

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

Practice Directive 61

<b>Case Title:</b> IMMANUEL AWENE  and  BUSINESS & INTELLECTUAL PROPERTY AUTHORITY	<b>Case No:</b> HC-MD-LAB-APP-AAA- 2022/00025
	<b>Division of Court:</b> LABOUR COURT (MAIN DIVISION)
<b>Coram:</b> COLEMAN J	<b>Heard:</b> 16 SEPTEMBER 2022
	<b>Delivered:</b> 20 OCTOBER 2022
<b>Neutral citation:</b> <i>Awene v Business &amp; Intellectual Property Authority</i> (HC-MD-LAB-APP-AAA-2022/00025) [2022] NALCMD 61 (20 October 2022)	
<b>Order:</b>  <ol style="list-style-type: none"><li>1. The Arbitrator's award of 14 March 2022 is set aside in its entirety.</li><li>2. The matter is referred back to the Labour Commissioner for a <i>de novo</i> arbitration hearing before another arbitrator.</li><li>3. No order of costs.</li></ol>	

4. The matter is removed from the roll and regarded as finalized.

**Reasons for orders:**

COLEMAN J:

[1] This is an appeal against an arbitration award made on 14 March 2022 upholding a point *in limine* that appellant waived his rights by not attending his disciplinary proceeding and holding appellant's dismissal '...not in violation of the law'. No evidence was led.

[2] Counsel for both parties agree that the matter should be referred back to the Labour Commissioner, although for different reasons. The bone of contention is what should be made of the fact that the appellant did not attend his disciplinary proceeding. The process went on in his absence and he was dismissed.

[3] It is not advisable for a party subjected to disciplinary proceedings to simply not attend because he/she objects to an aspect of the proceedings. The best approach is to attend and raise the issues there. However, the arbitrator in this matter elected to hear the point *in limine* based on appellant's election not to attend without any evidentiary base and to make findings on the merits of appellant's dismissal. In my view that is a misdirection. The point *in limine* should have been treated like a special plea in a civil action and be adjudicated in the context of the bigger picture of the matter with an evidentiary basis. I do not make any finding on the merits of the arbitrator's decision because I do not want to fetter the discretion of the new arbitrator.

[4] As a result, I make the following order:

1. The Arbitrator's award made of 14 March 2022 is set aside in its entirety;
2. The matter is referred back to the Labour Commissioner for a *de novo* arbitration

- hearing before another arbitrator;
3. No order of costs; and
  4. The matter is removed from the roll as finalized.

<b>Judge's signature</b>	<b>Note to the parties:</b>
Coleman Judge	Not applicable.
<b>Counsel:</b>	
<b>Applicant</b>	<b>First Respondent</b>
N Alexander Of Sisa Namandje & Co. Inc Windhoek	M Kuzeeko Of Dr Weder, Kauta & Hoveka Inc. Windhoek