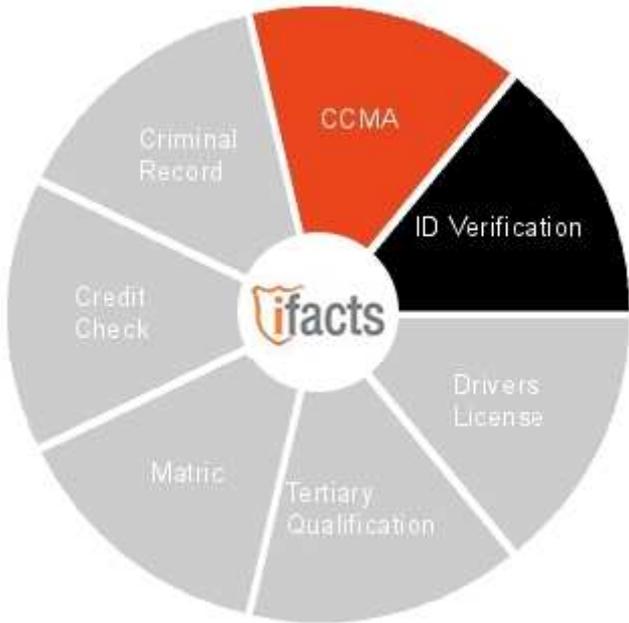


Enquiry #:	269977
Order Num / Ref:	
Client:	IFacts (Pty) Ltd
Submitted:	04 Dec 2017 00:00 by Demo User
Number of Candidates:	1

CANDIDATE 1: JOHN SMITH



- Checks not requested
- Requiring further investigation
- Information confirmed
- ID verification (Dept of Home Affairs)

For a full list of services please visit www.ifacts.co.za

	Employee record at CCMA	Possible Records Found	- Further investigation required
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FINAL REPORT: 04 December 2017

INFORMATION PROVIDED BY THE USER

ID/Passport Num	Surname	First Name	Middle Initial(s)	Date of Birth
7001016000000	Smith	John		01 Jan 1970
Gender	Maiden / Other Names	Town of Birth	Residential Address	
Male				

INFORMATION WE HAVE SOURCED FROM PUBLIC DATABASES

Please note that this information has not been independently verified by us.

ID Verification via Dept of Home Affairs (provided free of charge)

ID Number	7001016000000
First Name	JOHN
Second Names	JAMES
Surname	SMITH
Date of Birth	1970-01-01
Age	47
Gender	Male
Citizenship	South African
Dead/Alive	ALIVE

Employee record at CCMA - Possible Records Found

ARBITRATION AWARD

IN THE COMMISSION FOR CONCILIATION MEDIATION & ARBITRATION

Case Number: GAXXXX-YY

In the matter between

John Smith Applicant

And

Cleaning Services cc Respondent

DETAILS OF THE HEARING AND THE REPRESENTATION

This matter was set down as a "con-arb" on the 18th September 2004 at 11:00am in the offices of the Commission for Conciliation Mediation and Arbitration, CCMA House, 20 Anderson Street, Johannesburg. The dispute was referred in terms of section 191 (5) (a) (iii) of the Labour Relations Act 66 of 1995 (as amended). No party to the dispute objected to the matter being dealt with on a "con-arb" basis.

The Applicant, Mr. John Smith was present and represented himself during the arbitration proceedings. Mr. S D represented the

Respondent. Attempts to resolve the dispute through conciliation failed and we proceeded to arbitration immediately thereafter.

The arbitration proceedings were mechanically recorded and two tapes were used to record the entire arbitration proceedings. Handwritten notes, which will form part of the record were also taken during the arbitration proceedings.

3. PRELIMINARY ISSUES

No preliminary issues were raised with me during the arbitration proceedings.

4. ISSUE TO BE DECIDED

I must decide whether the Applicant was dismissed, if so I must decide whether the dismissal of the Applicant was both procedurally and substantively fair or not.

5. BACKGROUND TO THE ISSUE

The Applicant in these arbitration proceedings is Mr. John Smith who was in the employ of the Respondent as a cleaner since 1 October 2003 to 5 December 2003. The Applicant was re-employed again on the 5 January 2004.

6. ANALYSIS OF EVIDENCE AND ARGUMENT

6.1 The Applicant's Evidence

The Applicant testified that he was employed as a cleaner on the 9 October 2003. The Applicant testified that he worked from October 2003 till 5 December 2003 when he was dismissed due to what he termed the LIFO principle.

