

SOUTH AFRICA / JUDGMENT

Mohale v Formica South Africa (JR1574/03) [2006] ZALC 112 (24 November 2006) [2006] ZALC 112

COURT
Labour CourtBEFORE
Pillay DCASE / FILE NUMBER
JR1574/03

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

JR1574/03/MS

- 1
- JUDGMENT

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1574/03

DATE heard and delivered: 2006-11-24

Not Reportable

In the matter between:

MASILO ALFRED MOHALEApplicant

And

FORMICA SOUTH AFRICARespondent

J U D G M E N T

PILLAY D, J: In this review the applicant seeks to set aside the award in which the second respondent, the Commissioner confirmed his dismissal. The applicant had tendered medical certificates issued by an obstetrician and gynaecologist in support of his claim for sick leave. He was dismissed as his conduct was regarded as fraudulent.

His union intervened and negotiated his reinstatement on certain terms. His misconduct was to be reduced to the lesser offence of not adhering to the company policy on compassionate leave for which he would receive a final written warning. He was also not to be paid for a month. These terms were framed as an offer which the applicant had to accept before they could be implemented. The applicant refused to sign the offer. No agreement accordingly came into place.

Mr West, counsel for the applicant, submitted that the third respondent, the employer had waived its right to dismiss the applicant once it made the offer. The terms of the offer implied that the relationship had not broken down and that "additional evidence", which had not been available when the decision was taken to dismiss, had since come to light. The additional evidence referred to, namely an acknowledgement by the employer that the applicant did not enjoy a good relationship with his supervisor, was evidence quite unrelated to the fraudulent nature of the applicant's conduct.

The picture that emerges is that the employer entered into constructive conciliation with the applicant and his union. In doing

so it did not abandoned its rights to dismiss the applicant. Abandonment or waiver of the right to take disciplinary action has to be unequivocal to be effective. If the Commissioner or the Court were to hold otherwise it will be a disincentive to constructive and meaningful conciliation in misconduct cases.

In this award the Commissioner recognises the applicant's conduct as fraudulent. He was paid sick leave when, on his version,

he should have claimed compassionate leave as he took the leave to take care of his wife. The medical certificate had been issued in his name but had described his wife's condition.

A lesser amount was paid for compassionate leave than for sick leave. Furthermore, the leave taken had coincided with long weekends. In all the circumstances the award is unassailable and the application for review is dismissed with costs.

---oo0oo---

Pillay D, J

7 February 2007

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALC/2006/112.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mohale-v-formica-unknown-topic-alc-2006>

Prepared on 13 October 2026 · Esheria