

REPUBLIC OF SOUTH AFRICA



Not reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 2027/10

In the matter between:

ARCELORMITTAL SOUTH AFRICA

Applicant

and

NUMSA oboP. MAZIBUKO

FirstRespondent

METAL AND ENGINEERINGS BARGAINING

COUNCIL (MEIBC)

Second Respondent

MOKGERE MASIPA N.O

Third Respondent

Heard :30 January 2013

Order : 30 January 2013

Summary :

JUDGMENT-REASONS FOR ORDER

AC BASSON, J

- [1] This is an application to review and set aside an arbitration award, in terms of which the Commissioner held on the evidence that there was no evidence to show that the cause of the collision that occurred between two locomotive drivers was as a result of a fault attributable to the first respondent, Mr Mazibuko. The evidence before the Commissioner was that when Mr Mazibuko entered an area where Mr Tshabalala already was in, the rule was that he should first ask Mr Tshabalala, who had the right of way, whether he could enter the area.
- [2] What does appear from the evidence is that Mr Mazibuko was aware of this rule. He also testified that that is why he asked Mr Tshabalala whether he could enter the area. However, what occurred, Mr Mazibuko said, “I heard Mr Tshabalala say that I should enter slowly, and that is why I did”, according to the evidence, what he did was that he entered the area slowly. Mr Tshabalala, however, according to his evidence said “I told him to wait”.
- [3] I have considered the evidence, what was before the Commissioner was that there was a misunderstanding between the two locomotive drivers. The question is whether or not that misunderstanding could be attributable to the negligence of Mr Mazibuko who got dismissed. There was nothing before the Commissioner to indicate that Mr Mazibuko was an untruthful witness nor that Mr Tshabalala was a truthful witness.
- [4] I am therefore, on the evidence placed before the Arbitrator, satisfied that in light of the *Sidumo*¹ case, the Commissioner had arrived at a reasonable decision. I am satisfied, therefore, that the award should stand. And in the event, the following order is made:
- 4.1 The application to review is dismissed.
- 4.2 There is no order as to cost.

AC BASSON J
Judge of the Labour Court

¹2008 (2) SA 24 (CC)

APPEARANCES:

For Applicant : Advocate A A Mphahlele
Instructed by : Snail Attorneys

For Respondent : Advocate A Redding SC
Instructed by :

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