

AT THE SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL

IN THE MATTER

BETWEEN

JOHANNES PHEPHESI MABULA

APPLICANT

AND

NORTHWEST STAR

RESPONDENT

ARBITRATION AWARD

CASE NUMBER:

RPNT 888

DATE OF HEARING:

23 MAY 2011

DATE AWARD SUBMITTED:

6 JUNE 2011

NAME OF PANELLIST:

DAISY MANZANA

Centre for Dispute Resolution

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1. DETAILS OF HEARING AND REPRESENTATION

This is a default award in the matter between Johannes Phepheshi Mabula (hereinafter referred to as the “Applicant”) and Northwest Star (hereinafter referred to as the “Respondent”). The arbitration was conducted at the MEIBC offices in Tshwane on the 23rd of May 2011. The applicant presented his case and the Respondent was not in attendance and not represented despite being notified by fax on the 29th of April 2011.

The arbitration proceeded in the absence of the Respondent after a certain Mr. Somo from the Respondents Human Resources Management telephonically acknowledged receipt of the notice.

The proceedings were mechanically recorded.

2. ISSUE TO BE DECIDED

I am required to determine whether the dismissal of the applicant was for a fair reason or not in order to determine an appropriate remedy in terms of the Labour Relations Act.

3. PRELIMINARY ISSUES

No preliminary issues were raised at arbitration.

4. SUMMARY OF EVIDENCE

Only the applicant, Mr. Johannes Phepheshi Mabula testified at arbitration and his version is summarized as follows;

The Respondent employed him as a Handyman on a two months contract on the 20th of October 2010 at a salary of R5340.00. The Respondent offered a second contract for three months with a promise to offer him full time employment. Mr. Eddie Engelbrecht the Managing Director of the Respondent Company introduced him to employees including Mr. Lucas Kununtu, also a handyman as a permanent employee. Mr. Eddie Engelbrecht promised to renew his contract whilst waiting for the response from Head Office. Mr. Engelbrecht told him on the 31st of March 2011 that his services were terminated despite the various promises. . The applicant pleaded for renewal of his contract on the same or similar terms

The applicant argued that the termination of his contract was unfair as the Managing Director promised to renew the contract until Head Office confirmed his employment.

5. ANALYSIS OF EVIDENCE AND ARGUMENTS.

My role is to determine whether the applicant was dismissed and if so whether the dismissal was procedurally and substantively unfair in terms of the Labour Relations Act. The standard of proof required is on a balance of probabilities.

Section 192 (1) of the Labour Relations Act provides that in any proceedings concerning any dismissal, the employee must establish the existence of the dismissal. Section 192 (2) provides that if the existence of the dismissal has been established, the employer must prove that the dismissal is fair. In terms of section 192(2) the employer must prove that the dismissal was for a fair reason i.e. substantive fairness and that it was affected in accordance with a fair procedure i.e. procedural fairness.

Section 186 of the Labour Relations Act defines dismissal as follows;

(1) Dismissal means that –

- (a) An employer has terminated a contract of employment with or without notice;
- (b) An employee reasonably expected the employer to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it
- (c)

The Applicant's version that the Managing Director terminated his contract on the 31st of March 2011, despite the promise to renew his contract until the head office confirmed his full time employment. The applicant's version was not challenged as the Respondent was in default. Based on the applicant's unchallenged version, I believe that the applicant has proved the existence of a dismissal as defined in section 186(1) (b) as he has proved that he expected his contract to be renewed on the same terms until he was offered a permanent position.

It is the applicant's version that he was informed on the 31st of March 2011 that his contract will not be renewed despite the various promises made by the Managing Director to renew his contract until his full time employment is confirmed by head office. It seems the Respondent created an expectation that the applicant's contract would be renewed on the same or similar terms until he is employed permanently.

Based on the applicant's unchallenged version I find that he was unfairly dismissed.

The applicant pleaded for reinstatement however I noted that he had been employed on fixed term contracts. I believe that compensation would be the appropriate relief in the circumstances. The applicant was employed on a fixed term three months contract and expected it to be renewed on the same or similar terms and therefore I believe that it will be fair to order the Respondent, Northwest Star to compensate him the applicant with an amount equal to his salary of three months i.e. R5340.00 x 3 = R16020.00 (less tax)

6. AWARD RPNT 888

6.1 I find that the applicant Johannes Phepishi Mabula was dismissed.

6.2 I order the Respondent Northwest Star to pay the applicant an amount of R16020.00 (less tax) as compensation for the unfair dismissal.

6.4 The Respondent is ordered to pay the R16020.00 (less tax) due to the applicant within fourteen days of receipt of this award.

A handwritten signature in black ink, appearing to be 'DM', with a long horizontal flourish extending to the right.

PANELLIST: DAISY MANZANA