

On the 20th July, Laurie D Vinson testified at the CCMA as the expert witness for my client. The client had obviously dismissed the Applicant and he in turn was contesting the dismissal as unfair.

The Arbitration Award - dated the 2nd August 2009 – concludes as follows,

The employee's case was that he does not understand polygraph tests, therefore cannot be admissible as evidence. The examination was conducted freely and voluntarily and the process was fully explained to the applicant.

The Applicant's argument has no basis in law. The admissibility of the evidence in this regard is not in question. The admissibility can only be in question if,

- *The examiners qualifications are challenged, the examiner did not present oral evidence and the test was not conducted freely.*

The above was not in dispute in this matter.

It is inescapable and the inference is unavoidable that the applicant must have been aware could reasonably have been suspected of dishonesty (sic)

*The evidence of respondent by a polygraph examiner is acceptable in this regard; **See Mncube and Cash Paymaster Services (Pty) Ltd (1998) 7 CCMA 2.9.3***

I find that the circumstantial evidence supported by polygraph examination leads to the conclusion the trust relationship has been broken down. An employment relationship should be based on trust especially in this regards it relates to loss of stock and money (sic)

The employer's version was more probable than that of the applicant.

AWARD

The dismissal was both substantively and procedurally fair.

The matter is dismissed and no costs are ordered.

The case number is MP 3288-09 (Witbank). The Commissioner was Thabi Kekana.

First off – well done Laurie! You deserve a round of applause.

This follows the same award granted to the same client of mine in December with case number GAJB30643-08 (Johannesburg) where I was the polygraph examiner testifying that day.

Furthermore, I have been the expert witness at three other cases recently. The first two (done together) went to Arbitration, and then very strangely went back to Conciliation at the guidance of the Commissioner. After four hours of negotiations with both parties, the applicants and my client eventually agreed on a one month settlement. My client was delighted with the decision. I believe that the Commissioner took the time and the effort to get the applicants to agree to this due to – among other reasons – the evidence presented by the polygraph examinations. Conversely, I believe without them, it would have been an upward struggle for my client.

On Monday, I was at the CCMA for another client. The Commissioner was advised by the Applicant that he wanted 24 months which my client obviously refused. The matter then went to Arbitration and I was naturally asked to leave the room. Two hours later, the parties emerged and I was informed that the

matter had been resolved by the parties reaching a settlement agreement of two months this time. I do not believe that the Applicant would have settled for this if the threat of the polygraph evidence was not going to be presented. Once again, the client was delighted by the decision (it amounted to R6000.00)

I know that we are presently in the midst of opposition from some elements with regard to polygraph evidence.

The decisions above are very encouraging for me. I still recommend to all my clients that they do not dismiss based solely on the evidence of polygraph tests of course. These decisions were taken against my advice but make for excellent case examples to support our cause as a result of that.