The Applicant testified that the Respondent re-employed him on the 5 January 2004. The Applicant testified that he worked from 5 January 2004 till 23 July 2004.

The Applicant testified that on the 21 July 2004 at around 17:10 the Respondent approached him in the change room after he had just had a shower. The Applicant testified that the Respondent had in his hand a document entitled contract of employment for casual workers. The Applicant testified that the Respondent asked him what his surname was, the Applicant testified further that he wanted to find out what the Respondent was going to do with his surname. The Applicant testified that the Respondent indicated he wanted to write the surname on the papers he had in his hand. I said before he could write any thing on the paper he should allow me to read it first.

The Applicant testified that he asked him when the 23 July 2004 was and he stated it was the coming Friday and that the Applicant must finish up then. The Applicant testified the Respondent said they would phone him if there was a job for him. The Applicant testified that he took the documents from the Respondent and signed them. The Applicant testified that the Respondent called two witnesses one of whom was his friend to come and sign as witnesses. The Applicant testified that the two witnesses did not read what they were signing for and that they just signed the documents.

There was no cross-examination for the Applicant. The Respondent declined to cross-question the witness.

6.2 The Respondent's Evidence

The Respondent testified that on the 11 July 2004 he had a meeting with all the casuals and that the Applicant was not present in the meeting. The Respondent testified that in this meeting they discussed the information the Respondent received from the Department of Labour. The Respondent testified that the inspectors from the Department of Labour said they must have contracts of employment for both permanent and casual workers. The Respondent testified that is the reason why they had contracts of employment for casuals.

The Respondent testified that they tried to draft contracts of employment in the past weeks for casual employees like they did for permanent staff. The Respondent testified that during the week ending 23 July 2004, the Applicant was the only casual on duty. The Respondent testified that the other casual was off sick and that he/she came back on Friday.

The Respondent testified that when he gave the Applicant the contract he explained to him what was happening upfront. The

Respondent testified that he explained to the Applicant before he signed the contract what the duration of the contract was and that he was due to finish up on Friday, 23 July 2004. The Respondent testified the contract of employment for casuals was renewed on a weekly basis.

The Respondent testified that the casuals are advised every Friday if there is work for them the following Monday.

It was put to the Respondent that the Applicant was not a casual employee and that he was on probation for a permanent post. The Respondent indicated that the Applicant was not on probation and that the Applicant was given an opportunity to prove himself a long time ago and that he failed to live up to the expectations.

7. ANALYSIS OF EVIDENCE AND ARGUMENT

The Applicant's case that he was unfairly dismissed is not substantiated in any manner whatsoever. The evidence as it stands is that the Applicant was given the documents to sign. The Applicant requested to read the documents before anything could be written on them and he was granted the opportunity to do so. The Applicant indicated that the other witnesses who signed the documents did not read them and that he was the only one who read the documents. The question is why did he sign them if he did not agree with them. I have little difficulty finding this to be rather strange. He signed voluntarily after reading the documents.

8. FACTUAL FINDING

On the basis of the evidence and arguments presented before me during these arbitration proceedings, I make the following findings:

- > The Applicant was not dismissed. The Applicant voluntarily signed documents indicating that his casual contract of employment was expiring on Friday, 23 July 2004.
- > By his own admission, the Applicant indicated that he said to the Respondent that he wanted to read the documents before the Respondent could write anything on them, which he did.
- > The Applicant in his own words said he took the documents from the Respondent after reading them and voluntarily appended his signature thereon.
- > There was no evidence presented before me that the Applicant signed the documents under duress or that he was deceived in signing them.
- > The Respondent's testimony that the documents were explained to the Applicant before he signed them was not challenged.
- > One cannot leave a witness' testimony go unchallenged under cross-examination and then come and argue afterwards that the witness must be disbelieved.

9. LEGAL FINDING

- > There was no dismissal as contemplated in section 186 (1) of the Labour Relations Act 66 of 1995 (as amended).

10. THE AWARD

- > The Applicant's unfair dismissal claim referred to the Commission in terms of section 191 (5) (a) (iii) is accordingly dismissed.
- > There is no order as to costs.

DATED AT JOHANNESBURG THIS 29TH DAY OF SEPTEMBER 2004.

.....
M J Tsabadi
Commissioner.

Note: The CCMA does not and never has listed cases which are "settled" or withdrawn or for which no arbitration award exists. It also does not list cases referred to conciliation only.

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