

# ARBITRATION AWARD

Commissioner: Willie M Ralefeta  
Case No.: D1688/JHB/7728/06A  
Date of Award: 28/05/2007

## NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY

### In the ARBITRATION between:

SAACOWU obo Joshua Chitsvatsva

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(Union / Applicant)

and

Freight Haul

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(Respondent)

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## **Details of the hearing and representation**

This is an arbitration in terms of the provisions of Section 188 read with Section 191 of the LRA 66 of 1995 ("the Act"). Mr Joshua Chatsavatsa attended the arbitration alone as an applicant. The respondent Freight Haul was represented by Mr Hennie Develliers. Mr Dons Fourie and Mr Moses Ndlovu attended the proceedings as witnesses of the respondent. The arbitration proceedings were conducted on the 23<sup>rd</sup> May 2007 at the bargaining council offices in Braamfontein.

## **Issues in dispute**

To determine whether the dismissal of the applicant was both procedurally and substantively unfair

## **Submission of evidence and arguments**

Opening statement by the respondent's representative-Mr Hennie Develliers

Mr Hennie Develliers stated as follows:

The respondent will submit written evidence and call on two witnesses to prove that the dismissal of the applicant was both procedurally and substantively fair. The respondent will further prove that the applicant received thorough training before and during his employment as a truck driver. Further the respondent will rely on evidence from Mr Dons Fourie to prove that the applicant had a tendency of making accidents during his employment at Freight Haul as a driver. Further the respondent will prove that it incurred large amounts of losses due to the accidents caused by the applicant's negligence.

The respondent will further prove that the last incident for which the applicant was dismissed for was not the first one but the fourth one. The respondent will produce evidence to prove that the applicant was given all the necessary assistance the process of progressive discipline was exhausted before the applicant was finally dismissed.

The respondent will further prove that the applicant was issued with the notice to attend the disciplinary hearing on time, to organize his own representative and was informed of his rights during the disciplinary enquiry. Further the applicant was also afforded and opportunity to state his case, cross-examine witnesses and plead in mitigation after the verdict was passed. The respondent will prove that finally after looking at various other alternatives it found that the applicant was a high risk to keep him as a driver and had to dismiss him.

## **Opening statement by the applicant-Mr Joshua Chatsavatsa**

### **Mr Joshua Chatsavatsa stated as follows:**

He will testify under oath that his dismissal was both procedurally and substantively unfair. He will further prove that he was dismissed unfairly for making accidents and that money was deducted from his salary without being consulted. He will further prove that the reasons for his dismissal were not valid.

First witness of the respondent-Mr Moses S Ndlovu

He started working for Freight Haul in January 2000 as a training manager. He employed the applicant last year on 8<sup>th</sup> May 2006 as truck driver. The applicant was tested first before he was employed as a truck driver. He was also put in class for a week to undergo training.

The first time he went out to the clients an experienced driver who guided, introduced him to the clients and also showed him the routes accompanied him. Subsequent to rigorous induction the experienced driver write a report with the recommendations that the casual driver is now ready to go out to the clients on his own.

As a training manager he has done everything in his power to ensure that the applicant was an efficient driver. He made several attempts to counsel and encourage him but without any avail.

### **Cross-examination**

Under cross-examination the applicant did not have any questions as he admitted to the witness's testimony.

### **Second witness of the respondent-Mr Dons Fourie**

Mr Dons Fourie testified under oath as follows:

He started working for the company in 2003 as a risk manager. The applicant was employed in 2006 as one of the spare drivers in the company. He used to manage the fleet and was also responsible for the reported accidents. They do cargo containerization and long distance deliveries.

The company uses casual spare drivers and permanent drivers. Casual spare drivers are used to relieve the permanent drivers when they are off duty. The casual spare drivers form a pool of their own. Every fleet has got a its own

number which used as a control number. Drivers who are promoted to permanent positions are dedicated ones with a good track record. All the truck drivers start off as casual spare drivers and later are promoted as qualified permanent drivers.

On 15<sup>th</sup> November 2006 the applicant went to do deliveries at Fair Price. As he was reversing into the offloading bay, the left hand side of the trailer hit the gate and knocked it down. The applicant blamed the security guard that was directing him and the other motorists who were shouting at him.

The photographs indicated that there was enough space for a qualified driver to park into the offloading bay without making an accident. e (See page 17, 25, 26,27, and 28). Truck DAF registration No. 620 was driven y the applicant on the day of the accident. Due to the impact of the trailer hitting the gate it got damaged and fell down. (See page 30, 31 and 32).

