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NEWSLETTER 19

Clinix Private Hospital Soweto (Pty) Ltd v Ralefeta & others [2007] 5 BLLR 455 (LC)

Commission for Conciliation, Mediation and Arbitration – Arbitration award –Review – Commissioner failing to note that employee had given different versions at disciplinary inquiry and arbitration hearing, and ignoring fact that employee was on final warning – Award set aside. Dismissal – Misconduct – Insubordination – Employee abusing manager and throwing notice of disciplinary inquiry at her – Dismissal fair.

Summary

The respondent employee was dismissed after an altercation with the applicant's hospital manager, during which she had sworn and ultimately thrown a notice to attend a disciplinary hearing back at the manager. The employee pleaded guilty to charges of insolence and insubordination at the disciplinary hearing, but during the arbitration denied that she was guilty of either offence. A CCMA commissioner ruled that the dismissal was both substantively and procedurally unfair, and reinstated the employee.

The **Court held** the commissioner had paid no regard to the fact that the employee had changed the version she had presented at the disciplinary hearing when she gave evidence at the arbitration, and that the employee had not challenged the fairness of the disciplinary procedure. It was apparent from the record that the arbitrator had selected only evidence favourable to the employee, and had either disregarded or misconstrued the rest. In upholding the employee's evidence, the commissioner had in effect found that the applicant's four witnesses had all conspired to present a false version. There was no basis for rejecting their evidence. The commissioner had also ignored the fact that the employee was on final warning for a similar offence.

The award was set aside and the employee's dismissal declared fair.

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