

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 2341/19

In the matter between

NUMSA OBO LUNGI MAPOMA

Applicant

and

VIDEX MINING PRODUCTS PTY LTD

First Respondent

**THE METAL AND ENGINEERING INDUSTRY
BARGAINING COUNCIL**

Second Respondent

T.S MNISI N.O

Third Respondent

Heard: 04 July 2023

Delivered: 21 February 2024

JUDGMENT

MAKOPO, AJ

Introduction

[1] This is an opposed review application. There are two main grounds submitted by the Applicant for review:

- 1.1 That the rule was not consistently complied with by the First Respondent.
- 1.2 That the sanction of dismissal was not appropriate.

Background

[2] Mr Mapoma was dismissed in November 2018, following the charges of assault levelled against him, wherein he assaulted his manager Mr Komane.

[3] Mr Tumisho Manasoe, an attorney appeared on behalf of the Applicant and Advocate Pienaar appeared on behalf of the Respondent.

[4] Mr Mapoma commenced employment with the Respondent on the 26th of January 2011. At the time of his dismissal, he was employed as a welder, earning R 2 580.08 per week. He was charged with the following offence:

4.1 Assault, causing or attempting to cause grievous/ bodily harm to the Manager, Mr B Komane on the 28th of September 2018, in the production office.

[5] The arbitrator heard evidence of all the witnesses, the Third Respondent led evidence of 3 witnesses and Mr Mapoma was the only witness to testify in support of his case.

[6] The essence of the dispute arose when Mr Mapoma refused to sign a training sheet.

6.1 Mr Nyembe then reported Mr Mapoma to Mr Komane (Production Manager).

6.2 Mr Komane informed Mr Mapoma that refusing to sign a training sheet and the importance of signing the training sheet.

6.3 Mr Mapoma asked Mr Komane not to point his finger at him, Mr Komane then apologised to Mr Mapoma for using his hands to communicate with him.

6.4 Mr Mapoma despite Mr Komane apologising for pointing his finger at him, he then stood up and punched him on his face, when Komane asked why he was punching him, he assaulted him again, and sustained injuries as a result of the assault.

6.5 The version of Mr Komane was corroborated by Mr Nyembe.

[7] Mr Mapoma testified that he was provoked by Mr Komane and that this is the reason he assaulted him.

[8] Mr Mapoma clearly assaulted a Senior Manager without any justification for his conduct.

[9] The Arbitrator found:

9.1 The dismissal of the Applicant (Mapoma Lungi) is substantively fair.

[10] It is not in dispute that Mr Mapoma admits to assaulting Mr Komane, but alleged that he had been provoked by Mr Komane.

Analysis and the law

[11] It was accepted that like any misconduct in the workplace, dismissal is not the only solution and that every case must be decided on its own facts.

[12] The Arbitrator found on the evidence presented to him that there was no assault on Mr Mapoma by Mr Komane and therefore, found the Respondent was consistent in applying its rule relating to assault.

[13] The Arbitrator also had regard to appropriateness of the sanction imposed, and the dismissal that was fair.

[14] In *Lonmin Mine v Commission for Conciliation, Mediation and Arbitration and others*¹, the inconsistency and principles of the law were discussed by Deane AJ.

14.1 It is not in dispute that Mr Mapoma by assaulting Mr Komane broke the rule, what is in dispute is that Mr Komane also broke the rule.

[15] The legal principles are clear that where there is an allegation of discipline being applied inconsistently by an employee, it is incumbent on the employee alleging the inconsistency to lay a credible basis for this claim and not a mere unsubstantiated allegation.

¹ [2022] JOL 52944 (LC).

[16] Mr Mapoma did not discharge the evidentiary burden that rested on him to provide at least *prima facie* evidence to show the existence of the inconsistency, in the proceedings before the Commissioner, and which would have put the duty on the Applicant to answer the same, simply put, Mr Mapoma did make out a case of inconsistency in law.

[17] In arriving at a decision on whether or not the dismissal is fair, a Commissioner must exercise a value judgement.

17.1 In exercising the value judgement, the Commissioner needs to take into account all the circumstances of the case, including the importance of the rule that was breached and the reasons why the employer imposed the sanction of the dismissal.

[18] Mr Mapoma committed a serious misconduct by assaulting his Manager, Mr Komane.

[19] I am of the view that the Third Respondent took into account the seriousness of the misconduct and reconciled that with the sanction imposed.

[20] In the premises, I make the following order:

Order

1. The application for review is dismissed.
2. There is no order as to costs

N Makopo

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr Tumisho Manasoe of Letsholo Manasoe Attorneys

For the Respondent: Adv Morne Pienaar

Instructed by:

Kruger Wilkens Attorneys

LABOUR COURT