

C517/2006

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT CAPE TOWN)

CASE NUMBER:

C517/2006

Heard and Delivered:

7 May 2008

5 Edited:

0 June 2010

NOT REPORTABLE

TRENTYRE (Pty) LTD

Applicant

and

NATIONAL UNION OF METAL WORKERS10 OF SOUTH AFRICA ("NUMSA")

First Respondent

SARAH CHRISTIE N.O.

Second Respondent

THE MOTOR INDUSTRY BARGAININGCOUNCIL

Third Respondent

SIMON WITBOOI

Fourth Respondent

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J U D G M E N TPILLAY D, J:

This is an application to review and set aside the award of the second respondent commissioner. This is a classic case in which an application for a review should be dismissed. It is submitted for the applicant that the award should be set aside on the grounds that it amounts to a gross irregularity because the commissioner effectively denied the applicant a fair hearing by discounting altogether the misconduct of being drunk on duty because it was the applicant's first offence.

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It is manifest from the award that the commissioner took into account all factors and did not exclude the seriousness of the offence and the importance of the rule; she in fact records that  
5 dismissal for drunkenness would be a valid reason for a dismissal, but in the circumstances was not a sufficient reason to dismiss. The commissioner also took into account that dismissal is a remedy when conduct poses a risk to management.

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In the circumstances the application for review is dismissed with costs.

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PILLAY D, J