

IN THE LABOUR COURT OF SOUTH AFRICAHELD IN DURBANCASE NO D694/05IN THE MATTER BETWEEN:

5	THOKOZANI MICHAEL MSOMI	APPLICANT
	and	
	COMMISSION FOR CONCILIATION,	
	MEDIATION AND ARBITRATION	FIRST RESPONDENT
	NHLANHLA MATHE	SECOND RESPONDENT
10	SOUTH AFRICAN REVENUE SERVICES	THIRD RESPONDENT

JUDGMENT

19 MARCH 2007

PILLAY D, J This is an application to review and set aside the award of the second respondent Commissioner. The applicant was charged for being
15 absent from duty without proper authorisation. The second charge appears to be a duplication of the first, in that through his absence he prejudiced the administration, discipline and efficiency of the South African Revenue Service, the employer.

The employee admitted to being absent from duty for the time
20 alleged, which was about seven days. He denied that he prejudiced the administration, discipline and efficiency of SARS.

The arbitrator's reasoning is based squarely on the evidence before him. It was common cause that the employee had absented himself and that when he had done so, he had informed his supervisor on two occasions that
25 he had been "sleeping and drinking." The simple fact of employment is that

an employee who does not turn up for work must expect to be disciplined and if his misconduct persists, there is a good chance that he will be dismissed. The applicant had been aware of this rule. He had transgressed it previously and had been warned. His contention is that the warning had
5 expired and he should not have been dismissed on this occasion, but should have been given a written warning.

There was no obligation on the employer to constantly give written warnings for repeated offences, even if the old warnings have expired. There is a limit to which absenteeism can be tolerated. It is not as though
10 the employee was not aware of the consequences of his actions. In any event, none of the information and none of the grounds on which the award is challenged enable the Court to set aside the award on review.

In the circumstances, arbitration is final and binding and is reviewable on the limited basis set out in section 145 of the Labour Relations Act, No 66 of
15 1995. In the circumstances, the application for review is DISMISSED.

Pillay D, J

20 Date Edited: 8 August 2008

Appearances:

ON BEHALF OF APPLICANT: In person

25

ON BEHALF OF RESPONDENTS: No appearance

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

CASE NO : **D694/05**

DATE : 19 MARCH 2007

T M MSOMI

versus

SARS & ANOTHER

BEFORE THE HONOURABLE MADAM JUSTICE PILLAY

ON BEHALF OF APPLICANT : IN PERSON

ON BEHALF OF RESPONDENT : NOT REPRESENTED

INTERPRETER : NOT REQUIRED

EXTRACT Judgment

<u>REPORT ON RECORDING</u>

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T M MSOMI v SARS & ANOTHER

CASE NO : D694/05

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