IN THE SSSBC **GAUTENG**

(HELD AT PRETORIA)

CASENO: PSSS 1090

In the matter between:

MAMPANE AND OTHERS Applicant

and

SOUTH AFRICAN POLICE SERVICE Respondent

ARBITRATION AWARD

INTRODUCTION

This arbitration is a sequel to a disciplinary hearing held against applicant who was found guilty of misconduct and was dismissed. Applicant was not happy with his dismissal; he referred a dispute to the Council for resolution. The dispute was not resolved and was referred to Arbitration and the matter came before me for final determination.

Parties and Representation

Applicants were represented by Adv. Klein and Respondent was represented by Senior Superintendent Phefo.

ISSUES FOR DETERMINATION

Was the dismissal in the circumstances of this case fair?

Can the Council pronounce on the validity or otherwise of Regulation 11 (5) of South African Police Service Discipline Regulations?

EVIDENCE

The facts in this case were not in dispute on the whole except a little area I will refer to later. It would seem that Applicants were charged and convicted in a Criminal Court.

It appears that when Applicant appeared before the Disciplinary Hearing Committee, the employer in terms of Regulations for the South African Police Service produced a transcript of the Criminal Proceedings from Court whereat Applicant was tried and convicted.

Both parties did not call witnesses and their cases were based on documents handed in during the process.

ASSESSMENT OF EVIDENCE

That Applicant was convicted in a Criminal Court - a Court of Law is in this case common course.

That South African Police Service Discipline Regulations provide for the production of a transcript of Criminal Proceedings record, the charge sheet and judgment relative thereto in a disciplinary hearing meeting and same to be regarded as conclusive proof of commission of misconduct is beyond any debate. See in this regard Regulations 11(5) of Regulations for the SAPS.

Whether these regulations are valid constitutionally is another question and certainly for another forum. The council cannot determine the question. It must be noted that these Regulations have become a product of collective agreement by both labour and the employer. If the fairness or the validity or indeed the usefulness of these regulations are in question surely the Safety and Security Sectoral Bargaining Council will be the appropriate forum to raise such question at and deal with same.

In the circumstances it does not look like I have discretion to determine whether or not the application of Regulations 11(5) in a disciplinary hearing meeting is proper or not. The Regulation is there, is valid and must be applied when appropriate. And the application thereof cannot constitute an irregularity.

It must be remembered that the standard of proof in a disciplinary hearing setting is balance of probabilities whereas that in a criminal trial in a court of law is beyond any reasonable doubt.

It makes sense therefore to hold that once a court of law has found one guilty of an offence, in all reasonable probabilities; such a person would be found guilty of the same offence by any forum which particularly uses a lower standard of proof on the same facts to prove the commission of same offence or less serious offence.

I was addressed on whether or not the sanction imposed on the Applicant is appropriate by both parties.

Naturally Applicants' representative Adv. Klein argued that the sentence is inappropriate whilst in contradistinction Superintendent Phefo argued that the sentence is appropriate and fairly imposed and I should not interfere there with.

In the case of **County Fair Foods (Pty) Ltd v. CCMA** (1999) 20 ILJ 1701 (LAC) the Labour Appeal Court confirmed that in circumstances like these, "it was not for the arbitrator to determine *de novo* what would be a fair sanction but rather to determine whether the sanction imposed by the employer was fair".

The Labour Appeal Court went on to say that it lies in within the province of the employer to set the standard of conduct to be observed by its employees in the first place, and to determine the sanction with which non-compliance with the standard will be visited.

The Court further stated that interference therewith is only justified in the case of unreasonableness or unfairness of the sanction. The Labour Appeal Court also remarked that the determination of whether or not the sanction is fair is not determined only by what evidence was before the employer but by all material evidence put before the arbitrator.

Using the above as the bench mark, I do not have any doubt that no basis was made to justify interference with the sanction meted out to Applicant. Police officers are supposed to be the enforcers of the law and to protect those who abide by the law **not** themselves to be breakers of the law.

I hold therefore that the dismissal was both procedurally and substantively fair.

AWARD

Application is and hereby dismissed. I make not order in respect of costs.

ADV. A P LAKA