



LABOUR LAW UPDATE

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CASE 1

MANAMELA / FORD MOTOR COMPANY OF SA (PTY) LTD 92013) 22 CCMA

CASE SYNOPSIS:

When the company restructured its shifts, Manamela was found to be excessive on the line which he had originally worked on. He was placed in a pool to await further assignment and was eventually transferred to the glass sub-assembly line. Manamela refused to work there and claimed that he was allergic to the fumes.

He was then transferred to the wiper motor fitment section and when he was transferred to yet another assignment he refused to accept same and instead proceeded to report to the medical centre without informing his supervisor. When told to report to the HR department, Manamela refused and said that he was "busy". He was charged and found guilty of insubordination and using abusive language to a supervisor. Manamela referred a case of unfair dismissal to the CCMA.

The CCMA commissioner found that the Company's process in redeploying Manamela "left much to be desired". The commissioner further found that the direct instruction to work on the line on which he had finally been stationed was not a reasonable instruction.

The Company had also failed to prove the allegation that Manamela had sworn at his supervisor. Lastly the commissioner found that even if his aforesaid findings were wrong, the sanction of dismissal was too harsh having regards to the circumstances. Manamela was reinstated with immediate effect.

Learning Lesson: Before imposing the sanction of dismissal, the totality of what led to the misconduct should be considered by the Company.





CASE 2

TLHASE / DEVELOPMENT BANK OF SOUTHERN AFRICA (2013) 22 CCMA

CASE SYNOPSIS:

Tlhase had been appointed on a fixed term contract which clearly stipulated that same would expire on a particular date, but that the contract could be extended by the company if continued employment was considered necessary.

The company notified Tlhase some weeks before the expiry date of her contract that same was set to expire. When the contract came to an end, Tlhase referred a case of unfair dismissal to the CCMA citing that she had a reasonable expectation that her contract would be renewed.

At the CCMA Tlhase argued that her expectation of renewal was based on the fact that, according to her, the extension of her contract was necessary. The commissioner found that she had failed to prove that she has harboured a reasonable expectation that her contract would be renewed and dismissed her case.

Learning Lesson: The CCMA will look to the Company for any evidence of creating a reasonable expectation in the employee's mind. Management should therefore be cautious when making statements about continued employment to fixed term employees.

