

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D269/08

5 In the matter between:

MCL UKHOZI RECRUITMENT SERVICES CC

APPLICANT

And

FAIZ AHMED KHAN

FIRST RESPONDENT

COMMISSION FOR CONCLIATION,

10 MEDIATION AND ARBITRATION

SECOND RESPONDENT

COMMISSIONER LESTER SULLIVAN

THIRD RESPONDENT

JUDGMENT

15 PILLAY D, J

This is an application to review and set aside the award of the third respondent Commissioner. The issue before the Commissioner was to determine whether the applicant employer dismissed the first respondent employee or whether the employee resigned. The Commissioner found that

20 the employer had dismissed the employee.

A material consideration was documentary evidence. There was an email before the Commissioner in terms of which the employee had written to a

25 third party about an area sales manager job. In that email he also stated that

he "will be without a job from the end of December". This email was sent on 2 November 2007. The altercation between the employee and Mr Lembede for the employer occurred on 14 December 2007, before the employee went on leave. The employer alleged that they were in a discussion in which the
5 employer was attempting to get a report from the employee about his work, when the employee became agitated and angry and said that he could not work for an employer who did not trust him. The employee walked out of the meeting. Thereafter Mr Lembede found him deleting data off his laptop which belonged to the employer. Subsequently, the employer found the
10 email in which the employee said that he would be without a job from December.

He also found another email from the employee to a third party in which he stated that he, the employee, was the owner of Rock Hustlers Fishing
15 Tackle. This email was sent on 6 August 2007. In this email the employee was ordering goods for his business. The employee admitted that these emails belonged to him and that he was aware of them.

The Commissioner, however, paid no attention whatsoever to these emails.
20 They manifest a clear intention not to be employed after December. That was material corroboration of the employer's version that the employee did not intend to remain employed with the employer. In the circumstances the Commissioner ignored material evidence. As such, he misdirected himself.

The application for review is GRANTED.

Pillay D, J

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Date heard and delivered: 9 February 2009

Edited: 2 April 2009

Appearances:

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For the Applicant: P.O. Jafta – Jafta Inc

For the Respondent: No Appearance (Unopposed)

CONTRACTOR

Sneller Recordings (Pty) Ltd. Durban • 103 Jan Hofmeyr Road • Westville 3630
Tel 031 2665452 • Fax 031 2665459

IN THE LABOUR COURT

HELD AT DURBAN

CASE NO : D269/08

DATE : 9 FEBRUARY 2009

MCL INKOSI RECURITMENT SERVICES

versus

F KHAN

BEFORE THE HONOURABLE MS JUSTICE PILLAY

ON BEHALF OF APPLICANT : MR JAFTA

ON BEHALF OF RESPONDENT : NO APPEARANCE

INTERPRETER : NOT REQUIRED

REPORT ON RECORDING

EXTREMELY POOR – Mr Jafta was barely audible.

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