

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

**Not Reportable
JR1151/2018**

In the matter between:

**GENERAL INDUSTRIES WORKERS UNION
OF SA**

First Applicant

JOHANNES THABO LAKAJE

Second Applicant

And

ELEANOR HAMBRIDGE N.O.

First Respondent

NAMPAK GLASS (PTY) LIMITED

Second Respondent

Heard: 15 August 2022

Delivered: 11 April 2024

JUDGMENT

RAMOLEFE, AJ

Introduction

[1] This is an application in terms of section 145 of the Labour Relations Act¹. The applicant prays for the review and setting aside of an arbitration award issued by the first respondent on 21 May 2018 (award). The first respondent does not oppose the application.

[2] Central to the award is the finding that:

¹ Act 66 of 1995, as amended.

‘Based on the evidence and argument before me, I find that the Applicant was grossly negligent in his conduct. It was common cause that the Employee was appointed as a Palletiser Operator at the time of the incident. It therefore follows that it was within his job description to ensure that the pallets are correctly labelled. This aspect the Applicant had conceded to during his disciplinary enquiry, as well as at the arbitration. Based on the evidence before me, I find that the Applicant had failed in his duty of care and as a result, the pallets were incorrectly labelled.’

Background facts

- [3] The applicant was appointed by the second respondent to the position of Palletiser Operator responsible for operating a beer bottle labelling machine.
- [4] At the heart of this matter lies a work shift at the premises of the second respondent (employer). The shift commenced on the night of 7 January through to 8 January 2013. Reporting for this shift on 7 January 2013, the applicant alleges that he found printed labels placed on a computer and ready for use in marking bottles of specified beer bottles. The bottle marking process is mechanical.
- [5] At the disciplinary hearing that forms the subject matter of this application, the employer had called a Mr Corrie Erasmus (Mr Erasmus), the Business Continuous Improvement Manager to give evidence, while the applicant testified on his behalf.
- [6] Mr Erasmus testified that he knew the applicant from the time when he chaired a disciplinary hearing of the applicant, found him guilty, and imposed a sanction of dismissal. This was, so proceeded Mr Erasmus’ evidence, because “*there was a valid final written warning already for the same offence*”. Mr Erasmus was asked if the applicant, already the bearer of a final written warning, disputed the validity of the final written warning. His answer was in the negative.
- [7] Under cross-examination, Mr Erasmus said that whether or not the applicant ever challenged the final written warning issued to him, there was certainly no challenge at the time of the disciplinary hearing. He then continued a rather long and unstructured cross-examination which does not seem to have achieved much. Re-examination covered the final written warning and established that both the applicant and the union representative had signed the warning.

- [8] In his evidence-in-chief, the applicant was led on the final written warning and the reasons for it. Some dramatic evidence was led relating to one employee, a manager, resigning, and another, a fellow employee, passing away. At any rate, the applicant gave evidence that the issue relating to the final written warning did not arise at his disciplinary hearing. Nothing of significance appears to have developed from this aspect, except the suggestion, by the applicant, that he signed the final written warning because *"[i]f you are looking for a job to work and then you are given a pen and said you must sign here there is nothing you can do"*.
- [9] On the aspect of the labels, the applicant testified that the label *"comes from the computer and when it comes from the computer, you check the machine number and you check the label and the machine whether they correspond and you then put the label on the pallet. You cannot put a label on a machine that does not correspond"*.
- [10] Under cross-examination, the applicant was asked why the first applicant, his representative union, did not refer a dispute to the CCMA, or the Bargaining Council about the final written warning. His response was that *"we were still fighting it inside the company's premises"*.
- [11] In argument before the Court, critical to the change of shift was a notice board used to communicate job changes and any special instructions. As I understood the case, the change of shift did not entail a re-manning of the operation or a mere change of guard, in which case one set of consequences would result. This was also not like running a relay and simply having one team member hand a bat over to the next, in which case, still, it would have been vital not to drop anything. The change of shift was, again as I understood matters, a fresh phase in the production line with a different set of consequences.
- [12] Much of the evidence is largely common cause. Of what remains, there is contestation relating to an interplay between the following: the incorrectly generated labels, and whether this was a continuing feature from one shift to the next, in which case there might well be room to exonerate the applicant; the role played by the previous shift in the handover period, and whether the blame lay properly with that shift; and finally, the applicant's own role and whether he was himself duty-bound to check the notice board.

- [13] From the evidence, the applicant appears not to have checked the notice board, instead he proceeded with the labelling from where the previous shift and machine operator left. This resulted in an incorrect labelling of the bottles relating to his shift and continued until the error was discovered in the early hours of the morning. At this point, the incorrectly labelled bottles had to be re-labelled, and the pallets repacked. Happily for the second respondent, the mistake was contained and there was no supply, or delivery of incorrectly labelled beer bottles.

Analysis

- [14] The crisp issue is therefore whether the applicant's conduct fell below standard, and whether he was, as a result, negligent. Also to be considered is whether the award was met, and in particular, whether the dismissal of the applicant, already served a final warning, was justified.
- [15] From the award, the applicant's case is that, having found printed samples of the labels from the previous shift, he continued to use the works number he already found to print labels for the batch of bottles labelled during his shift. It was at this point that the conduct complained of against the applicant arose.
- [16] If I am wrong regarding the origin of the mistake, and it is contended that it arose before the applicant's shift, the answer is that checking the notice board would have certainly limited the mistake, and possibly spared the applicant from being held responsible.
- [17] When asked under cross-examination whether the first respondent was entitled to accept that it was his responsibility to ensure that the correct label was put on the pallets, the applicant conceded that "*that is correct*". Of course, the applicant attempted to explain this away by seeking to place the blame on other employees.
- [18] In the applicant's evidence, much is made of incorrect labels having been produced prior to his shift, and this being the reason, and justification, offered for the labelling mistake under the applicant's watch. The incorrect labels aside, the nub of the matter, it seems to me, is really this: the duty upon the applicant himself to check that his shift commenced with the correct labels. In considering this issue, I do not suppose the applicant thought that he could adopt the attitude that it was permissible

for him to act mechanically. This was something to be left to the machine, and for him, the human element, to avert the situation.

[19] Indeed, precisely because of a range of mistakes that can happen, and the fact that a notice board was installed for the very purpose of communicating vital information to staff, it was plainly incumbent upon the applicant to have regard to this and to make proper checks. His failure to do both, and instead to point elsewhere, constituted negligence. I accordingly find no basis for setting aside the award.

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

Order

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

K. D. Ramolefe

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

M. Bayi, of Bayi Attorneys.

M. van As, instructed by Cliffe Dekker Hofmeyr Incorporated.