

Sneller Verbatim/JduP

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR138/01

2001.10.16

In the matter between

DRIEFONTEIN CONSOLIDATED (PTY) LIMITED                      Applicant

and

CCMA                                                                                      Respondent

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J U D G M E N T

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LANDMAN, J: This is an application to review and set aside a ruling of a commissioner of the CCMA in the matter of East Driefontein Gold Mine v NUM on behalf of Mr Moleke. An award was made by a commissioner of the CCMA. Subsequently an application to rescind the award was made by the gold mine. The commissioner presiding over the application to rescind the award appears to have accepted that the notice of set down did not arrive and did not come to the attention of the gold mine. Nevertheless he concluded that as there had been service in the sense that the document had been sent to the gold mine, this constituted proper service.

That, of course, is a gross irregularity because the purpose of service is that

it should come to the attention of the party to whom it is addressed. Where this has not occurred, and the facts point to this, then clearly the rules relating to *audi alteram partem* have not been complied with. The proper order is to rescind the award. This was not done. In the circumstances the ruling and award is reviewed and set aside, and the matter is referred back to the CCMA for arbitration *de novo* before a commissioner other than the second respondent.

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A A Landman

Judge of the Labour Court of South Africa

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