The applicant was issued with the notice on 22 November 2006 to appear at the disciplinary hearing on 29<sup>th</sup> November 2006 at 12h00. He signed the notice. (See page 33). The applicant was given enough time of two days to prepare for the disciplinary hearing. (See page 33). Summary of the disciplinary hearing was prepared. (See page 34).

The applicant was involved in three different incidents of accidents within six months as follows:

- On 24<sup>th</sup> August 2006 there was damage to his vehicle while he was sleeping at Tugela Transport Stop. He did not take the third party details because he said the other driver scratched his vehicle on the left panel while he was sleeping. The witness counseled him the first time. (See page 5 and 6 statement from the applicant about the incident);
- On 11 November 2006 he damaged the gate at MSC in City Deep and drove away without reporting the incident. He drove over the pavement at a curve (See page 11). On arrival at the employer's premises he tried to hide the dent. The Depot Manager reported the damage and not the applicant. The Depot Manager at MSC and the other people tried to stop him not to go over the pavement but he refused to stop;
- On 12<sup>th</sup> September 2006 while in Durban, he failed to tighten the hand brake and started the vehicle, the brakes released and the truck ran into another parked vehicle. At that time the applicant was given a final written warning for negligence;

During the disciplinary hearing to which he was called for the last incident where he reversed into the gate of the customer, he said he was nervous because he was standing in the road and other motorists were impatient and shouting at him. Further he also blamed the security guard for misdirecting him.(See page 36).

During the disciplinary hearing the applicant and his representative were given an opportunity to cross-examine the respondent's witness. (See page 37).

After the applicant reversed into the gate the respondent incurred costs for the repairs and as a result and in accordance with the bargaining council rules, deductions amounting to nine hundred and forty rand and fifty cents were made from his salary. (See page 8 of Bundle A). The deductions from the employee's salary going up to R1,000 are allowed only if the transgression of the company rules was due to negligence. The applicant objected to the deductions saying that the security guard at the customer's premises had misdirected him to cause the accident. (See copy of the cover letter from MSC Logistics on page 9 of Bundle A).

While on a trip in Durban, the applicant had an altercation with one of the mechanics called Leon Visser. The applicant reported Leon that he had provoked him and insulted him. After management investigated the matter Leon was found to be at fault and he was subsequently issued with a final written warning.

During the altercation with Leon, the applicant left the truck engine idling with the hand brake off and the truck rolled into another truck and damaged it.

### **Cross-examination**

Under cross-examination the witness admitted that he had deducted R825 for the damages to the gate at MSC Logistics. Further witness argued in his testimony that he never authorized the deductions of R1,500 from the applicant's salary for the Tugela incident.

The witness further confirmed in his testimony that the applicant's notice to the disciplinary enquiry was issued on 22<sup>nd</sup> November 2006 and was to be held on 29<sup>th</sup> November 2006. Further the witness contested that subsequent to Tugela incident, the applicant was given a final written warning and the disciplinary hearing was called off at that stage. The witness further argued in his testimony that he went to investigate the Tugela incident because the applicant had failed to report it to him.

### **Applicant as the sole witness-Mr Joshua Chitsvatsva**

Mr Joshua Chitsvatsva testified under oath as follows:

He started working as a spare truck driver for the respondent earning R3,789 pm. He was dismissed on 7<sup>th</sup> December 2006. He was allegedly dismissed for making too many accidents with the company truck. He went to Fare Price to deliver containers. On arrival there the security instructed him to park his truck at the offloading bay.

As he reversed the truck and the trailer backwards to the offloading bay, he blocked the road and the other motorists started shouting and getting impatient. He felt pressurized and reversed into the gate and knocked it down with the side of the trailer. Further the security guard who helped him to park the truck at the offloading bay did not direct him properly that is the reason he reversed into the gate. He could not see the back of the truck. Due to the gate being damaged, he gave one of the managers his employer's telephone number to inform him about the accident.

The employer sent Morne to come and investigate and take some pictures of the scene of the accident. He was subsequently suspended to appear at the disciplinary hearing on 29<sup>th</sup> November 2006. On 7<sup>th</sup> December 2006 he received a dismissal letter. After he was dismissed he started looking for another job. He still feels that the company owes him the four days he had worked before his dismissal even if the management claims it for the uniform that was issued out to him. He feels it was unfair for the employer to consider the previous offences when they dismissed him. Further he feels that management harassed him.

### **Cross-examination**

Under cross-examination the witness argued in his testimony that the security guard did not guide him properly and that is the reason he knocked down the gate of the client at Fare Price. Further the witness contested that after he knocked the gate down, the security guard who was guiding him to reverse backwards disappeared. The witness further admitted that as a professional driver he was supposed to use his rearview mirror.

