

BACKGROUND

Allan Long (“the Applicant”) was previously employed by South African Breweries (Pty) Ltd (“the First Respondent”) as its district manager for the Border District. He was responsible for legal compliance in respect of the First Respondent’s operations in the Border District, including the requirements pertaining to a fleet of vehicles.

On 10 May 2013, a trailer owned by the First Respondent was involved in a fatal accident. Before the accident, the vehicle was in a state of disrepair and unlicensed. This accident prompted an investigation by the First Respondent into the vehicle fleet. The investigation revealed that many of the vehicles, for which the Applicant was responsible for, were not roadworthy and had invalid licence discs.

Subsequent to further investigation and a disciplinary hearing, the Applicant was found guilty of dereliction of duties, gross negligence and bringing the First Respondent’s name into disrepute. He was dismissed on 14 October 2013. The Applicant had also been suspended from work from the time the investigations began until he was dismissed.

Commission for Conciliation, Mediation and Arbitration (“CCMA”):

Two arbitrations followed in the CCMA, the first concerned the Applicant’s suspension, pending disciplinary proceedings. The arbitrator concluded that, although there was a valid reason to

suspend the Applicant, he had not been given an opportunity to make representations to show why he should not be suspended. This he found to be an unfair labour practice and awarded the Applicant compensation equivalent to two months’ remuneration. In the second arbitration, the arbitrator held that the Applicant had been unfairly dismissed because the illegalities regarding the vehicles did not fall within his responsibility. The First Respondent was directed to reinstate the Applicant with retrospective effect.

Labour Court (“LC”):

The First Respondent took both arbitration awards on review to the LC. Regarding the first arbitration, the LC held that where a suspension is precautionary, there is no requirement that an employee be given an opportunity to make representations. Instead, the suspension must be linked to a pending investigation and serve to protect the integrity of that ongoing process. The LC thus set aside the arbitrator’s finding that the suspension was an unfair labour practice. The LC held, in respect of the second arbitration, that the Applicant had been guilty of dereliction of duty. Further, that the arbitrator’s award constituted a gross irregularity in that he irrationally and improperly evaluated the evidence. The award was set aside and substituted with an order declaring the Applicant’s dismissal to be fair. The LC also ordered that the Applicant pay the First Respondent’s costs in both review applications.

The Labour Appeal Court (“LAC”) refused the Applicant’s application for leave to appeal.

Constitutional Court ("CC"):

In a unanimous judgment, the CC confirmed that an employer is not required to give an employee an opportunity to make representations before a precautionary suspension and thus refused leave to appeal on the merits of the review. The CC further held that the LC was correct in holding that the dismissal had been fair and that the Applicant should not be reinstated. However, leave to appeal against the LC's costs order was granted because, in labour matters, costs do not ordinarily follow the result. The LC had failed to justify its adverse costs order and the CC found that there were no reasons for awarding costs against the Applicant.

HELD

The appeal was upheld and the costs order granted by the LC was set aside.

VALUE

A precautionary suspension is not a disciplinary measure and consequently, the requirements relating to fair disciplinary action under the Labour Relations Act do not apply.

Written by Jordan Dias and Pierre van der Merwe

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