

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 29 November 2012

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

MYERS v NATIONAL COMMISSIONER OF THE SAPS (425/2012) [2012] ZASCA 185 (29 November 2012)

The SCA today upheld an appeal against the judgment of the Labour Appeal Court confirming the appellant's dismissal from his employment with the South African Police Service.

The appellant, Superintendent Ivan Myers was a Commander of the Dog Unit in Maitland. He was charged with misconduct alleging a breach by Myers of Standing Order 156(4)(1) in that he had issued a media statement bemoaning the condition of the dogs in his unit without the permission of the relevant Media Liaison Officer or his Commander. After a hearing in the Disciplinary Inquiry he was dismissed from his employment with effect from 13 July 2007 and fined R500. He had sent an e-mail to 'Die Burger' newspaper while he was on leave, stating that the poor condition of the SAPS dogs that had lost weight was caused by the police management's decision to reduce their food rations from 700 grams to 500 grams.

The police management considered the statement to be prejudicial to the administration, discipline or efficiency of the South African Police Service — hence the charge of misconduct against Myers.

The Labour Appeal Court agreed with the Disciplinary Hearing's findings but disagreed with the Labour Court which had held that the sanction of dismissal was harsh and referred the matter back to the arbitration for rehearing.

The SCA held that the conviction for misconduct was correct but that the sanction of dismissal was not fair given the circumstances. It found that the majority of the Labour Appeal Court had not sufficiently considered the mitigating factors and had adopted an incorrect test in approving of the sanction of dismissal. It agreed with the judgment of the minority (presided by Zondi AJA) that the sanction was unreasonable. The Labour Appeal Court had found that the dismissal was harsh but not 'so unreasonable' as to be set aside and which the SCA considered to be inappropriate.

Myers had had unbroken service of 28 years in the SAPS and was a Commander of a Unit who was only 6 years away from retirement. There was nothing to suggest that if he was reinstated continued employment relationship on the SAPS would be intolerable.

Having regard to all of the above factors the SCA considered the sanction of dismissal to be unfair, and reduced it to a written warning valid for a period of 12 months from the date of this order and directed that he be reinstated.