

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT PORT ELIZABETH

Case Number: P34/09

REPORTABLE

In the matter between:

First National Battery (Pty) Ltd

APPLICANT

and

1ST RESPONDENT

2ND RESPONDENT

J M Matshoba

3RD RESPONDENT

JUDGMENT

Pillay D, J

[1] This is an application to review and set aside the award of the second respondent commissioner. The third respondent employee was dismissed for receiving a bribe from a transport contractor.

[2] The arbitrator found that the employee did receive a payment of R3 000. He accepted that the payment was not for a loan as alleged by the employee. However, in a convoluted way of reasoning he concluded that the employee was not dishonest in relation to the employer and therefore to dismiss him would be unfair.

- [3] In the course of reaching that conclusion the arbitrator was persuaded that the charge of bribery was inappropriate, and that it should have been extortion. He proceeded to find that, because the transaction did not involve violence, intimidation or force it was not extortion either. He then reasoned that as it was the employee's job to persuade workers, to use his influence as chief shop steward and to persuade them to act, he did not break the rule. The court draws these inferences from the award which is vague in several respects.
- [4] From the arbitrator's reasoning it seems that the arbitrator has lost his moral compass. This is clearly a case of wrongdoing whether one labels it bribery or extortion. It was payment to a shop steward to pacify his constituency when there was evidence that he was agitating to cause trouble for the contractor.
- [5] Furthermore the arbitrator does not reconcile his initial finding of credibility against the employee with his conclusion and award in which he reinstated the employee.
- [6] Given the seriousness of the offence committed by the employee, and the poor judgment exercised by the arbitrator, the court directs the registrar to refer a copy

of this judgment, after it is transcribed, to the National Director of the CCMA with a view to investigating and monitoring the competence of this arbitrator to remain on the CCMA's panel of arbitrators.

[7] I grant an order in the following terms:

- a. The award is reviewed and set aside.
- b. The dismissal of the employee was fair.
- c. The employee is to pay the costs of the review.
- d. The registrar is directed to refer this judgment to the National Director of the CCMA.

Pillay D, J

Date of Hearing: 19 November 2009

Date of Judgment: 19 November 2009

Edited: 18 December 2009

For the Applicant: Adv K. Tip

For the Respondents: Mr Gajjar