Further the witness admitted that he was responsible for reversing into the gate even though the security guard misguided him. Further the witness explained in his testimony that he could not see the gate at the back of his truck. The witness admitted that he did know how to reverse the trailer in such a way that it coiled like a snake so that he could see the rear view of the truck (snaking skill of truck driving).

Further the witness admitted that the truck was two metres wide whereas the gate was seven metres wide. Further the witness raised his concern in his testimony about the deductions the company had effected from him. Further the witness admitted was responsible for the accident Fare Price but not for Tugela Truck Stop and Durban. Further the witness admitted that though he felt that he was not responsible for the accidents where his truck was involved at Tugela Truck Stop and Durban, he did not lodge a grievance to management.

### **Analysis of evidence and arguments**

In terms of the provisions of Section 188 read with Schedule 8(2) of the Act, a dismissal that is not automatically unfair is unfair if:

- 1) the employer fails to prove that the reason for dismissal is related to the employees conduct; or
- 2) capacity; or
- 3) based on the employer's operational requirements; and
- 4) that dismissal was effected in accordance with a fair procedure

According to the evidence and arguments submitted by both parties, I find the dismissal of the applicant to be procedurally fair because of the following reasons:

- The applicant has admitted during cross-examination that he was issued with the notice on 22<sup>nd</sup> November 2006 to attend the disciplinary enquiry on 29<sup>th</sup> November 2006;
- The witness has also admitted in his testimony that he was represented by his shop steward during the disciplinary enquiry;
- Further the applicant admitted that he was given two days to prepare himself for the disciplinary hearing;
- The witness further admitted that his representative was allowed to plead in mitigation while the company representative was also allowed to submit their aggravating factors; and
- Further the applicant admitted that he knew about his rights pertaining to the disciplinary hearing and was also given the opportunity to cross-examine and be cross-examined.

After considering the abovementioned evidence and arguments from both parties, I find the dismissal of the applicant to be procedurally fair.

In terms of Schedule 8 (7) of the LRA regarding guidelines in cases of dismissal for misconduct-Any person who is determining whether a dismissal for misconduct is unfair should consider-

- (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- (b) if a rule or standard contravened was valid, reasonable, known and consistently applied to every body within the organization.

Considering the abovementioned provisions of the LRA, I find the dismissal of the applicant to be substantively fair because of the following reasons:

- The applicant fully concurred with his training manager, Mr Moses Ndlovu that he was given full and thorough training for one full week as a spare truck driver before he was assigned to out and deliver on his own;
- Further the applicant did not argue or contest the testimony by his training manager that he was well inducted by an experience mentor to show him the routes, guide him and introduce him to the company clients before he could go out on his own;

- The applicant did not dispute the fact that his training manager had counseled him and encouraged him to be a good driver previously before he was finally dismissed;
- Further the applicant admitted in his testimony and during cross-examination that he had caused the accident at Fare Price because other motorists pressurized him, the security guard misguided him and that he could not see at the back of the truck he was reversing. This means that he could have killed even the security guard who was guiding him because he did not know where he was going and how far the objects behind him were from the trailer;
- The applicant also admitted having left the engine truck idle without the hand brake on which led to the rolling into another truck causing a serious damage in Durban;
- Further the applicant also admitted that he was responsible for the damage of the truck at Tugela Truck Stop but he was sleeping at that time; and
- The applicant further argued that management should not have reminded him of his previous accidents when he was finally dismissed, but unfortunately that is what progressive discipline is all about. Giving a person an opportunity to correct his behaviour and not to dismiss at the first instance; and
- The applicant has also objected in his arguments to the deductions from his pay of the damages he caused to other parties through his accidents, but unfortunately that is in accordance with the terms of the agreement entered into by the trade unions and the employers' organizations forming the bargaining council.

After having taken into account the evidence and the arguments of both the applicant and respondent, I find the dismissal of the applicant to be substantively fair.

Against this background and on a balance of probability, I find the dismissal of the applicant to be both procedurally and substantively fair. Therefore in conclusion I make the following award:

**Award:**

**After having considered the evidence and arguments of the applicant and the respondent, I now make the following award:**

- **That the dismissal of the applicant, Mr Joshua Chitsvatsva by the respondent, Freight Haul on 7<sup>th</sup> December 2006 must be upheld; and**
- **That I make no order as to costs.**



**Commissioner: Willie Moyahabo Ralefeta**  
**Date: 28<sup>th</sup> May 2007.**