

SOUTH AFRICA / JUDGMENT

# Abrahams v Commission for Conciliation, Mediation & Arbitration and Others (C426/2020) [2024] ZALCCT 16 (30 April 2024) [2024] ZALCCT 16

## COURT

Labour Court Cape Town

## BEFORE

Lagrange

## CASE / FILE NUMBER

C426/2020

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The Labour Court of South Africa,

Held at Cape Town

Case No: C426/2020

In the matter between:

DEIDRE ABRAHAMS Applicant and COMMISSION FOR CONCILIATION, MEDIATION &  
ARBITRATION First Respondent MR THUTHUZELA NDZOMBANE (N.O.) Second Respondent  
BUILDING INDUSTRY BARGAINING COUNCIL Third Respondent

JUDGMENT on application for leave to appeal

LAGRANGE J

## Introduction

[1] This is an unopposed application for leave to appeal against this court's judgment dismissing the application to review the

arbitration award upholding the fairness of the applicant's dismissal. The applicant ('Abrahams') is the applicant

for leave to appeal. The parties are referred to as they were cited in the original judgment.

[2] The standard for granting leave to appeal, where there is no issue of law involved, is that the court must be satisfied that the appeal would have a reasonable prospect of success. This means the court must be satisfied not merely that another court might come to a different conclusion, but there is a real prospect that it would.

[3] I should mention that it took time to finalise this application because the case file could not be located for a considerable period

after the application had been lodge.

#### Grounds of appeal

[4] The grounds of appeal are set out in summary and addressed below.

[5] The applicant alleged the court erred in finding that the first charge concerned her failure to act in the best interest of the

council and that her interaction with the group of contractors besieging the council premises was a breach of that duty, whereas it concerned her breach of a duty of confidentiality. A reading of the charge as recorded by the arbitrator shows this claim is disingenuous. The charge concerned her disloyalty and there was ample basis for concluding that she had shared information with them about the imminent arrival of security personnel which she had not been authorised to do.

[6] She alleges the court erred in holding that there was sufficient evidence for the arbitrator to conclude that she had acted disloyally

because her interaction with the group did not mean she had breached the duty of confidentiality she owed the council. As mentioned there was ample evidence to support an interpretation of the evidence of her interactions with the group that, despite her denials to the contrary, she had informed them of the imminent arrival of security personnel, which was information divulged to her by the council that she had not been permitted to share with them. Insofar as she testified that she had told the secretary that the leader of the group had done the opposite of what she had asked him to do in terms of allowing access to the building this version was not tested with the secretary, so cannot be given any weight. The fact that she subsequently disclosed flirtatious messages sent to her by the group's leader, does not meant that the arbitrator could not conclude that she had shared information with the group about the arrival of the security firm which meant she was untrustworthy.

[7] The court should have found that the arbitrator's analysis of circumstantial evidence was unreasonable. In its submissions, the applicant expands on this point, placing much reliance on her interpretation of the video evidence. The first point that needs to be made is that in the very detailed references to the record in support of the pleaded grounds of review in her founding and

supplementary affidavits, she did not make any reference to the actual video footage shown at the arbitration. The only evidence of the content of the footage was the observations made by witnesses at the hearing during or after viewing the video footage,

which were not a matter of contention in the arbitration hearing. Moreover, the footage was not part of the record which the applicant

filed in her review application so it was not place before the court. Accordingly, nothing was presented in the review proceedings to cast doubt on what the video record revealed. Further, the applicant did not challenge the version that the video evidence showed that the crowd of contractors started to disperse and leave immediately after they were addressed by one of the leaders she had

just spoken to after receiving the call that the security personnel were en route. She baldly denied giving such information to them, but provided no positive version of what she did convey to them just after she received the information.

[8] The applicant claims that court erred in not finding that there was no basis for the arbitrator to find she had approached the group of demonstrating contractors without permission was not unreasonable. It was unnecessary for the court to make a finding on this conclusion of the arbitrator in order to determine if the award as a whole should be reviewed. Whether or not that particular finding was possible on the evidence would not materially have affected the sustainability of the arbitrator's overall conclusions on the charges.

[9] The court should not have concluded that it was not disputed that the applicant had given the impression that she was up to date when she went on leave. Even if a different finding were made on this point, it would not have a bearing on the success of an appeal, because the court noted that this charge was not sufficient to have justified dismissal of the applicant and, in any event, the finding that she was guilty on the first charge, which was the main one was enough to justify the arbitrator's conclusion that her dismissal was justified (see paragraph 22 of the judgment).

[10] In the circumstances, I am satisfied that none of the grounds of appeal raised demonstrate there is a reasonable prospect another

court would come to a different conclusion.

Order

[1] The review application is dismissed.

[2] No order is made as to costs.

Lagrange J

Judge of the Labour Court of South Africa

30 April 2024

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(In chambers)

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