

**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA**

**Held at Johannesburg**

**Appeal case no.:JA 62/98**

In the matter between:

**Woolworths (Pty) Ltd**

Appellant

and

**Maria Mathews**

First Respondent

**The Commission for Conciliation,**

**Mediation and Arbitration**

Second

Respondent

**Advocate Hutchinson**

Third Respondent

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**Judgment**

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**Ngcobo AJP**

[1] Ms Maria Mathews, first respondent herein, was dismissed by the appellant, Woolworths (Pty) Ltd, following a disciplinary enquiry and an unsuccessful internal appeal. Her dismissal followed upon the discovery of a cash shortage in the amount of R5000 at

appellant's Market Street store in Cape Town, where the first respondent was employed as the trainee department manager. She subsequently referred the dispute to the Commission for Conciliation, Mediation and Arbitration, the second respondent herein. When conciliation failed, the dispute was arbitrated by the third respondent, who found that the dismissal was fair. The award of the third respondent was subsequently reviewed and set aside by Landman J. With leave having been granted by Landman J, the appellant now appeals to this Court.

[2] The standard of review of awards of commissioners is set out in Carephone (Pty) Ltd v Marcus NO and others [1998] (11) BLLR 1093 (LAC) at 1103 B - C. The reviewing court must ask itself whether there is:

”a rational objective basis justifying the connection made by the administrative decision maker between the material properly available to him and the conclusion he or she eventually arrived at?”

The essential enquiry is whether the award can be supported by the facts properly before the commissioner and the applicable law. If the award is so supported, it is impermissible to interfere with the award.

[3] In determining whether the award is supported by the facts and the applicable law, it is not helpful to consider only the reasons advanced for the award, and if they are not convincing or compelling, to conclude that interference with the award is warranted. While the reasons advanced in support of the award may be an indication of whether the commissioner has applied his or her mind to the facts before him or her, they are not decisive. The duty of the reviewing court is to consider the facts properly before the commissioner and to ask itself whether they sustain the award.

[4] In Carephone, supra, the court accepted that in determining whether the award can be sustained on the facts, the reviewing court will have to make value judgements which will

“ almost inevitably, involve the considerations of the merits of the matter in some way or another”. However in doing so, the reviewing court ought to bear in mind that it is doing so not to substitute its own opinions on the correctness of the result but to determine whether the outcome is rationally justifiable. Carephone (Pty) Ltd v Marcus No and others, supra, paragraph 36 at 1102.

[5] Although the commissioner, in this case, kept no record of the proceedings, a practice which is undesirable, the facts necessary to decide this appeal emerge from the papers in the review proceedings. It is true, there were factual issues, however, the essential facts are largely common cause.

[6] On 3 April 1997 the first respondent withdrew a sum of R18.510,00 from a cashier. This amount was intended for use as a cash float in the store. She counted the money and recorded it on a cash collection and banking work sheet. This amount was thereafter placed in a cash bag and sealed. When the first respondent went on lunch, she handed the bag to Mr Abel Rambau, her subordinate in the cash office department. Later that afternoon when Rambau handed over the cash float back to the first respondent, he indicated that the amount of cash float was R13.510,00. The first respondent and Rambau signed the float count sheet, which reflected the figure of R13.510,00 instead of R18.510,00. The figure recorded on the float count sheet was R5.000,00 less than the amount the first respondent had withdrawn from the till. The first respondent did not enquire from Rambau as to the reason for the discrepancy between the amount of R18.500,00 which she had given to him and the amount of R13.510,00 handed back to her by Rambau.

[7] Later on when the first respondent was reconciling her books, she could not find the balance brought forward book, that is, the cash transit book. The practice followed at the appellant's to determine the correct balance brought forward figure in the event the cash transit book went missing was either to telephone Fidelity Guards to establish the figure or to calculate the correct figure by working back to that figure. According to her she chose the latter method and determined that the balance brought forward was a sum of R26.676,00. Using this figure, the difference between the float on hand and the float per cash analysis was only eighty two cents, an insignificant amount.

[8] On 4 April 1997 the first respondent reported to Mr Govender, her supervisor, that the balance brought forward book was missing. According to Govender the first respondent did not report to him that the cash float figures may be incorrect or that there may be a shortfall. On 11 April 1997 the balance brought forward book was discovered. On the same day the first respondent reported to Govender that she was unable to balance her cash float. Upon

investigation, it was determined that there was a shortfall of R5.000,00. It is common cause that that shortfall reflected the difference between the sum of R18.510,00 withdrawn from the till by the first respondent and the amount of R13.510,00 reflected on the float count sheet.

[9] Both the commissioner and Landman J found that the first respondent was negligent in executing her duties. However, the commissioner went further and found that the first respondent “created her own false balance” to balance her cash float. Landman J criticised this finding on the basis that it was not supported by the facts. The question which arises, therefore, is whether the finding by the commissioner that the first respondent “created her own false balance” is borne out by the facts.

[10] The finding by the commissioner that the first respondent “created her own false balance” is nothing more than an inference which the commissioner drew on the facts. The test for reviewing the inferences drawn by the commissioner is no different from the test for reviewing any finding by the commissioner. When reviewing the inferences drawn by the commissioner, the proper approach is to determine whether the inference drawn may reasonably be drawn from the facts properly before the commissioner. The enquiry, in my view, is not whether the inference drawn is the right one or whether a different inference would be better supported by the facts.. It is sufficient if the inference drawn is supported by the facts and is not inconsistent with the law.

[11] The first respondent made two fundamental errors, namely, she entered an incorrect balance brought forward and an incorrect cash float. She did this in circumstances where she could easily have determined the correct figures. She could easily have determined the balance brought forward by making a telephone call to the Fidelity Guards Company. She allegedly chose not to do so. Instead she chose to use the method of calculating backwards in order to determine the balance brought forward. Having done so she arrived at an incorrect figure of R26.676,00. There is no explanation as to how she arrived at this figure. What is even more puzzling is how, using an incorrect figure of the balance brought forward, the first respondent could have arrived at a figure which was R5000,00 more to balance out the R5000,00 shortage in the cash float count.

[12] It was common cause that the first respondent could easily have determined the correct balance brought forward. There were documents available to her from which she could work in order to determine the correct balance brought forward. It was not in dispute that had the first respondent performed the exercise which she claimed to have performed correctly she would have realised there was a shortage of R5000,00. The first respondent did not suggest that she had made any error in her calculation. In any event even if she had made such an error, it is highly unlikely that the error would have been exactly R5000,00 more to balance out the R5000,00 shortage in the cash count.

[13] In these circumstances the inference that the first respondent created a false balance in order to balance out her books is not unreasonable. It is justified on the evidence.

[14] Even if it can be accepted in favour of the first respondent that she did not deliberately

create the false balance brought forward, she was nevertheless grossly negligent in making the two fundamental errors. She knew that earlier on she had withdrawn a sum of R18.510,00 and yet she reflected an amount of R13.510,00 on the float count sheet. She entered the incorrect balance brought forward figure in circumstances where with comparative ease she could have established the correct balance brought forward figure. As a result of her negligence the shortage of R5000,00 could not be detected timeously. She was employed to handle cash for the appellant. She held a position of trust. In these circumstances, I am unable to hold that the commissioner acted irregularly when he upheld the dismissal of the first respondent. In all the circumstances interference with the award made by the commissioner was not warranted.

[15] In the event the following order is made:

- a) The appeal is upheld with costs, which costs are to include the costs of the application for leave to appeal;
- b) The order of the court a quo is set aside and is replaced by the following order: "The application is dismissed with costs".

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Ngcobo AJP

I agree

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Conradie JA

I agree

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Nicholson JA

Date of hearing: 2 June 1999

Date of judgment: 24 June 1999

**Appearances:**

For appellants: A.E. Franklin

Instructed by: Perrott, Van Niekerk and Woodhouse

For respondent: Mr Zondi of Chennels Albertyn & Tanner