

IN THE LABOUR COURT OF SOUTH AFRICA

CASE NO D1397/99

In the matter between

Applicant

and

CLICKS STORES

Respondent

JUDGMENT

LANDMAN J:

1. Clicks Stores Hayfield dismissed Ms Ramsupathy for allegedly stealing cosmetics. She referred a dispute to the CCMA. An unsuccessful attempt was made to conciliate the dispute. Thereafter the matter was set down for Ms Ramsupathy to apply for condonation for the late referral of her dispute. The CCMA sent the notice of set down to Click's regional office at Westmead. Thereafter the matter was referred to arbitration. The notice of set down was also sent to Westmead. The arbitration was postponed. The next notice of set down was faxed by the CCMA to a stationery store "Pen and Paper" near Clicks' Hayfield Store. The fax came to the attention of a Clicks employee Ms Mothilal who said she thought the notice was meant for Ms Ramsupathy. So she telephoned her to collect the notice. Click's did not attend the arbitration hearing. At the hearing attorney Rawlinson is recorded by the commissioner to have informed him that Ms Mothilal had informed "her" that she would be attending the hearing. Why she would have attended is not clear for she has apparently no involvement nor interest in the case.

2. An award was rendered in favour of Ms Ramsupathy. The award came to the attention of Clicks stores on 5 November 1999. Clicks instructed its attorneys to set in motion proceedings to rescind the award. A copy of the rescission application was sent to Ms Ramsupathy's attorney.
3. In the meanwhile Ms Ramsupathy applied to have the award made an order of court. The application in terms of s 158(1)(c) was sent by registered post to Clicks at Hayfield in Pietermaritzburg and to the Westmead office. The application was received by the Hayfield branch and was forwarded to the Westmead office. Mr Steenkamer, the regional general manager, opened the envelope. He says he only found the award. As he was aware of the award he threw it and the envelope away. The envelope sent to Westmead was received but it did not come to Mr Steenkamer's attention.
4. In consequence the application was not opposed and this court made the award an order of court on 28 February 2000. Clicks seek to rescind the court's order. The application is opposed.
5. To succeed Clicks must give a reasonable explanation for its failure to oppose the application. The explanation must be a bona fide one and Clicks' conduct must not amount to wilful default or grossly negligent conduct. Lastly Clicks must show that it has a bona fide defence to the application. This means that Clicks will have to show that its application to rescind the award has merit ie that it did not have notice of the date of the arbitration and that it can justify its dismissal of Ms Ramsupathy.
6. I am satisfied that Clicks did not receive proper notice of the reconvened arbitration hearing and that it has a prima facie defence to the alleged unfair dismissal. Clicks' case is weaker when it comes to its explanation for its failure to oppose the s 158(1)(c) application. It was sent two notices. It received both although I am bound to accept that the one envelope contained only the award. This is a borderline case and Clicks should be given the opportunity of opposing the matter. However the opposition was reasonable and I do not intend making a cost order.
7. In the premises the order granted by this court on 28 February 2000 is rescinded and the respondent is given leave to file its notice of opposition and answering affidavit within one month from the date of this order. In the meanwhile the CCMA is directed to consider the rescission application in terms of s 144 of the Labour Relations Act 66 of 1995 with all due dispatch. There will be no order for costs.

SIGNED AND DATED AT DURBAN THIS 9 TH DAY OF AUGUST 2000.

A A Landman
Judge of the Labour Court

8 August 2000

10 August 2000

Mr M Alexander of Deneys Reitz attorneys

nt: Mr A. Ngcobo of Hoskins & Ngcobo