

IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN

CASE NO: **D522/04**

DATE: 2007/03/20

In the matter between

EDCON LIMITED

Applicant

and

1st Respondent

2nd Respondent

N B SITHOLE

3rd Respondent

**JUDGMENT DELIVERED BY
THE HONOURABLE MADAM JUSTICE PILLAY
ON 20 MARCH 2007**

ON BEHALF OF THE APPLICANT:

MR VENTER

ON BEHALF OF THE 3rd RESPONDENT:

MR JAFTA

JUDGMENT

20 MARCH 2007

PILLAY D, J

[1] The applicant was charged as follows:

“Failure to be honest and act with integrity:

(a) In that over the period of 19 April 2002 to 20 October 2002,

you processed cash sale transactions onto your cash card account No [.....] to the total value of R13 536,29 for the purposes of self-gain of the benefit of the cash vouchers; and

(b) On 22 April 2003 you altered records on your account No [.....] using your subordinate's user I.D. by changing the following:

(1) Title, name and I.D. number, Mrs to Nombheka Beatrice, to Mr Mbhulele and [.....] , this has resulted in a breach of the trust relationship between yourself and the Company.”

[2] The employer had an incentive scheme in terms of which customers received a R50 voucher for every R700 spent on their cash cards. The applicant was one of three staff members who had a cash card. The rule was established that employees were not allowed to use their cash cards to process customer's purchases. A scam was uncovered when an employee, Nokuzula from the Kokstad branch, where the applicant was employed, used 21 vouchers in the Pietermaritzburg branch of the employer. The employer was alerted to the incident and Nokuzula, was identified. Other than counselling Nokuzula about not using cash cards, no other disciplinary action was taken against her.

[3] Following that incident, the applicant changed the names and identity numbers on her cash card to her husband's. She told the

head cashier, Yandisa, that she should change the name on her cash card to her mother as she was not married. The applicant informed her supervisor, Marie Dickens, that she had effected these changes.

[4] The applicant admitted that her cash card was used to effect the transactions referred to in the charge sheet. Her case was that she did not use it herself. Evidence was led by the applicant, and corroborated by Nokuzula, that other members of staff had used her cash card. This seems, at first blush, to be strange considering that the beneficiary of the transactions would have been the applicant. However, the reason advanced by Nokuzula was that the employer set a target of 10 new cash cards to be opened per day. Ultimately this was interpreted to mean the number of cash card purchases made per day. In order to meet their target, other employees could have used the applicant's card without her knowing because they had the number of her card.

[5] It was submitted for the employer that the award is reviewable on the grounds that the arbitrator committed a gross irregularity, firstly by ignoring the employee's admission that she changed the name and the ID numbers on her card the day after the Pietermaritzburg incident.

[6] On this ground the evidence is well-established that the applicant

did change her cash card details. Whether her conduct could reasonably have resulted in a breach of trust depended on whether there was an explanation for making the changes. The explanation was that by changing the details on her card she prevented others from using it. As it turned out, her card, now in the name of her husband, had not been used by other members of staff after the changes had been effected. Furthermore, the change was effected openly.

[7] By drawing an adverse inference against the employer for not calling Dickson, the arbitrator did not render the award reviewable. It was open to both parties to call Dickson – the applicant to corroborate her rebuttal and the employer to discharge its *onus*. In the circumstances, the employer did not discharge its *onus* on both charges. The applicant's version was not refuted.

[8] A further ground on which the award was criticised is that the arbitrator allowed hearsay evidence to be led on behalf of the employee but not in respect of the employer. Even if that did occur, on the material evidence the applicant's evidence was corroborated and constituted the basis of the arbitrator's decision. In other words, if the hearsay evidence led by the applicant is ignored altogether the result would not change.

[9] In the circumstances, the application for review is dismissed with

costs.

PILLAY D, J