

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: JR1220/09

In the matter between:

HORTONS

Applicant

and

MOHAMED RAFFEE N.O.

First Respondent

COMMISSION FOR CONCILIATION,  
MEDIATION AND ARBITRATION

Second Respondent

JOAN-ANN OLIVIER

Third Respondent

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### JUDGMENT

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FRANCIS J

1. This is an application to review and set aside the first respondent's (the commissioner's) finding in an arbitration award in awarding the third respondent R10 785.00 being the unpaid savings and sheriff's returns that the applicant had not paid to the third respondent. The applicant does not challenge the commissioner's finding that the third respondent was not constructively dismissed.
2. The third respondent was employed by the applicant on 14 March 2006 as a tracer whose duties were to trace people and to verify information for an attorney. She earned a commission of about R10 000.00 per month. She resigned on 1 September 2008 with notice with her last day of work being 30 September 2008. She referred a constructive dismissal dispute to the second respondent (the CCMA). At the arbitration hearing she testified about her ill-treatment whilst employed and that there

was unpaid savings in the sum of R5 000.00, outstanding commission on Telkom, ITC and sheriff returns for no traces in the sum of R10 785.00. Her evidence that the applicant owes her R10 785.00 was not challenged during cross examination. The commissioner found in his award that the third respondent's evidence in that regard was not rebutted by the applicant. The commissioner's finding in this regard is supported by the handwritten notes of the commissioner.

4. The applicant felt aggrieved with the commissioner's finding on R10 785.00 and brought the review application. It contended that the commissioner acted grossly irregular in ordering compensation to the third respondent in the absence of material information about the employment circumstances under which the amount was calculated and decided on.
5. The applicant's ground of review is baseless. The commissioner did not award the third respondent any compensation. As stated above the third respondent testified about what was due and owing to her. Part of the documents that she handed in at the arbitration hearing was an invoice dated 29 September 2008 that reflects that R10 575.62 was due to her. Her evidence in this was not challenged during cross examination.
6. During oral submissions in Court, Ms Roeloffs who appeared for the applicant wanted to raise a new ground of review namely that the third respondent did not in her referral to the CCMA indicate that she was also claiming the monies owed to her. She conceded that this was not a ground of review and did not persist with it. Even if she could raise a new ground of review, which she clearly cannot, the applicant still faces

a difficulty with the provisions of section 74(2) of the Basic Conditions of Employment Act 75 of 1997 (BCEA) which permits a commissioner to determine a claim such as the one that the commissioner dealt with in arbitration proceedings.

7. The applicant has failed to prove that the commissioner acted grossly irregular in ordering that the third respondent be paid the sum of R10 785.00.
8. The application stands to be dismissed.
9. There is no reason why the applicant should not pay the third respondent's reasonable disbursements.
10. In the circumstances I make the following order:
  - 10.1 The application is dismissed.
  - 10.2 The applicant is to pay the third respondent's reasonable disbursements.

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FRANCIS J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR THE APPLICANT : S ROELOFFS INSTRUCTED BY  
VOGEL MALAN ATTORNEYS

FOR THIRD RESPONDENT: IN PERSON

DATE OF HEARING : 22 OCTOBER 2010

DATE OF JUDGMENT : 26 OCTOBER 2010