

AT THE NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY

In the matter between:

MUDWUSA obo Moris Mphapogane

Applicant

And

Parsons Transport Operations

Respondent

DEFAULT AWARD

Case No : D156/MPU/2564/06

Date of Arbitration : 28 September 2007

Date of Award : 01 October 2007

Head Note : Misconduct Dismissal: negligence

Joseph Mphaphuli
Panelist

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1. DETAILS OF HEARING AND REPRESENTATION

The dispute was arbitrated in default and at the premises of the Bargaining Council in Witbank on 28 September 2007. The proceedings were conducted in terms of Section 191 of the Labour Relations Act 66/1995 ("The Act") as Amended.

Mr Selepe a union official represented the Applicant. There was proof that the Respondent was served notice of the process. Notice was served by way of fax dated 05 September 2007 to fax number 013 656 1284.

The proceedings were tape recorded.

2. ISSUE IN DISPUTE

Whether the dismissal was for a fair reason and was effected in accordance with a fair procedure and the appropriate remedy, if any.

3. SUMMARY OF EVIDENCE AND ARGUMENT

The Applicant was recruited on 14 April 2006. He was employed as a general worker. He was remunerated at R 501.00 per week. His dismissal took place on 22 November 2006. Dismissal was for a reason related to conduct.

The Applicant Party filed for compensation in the event of a successful application.

The Applicant gave the following testimony. The Respondent accused him of negligence on 21 November 2006. He was accused of failing to tighten the nuts on the wheel after repairing it following a puncture.

The Applicant denied having repaired the wheel in question or even putting it back on the truck. He attended a disciplinary hearing where he was found not guilty of any wrong doing.

The Respondent however insisted that he should be relieved of his duties. He refused to sign a separation agreement as a result of which he was dismissed. The Respondent dismissed him without paying him his wages for the three weeks worked prior to his dismissal.

4. SUMMARY OF ARGUMENT

The Applicant's case was that he was dismissed for no fair reason or any reason at all. The Applicant pleaded that the dismissal be set aside and that his application be upheld.

5. ANALYSIS OF EVIDENCE AND ARGUMENT

A separation agreement is like any agreement a matter of consensus. An agreement is at issue where there is a meeting of the minds on the subject of agreement. In the case of a separation agreement an employee agrees to terminate his services without apportioning blame to the employer. Termination is on mutually acceptable terms and does not give rise to a claim of a dismissal.

An employer may not by virtue of its superior status in the relationship compel an employee to accept a separation agreement. Where this is the case an affected employee may proceed with a case of actual dismissal as is the case in the matter under investigation.

Accordingly I find that there was a dismissal and that the dismissal was not for a fair reason and was not effected in accordance with a fair procedure.

6. AWARD

1. The dismissal was unfair.
2. I order Parsons Transport Operations to compensate Morris Mphapogane at
 $R\ 501.00 \times 4.33 \times 6 = R\ 13,015.98$

In addition Parsons Transport Operations must pay Morris Mphapogane his outstanding three weeks wages as contemplated in terms of Section 195 of the Act.

Total compensation due will amount to the sum total of R 501.00 x 4.33 x 6 =

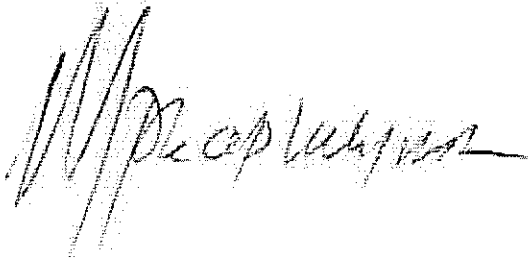
R 13, 015. 98

+ R 501 x 3 = R 1, 503.00

Grand total = R 14, 518. 98.

Compensation must be effected on or before 31 October 2007.

3. I make no cost order.



Joseph Mphaphuli

Signed

Tokiso Panelist

01 October 2007