

MINUTE OF PRE-ARB CONDUCTED ON 21 OCT 2016 CASE NO KNDB.....

- 1 The applicant is (female age 36), a full-time machinist. She commenced in a temporary capacity on 7 September 2009 but 3 months later was employed in terms of a written indefinite term employment contract. She was dismissed on 9 June 2016. She earned R771.39pw for working a 5 day / 45 hour week. She remains unemployed despite making attempts at finding alternative employment. She has not earned anything from casual work. As breadwinner the applicant supported 20 dependants (5 adults and 15 children). The applicant's highest standard of education is Gr 11.
- 2 The respondent is(PTY) LTD, a manufacturer of linen. It employs approximately 220 persons at the plant in question and has 1 branch.
- 3 The respondent handed in a bundle of documents on 21 October 2016. After a perusal thereof, the applicant admitted all the documents therein as being authentic and indicating that their contents were correct. The applicant did not hand in any documents.
- 4 The applicant was suspended with pay on 2 June 2016 and given a notice to attend a disciplinary hearing on 7 June 2016. The notice contained 3 charges: "1. Gross & disorderly conduct; 2. Unacceptable & threatening behaviour; 3. Assault & abusive behaviour."
- 5 The respondent maintains a unilaterally imposed disciplinary code that provides as follows:
 - a. Disorderly conduct – examples being: agitation, victimisation, intimidation, incitement; any behaviour unacceptable, conduct prejudicial to maintenance of good order within the company. It prescribes a final written warning for the first offence and dismissal for any further offence;
 - b. Threatening behaviour – examples being any act or language that may lead to violent behaviour. It prescribes a final written warning for the first offence and dismissal for any further offence;
 - c. Unprovoked assault – examples being assault (unprovoked); attempted assault (unprovoked). It prescribes dismissal for the first offence;
 - d. Assault – examples being fighting, minor assaults lead to no injury, assault / attempted assault. It prescribes dismissal for the first offence.
- 6 The applicant attended the hearing on 7 June 2016 and was represented by a shop steward. She pleaded not guilty to all the charges but was found guilty and dismissed. (It is disputed whether she called witnesses in support of her case.) The respondent maintains an appeal procedure but the applicant chose to refer her dispute to the CCMA on 10 June 2016. The matter was set down for conciliation on 7 July 2016 but remained unresolved. Hence the arbitration. At the pre-arb the following issues were either agreed to or disputed as the case may be:

PROCEDURAL ISSUES

- a. DISPUTED: whether the applicant was allowed to call witnesses in support of her case.

SUBSTANTIVE ISSUES

b. AGREED:

- i. insofar as charge 1 was concerned that the rule that applied was that employees must conduct themselves in an proper and orderly manner in the workplace;
- ii. insofar as charge 2 was concerned that the rule that applied was that employees may not threaten other employees;
- iii. insofar as charge 3 was concerned that the rule that applied was that employees may not assault other employees;
- iv. that the rules were reasonable, valid and served important purposes. The applicant accepted that she was aware of these rules and that breach thereof would lead to dismissal;

c. DISPUTED: whether the applicant breached the rules;

d. DISPUTED: the applicant's defence to charges 1 and 2 was a bare denial that she was unaware of having engaged in any such behaviour;

e. DISPUTED: the applicant's defence iro charge 3 was that she had merely acted in self-defence when she was physically attacked by a colleague one Ms;

f. AGREED: that the alleged incident between the applicant and Mshad occurred outside the respondent's premises near a bus-stop;

g. AGREED: that Mswas also dismissed;

h. DISPUTED: whether the charges were fabricated against the applicant. She submitted that the motive for fabricating the charges was that the floor manager“favoured” Ms However there was no suggestion that there was any bad blood between the applicant and;

i. AGREED: that the applicant's alleged misconduct had not occasioned any direct loss, harm, damage or prejudice to the respondent;

j. AGREED: that the issue of consistency was not being raised by the applicant;

k. AGREED: that the charges were serious and if the applicant engaged in them then it must be found that the dismissal was fair;

l. DISPUTED: whether there were any aggravating factors;

m. DISPUTED: whether there were any mitigating factors;

n. AGREED: that the applicant had a clean disciplinary record;

o. AGREED: that the applicant had long service;

p. AGREED: that the applicant's position has not been filled due to a downturn in business;

q. DISPUTED whether dismissal was fair;

r. DISPUTED –

- i. Whether the applicant's alleged misconduct had led to a breakdown of trust serious enough to warrant dismissal;
- ii. Whether the employment relationship had become intolerable;
- iii. Whether reinstatement was reasonably practicable;
- iv. Whether a good working relationship could be restored;
- v. Whether reinstatement would cause a disproportionate level of disruption or financial burden to the respondent.