



CASE NO.: LCA 56/2011

REPORTABLE

IN THE HIGH COURT OF NAMIBIA

In the matter between:

PURITY MANGANESE

APPELLANT

And

WALTER NGUVITJITA

RESPONDENT

CORAM:

MILLER, AJ

Heard on:

13 July 2012

Delivered on:

22 August 2012

JUDGMENT

MILLER, AJ. [1] The respondent was dismissed by the appellant. This followed a finding by the chairperson of an internal appeal hearing that the respondent had engaged in and instigated fellow employees to engage in unlawful strike action at the premises of the respondent.

[2] In essence the hearing on appeal was a complete new hearing, since the respondent was presented with that charge only when the appeal hearing commenced. For the purposes of this judgment I do not deem it necessary to decide whether or not that procedure was irregular or not.

[3] I shall assume in favour of the appellant that it was.

[4] The respondent was dissatisfied with decision to dismiss him. He consequently launched mediation and arbitration proceedings with the office of the Labour Commissioner.

[5] A protracted arbitration hearing followed.

[6] At the conclusion thereof the arbitrator found that on this evidence adduced, it had not been shown that the respondent was instigating other employees to strike. The arbitrator consequently made the following award:

“Award

[177] Having arrived at the above findings, I now make the following order, which I consider just and equitable in the circumstances of the case:

[178] That the decision to dismiss applicant is hereby set aside.

[179] That having ruled that reinstatement is not a viable option, the respondent must pay applicant compensation for loss of income for the period of six months amount to N\$14 623-87 as calculated below:-

hourly rate x 45 hours per week x 4.333 x 6 months

12.50 x 45 hours = 562.50 weekly rate x 4.333 = N\$2 437.31 = monthly salary

N\$2 437.31 x 6 months = N\$14 623.87 – income for six months

[180] That the said amount is payable on or before the 17th June 2011, proof of which must be furnished with the Office of the Labour Commissioner.

[181] No order as to costs is made in the circumstances of this matter.

[182] This award is final and binding on both parties hereto, and will be filed with the Labour Court in accordance with Section 87 of the Labour Act (Act No. 11 of 2007).

Dated at Windhoek this 01 June 2011.

Fabiola Kenonyune Katjivena

Arbitrator

Office of the Labour Commissioner”

[7] The appellant now appeals against the findings and the award.

[8] Mr. Namandje, who appeared for the appellant submits in argument that the finding of the fact arrived at by the arbitrator are so unreasonable that no reasonable trier of fact would have made such findings.

[9] I do not intend to traverse the evidence once more. The arbitrator in a written award canvassed the evidence at length as well as the submissions made by the representative of these parties.

[10] I am not persuaded upon a reading of that award together with the evidence adduced that those findings made by the arbitrator are as unreasonable as Mr. Namandje submits.

[11] At best for the appellant it may be contended by the appellant that another trier of fact might have come to a different conclusion.

[12] That, however, does not change anything.

[13] I consequently make the following order:

- 1) The appeal is dismissed.
- 2) There shall be no order as to costs.

MILLER AJ

ON BEHALF OF THE APPELLANT:

Mr. Namandje

INSTRUCTED BY:

Sisa Namandje & Co. Inc.

ON BEHALF OF THE RESPONDENT:

Mr. Tjitemisa

INSTRUCTED BY:

Tjitemisa & Associates