduct was patently grossly irregular and cannot be sustained and those specific issues clearly fall to be re-assessed.

8. For these reasons the order that I make in this matter is the following:

8.1 The First Respondent’s award that the dismissal by the Third Respondent of the Second and Further Applicants in this matter was procedurally fair, is reviewed and set aside.

8.2 The dispute relating to the procedural fairness of their dismissal, and only that aspect of their initial reference of the matter to the Second Respondent, is to revert to the Second Respondent for arbitration afresh before a Commissioner other than the First Respondent.

8.3 The matter being unopposed, there is no order as to costs.

B M JAMMY

Acting Judge of the Labour Court

Date of hearing: 6 August 2003

Date of Judgment: September 2003

Representation:

For the Applicants:

Mr N N Kapa : Union Official