

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JR1502/05

2008-05-28

In the matter between

ASTRAL OPERATIONS LIMITED

Applicant

And

G BESTEL

1st Respondent

CCMA

2nd Respondent

R SEGGIE

3rd Respondent

J U D G M E N T

PILLAY D., J: This is an application for leave to appeal against my judgment setting aside the award of the third respondent commissioner issued on 30 November 2007.

The overriding consideration in assessing the evidence before the arbitrator required him to make a determination as to whether the conduct of the employee, the first respondent, was honest and consistently above board. That determination could only have been made with the proper analysis of all the evidence before him. The arbitrator's award manifests firstly, that he failed to take into account material evidence that pointed to the dishonesty of the employee. He glossed over and failed to properly analyse the evidence that was before him in order to make a determination about the honesty of the employee.

In these circumstances, a failure to take into account material evidence is neither reasonable, rational nor justifiable, irrespective of whether the judgment of the Constitutional Court (*Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC) (Cct85/06) or the judgment of the Supreme Court of Appeal (*Rustenburg Platinum Mines Ltd (Rustenburg Section) v Commission For Conciliation, Mediation & Arbitration & Others* (2006) 27 ILJ 2076 (SCA)) apply

In the circumstances, **the application for leave to appeal is dismissed with costs.**

JUDGE D PILLAY

Edited: 18 June 2008

APPEARANCES:

On behalf of the Applicant : Advocate E Wessels

Instructed by:

On behalf of the Respondents : Advocate Pretorius, SC

Instructed by: