

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO. JA28/2002

In the matter between:

**Rustenburg Platinum Mines Ltd
(Rustenburg Section)**

Appellant

and

**Commission for Conciliation,
Mediation and Arbitration
First Respondent**

**Moropa C.J. NO.
Respondent**

Second

**Sidumo Z
Respondent**

Third

Long service does not lessen the gravity of the misconduct or serve to avoid the appropriate sanction for it...

The employees in casu were not dismissed in order to punish them. They were dismissed because the employer was not prepared to run the risk of employing them any longer once they had been shown to be [unreliable].

In the circumstances of this case, I consider that it was irrational to have relied on the employees' long service for having found their dismissal unfair. In my judgment the commissioner has 'ignored or misapplied legal principles to

an extent that is inappropriate or unreasonable'.... By doing so, she failed to make a rational connection between the material available to her and the conclusion she reached''.

(My underling)

[15] The appellant's challenged during argument of the second respondent's award on the basis that the third respondent's service of 14 years and that during that period he had kept a clean record and on the Code of Good Practice was not foreshadowed in the founding affidavit. It was not open to the appellant to seek to have the second respondent's award set aside on the basis that his reliance on the third respondent's clean record and long service was unjustifiable or a constituted reviewable irregularity when this had not been foreshadowed in the founding affidavit. A commissioner is entitled to know each finding of his that will be attacked on review to show the existence of a reviewable irregularity for the purpose of having his award set aside. That the third respondent had a clean record and a long service period is capable of sustaining the finding by the commissioner that the sanction of dismissal was too harsh. Whether or not it would have been enough to sustain the finding had it been challenged in the founding affidavit is another matter. However, I must say that, although the misconduct of the third respondent is, indeed, serious, I am not sure that I would not have been in doubt about whether I should interfere with the finding of the second respondent. And in case of doubt, the court should not interfere.

[16] Mr Myburgh emphasised that the third respondent's misconduct was extremely serious and submitted that the appellant was entitled to have adopted the attitude that the continued employment of the third respondent posed too great a risk to the employer. He pointed out that the third respondent was the last man in the appellant's line of defence because, if anyone had stolen any thing belonging to the appellant, the third respondent would be the last man to search the person before such person could leave the company premises. Mr Myburgh also urged us to have regard to certain passages in **Toyota**

SA Motors (Pty) Ltd v Radebe & Others (2000) 21 ILJ 340 (LAC) at par 24 **De Beers Consolidated Mines Ltd v CCMA & Others (2000) 21 ILJ 1051 (LAC)** at paras 22, 24 and 27, **County Fair Foods (Pty) Ltd v CCMA & Others (1999) 20 ILJ 1701 (LAC)** at par 43, **Nampak Corrugated Wadeville v Khoza [1999] 2 BLLR 108 (LAC)** at par 35, **Metro Cash & Carry Ltd v Tshihla (1996) 17 ILJ 1126 (LAC)** at 1133 FG and par 25 in De Beers case, supra. I do not consider it necessary to deal with each and everyone of those passages. However, I have considered them in the process of considering judgement in this matter. Despite them I am not able to conclude that they provide justification for interference by the court with the decision of the commissioner on review.

[17] In the circumstances I conclude that the Court a quo correctly dismissed the application. The appeal is dismissed with costs.

Zondo JP

I agree.

Mogoeng JA

I agree.

ComrieAJA

Appearances

For Appellants:	Adv. A.T. Myburg
Instructed by:	Leepan Beech Attorneys
For Respondents:	Adv. S. Strydom
Instructed by:	Mahlasedi Van Zyl Inc.
Date of Judgement:	20 November 2003