

**IN THE LABOUR COURT OF SOUTH AFRICA HELD IN
JOHANNESBURG**

Case no: JR 245\07

In the matter between:

NATIONAL UNION OF MINEWORKERS

**First
Applicant**

S MANDLAZI

**Second
Applicant**

and

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

**First
Respondent**

L BORMAN N.O.

**Second
Respondent**

NORTHAM PLATINUM LIMITED

**Third
Respondent**

JUDGMENT

MOSHOANA AJ

Introduction

[1] This is a review application brought in terms of section 145 of the Labour Relations Act as amended.

Background facts

- [2] The second applicant, Samuel Norman Mandlazi was employed by the third respondent as a stop machine operator.
- [3] On or about 08 October 2004 underground blasting activities were suspended following a mine accident. This was in line with section 54 (1) instructions from the Department of Minerals and energy. A risk assessment team was formed to go underground to do an inspection.
- [4] On that day Mr Gerson Nthengwe a stopper had called for the normal safety meeting chaired by him. Whilst busy with the said meeting, the second applicant disrupted such a meeting as a result Mr Nthengwe could not proceed with the safety meeting. This was after one Barend Loots, the second applicant's supervisor instructed him to form four assessment teams. The second applicant defied this instruction and proceeded to form only one team consisting of him and others.
- [5] Owing to the conduct of the second applicant as set out above, the second applicant was charged with 3 acts of misconduct. Following a disciplinary hearing, the second applicant was found guilty of all the acts of misconduct and dismissed.
- [6] He then challenged the fairness of his dismissal. His challenge failed in that the second respondent issued an award to the effect that the dismissal was not unfair. Aggrieved by the

award, this application was launched by the first and the second applicant.

The attack

[7] The applicants in their founding papers contend that the second respondent, committed a gross irregularity, misdirected himself and failed to apply his mind, in that he accepted the version of the third respondent despite contradictions.

[8] Further, he (second respondent) accepted uncorroborated evidence of Steyn without critical analysis and proper evaluation. Further, second respondent was accused of having produced an award that is not justifiable in relation to the material before him. He is also accused of not recognising the second respondent's version as being inherently probable.

[9] In court, Mr Goldberg for the applicants contended that the second respondent's award is unreasonable in that in rejecting the second applicant's justification for the misconduct, he ignored the risk assessment report and common cause facts. He in support of that contention referred the court to various decisions of the Labour Appeal Court and the Constitutional Court. At the end he argued that the applicants should succeed with costs following the results.

Analysis

[10] Having considered the award, I am of the view that the award is reasonable and in fact supported by evidence before the second respondent. The second respondent found that there

was evidence that the second applicant disrupted the safety meeting and refused to carry out an instruction.

[11] As was argued by Goldberg, the second respondent cannot factually be faulted for having found that the second applicant was guilty of the said two acts of misconduct. His submission was focused on the fact that in terms of section 54 instructions, employees were not supposed to work and therefore, the second applicant was justified in his misconduct as it were.

[12] This submission is absurd. In the first place, the very meeting that the second applicant disrupted was to deal with safety issues. How can he be justified by section 54 instructions to do that. Secondly the team to be formed were to do a risk assessment as required by the aforesaid section 54 instructions. The authorities relied on by Goldberg do not support the proposition that this award is reviewable.

Therefore, I do not find any grounds upon which this award could be set aside.

Order

[13] In the result, I make the following order:

1. The review application is dismissed.
2. The first applicant and second applicant to pay the costs of this application, jointly and severally, the one paying absolving the other.

Moshoana AJ
Acting Judge of the Labour Court
Johannesburg

Appearances

For the applicant	: Mr Goldberg
For the Respondent	: Adv Van Den Berg
Instructed by	: Van Zyl Roux & Hurter Attorneys
Date of hearing	: 28 February 2008
Date of Judgment	: 11 March 2008