REPUBLIC OF SOUTH AFRICA

In the Labour Court of South Africa, JOHANNESBURG

JUDGMENT

Not reportable

Case no: JR1681/11

In the matter between:

SOUTH AFRICAN POST OFFICE	Applicant
and	
JACOBS, T	First Respondent
COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION	Second Respondent
MPHAPHULI, *N.O.*	Third Respondent

Heard: **21 December 2012**

Delivered: 20 February 2013

Summary: Review in terms of section 145 of the LRA, arbitration award -

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JUDGMENT

MALAN AJ

Introduction

[1] This is an opposed application terms of which the applicant, South African Post Office Limited ('the Post Office') seeks to have the arbitration award handed down by the third respondent ('the Commissioner') under the auspices of the second respondent ('the CCMA') under case no. GAJB32682-10 and dated 18 April 2011 ('the award') reviewed and set aside in terms of s 145(1)(a) of the Labour Relations Act, 66 of 1995 (as amended) ('the LRA') ('the review application').

Condonation

[2] At the commencement of the hearing of this matter, the Post Office applied for condonation for the late filing of the review application. Although the first respondent did not oppose the application for condonation on the papers as they stand, Mr Moshoana, acting on behalf of the first respondent, still made submissions to the Court concerning the applicant's application for condonation.

[3] Having considered that the review application was delivered 21 days late and the Post Office's explanation for this delay as well as its submissions concerning its prospects of success and the absence of prejudice, condonation was granted and the matter proceeded accordingly.

Synopsis of relevant factual background

[4] Before proceeding to outline the grounds upon which the Post Office seeks to have the award reviewed and set aside and to consider the issues to which they give rise, it is necessary for me to first summarise briefly the facts which form the background to the dispute between the parties.

[5] Until the time of her dismissal, 29 November 2010, the first respondent ('Mrs Jacobs') was employed as a branch manageress at the Post Office's

Weltevreden Park branch. Mrs Jacobs was *inter alia* responsible for ensuring the safekeeping of monies collected at the Weltevreden Park branch as well as its daily banking until collected by G4 responsible for the Cash-In-Transit ('CIT').

[6] The Weltevreden Park branch has a walk-in safe with a lockable steel door providing access to the safe. The inside of the safe is partitioned by mesh wire into two separate areas. The one area has a further and separate lockable space with a mesh safe door giving access to such area ('the lockable space') where cash is kept. Mrs Jacob's was the only one that had the keys to the lockable space and consequently access. Inside the lockable space there were shelves where items could be placed. The other area has lockers for Tellers but does not have a similar mesh safe door. All the Tellers have access to this area. It is common cause that during trading hours, the main steel door to the walk-in safe was left open in order to provide the Tellers with access to the stock and their respective lockers.

[7] As branch manageress, Mrs Jacobs was entrusted with and responsible for the keys to the walk-in safe including the lockable space. Duplicate keys were kept at the area manager's office in a sealed envelope.

[8] On 15 December 2009 at approximately 15h00, Mrs Jacobs along with the checking officer, Ms Joubert, prepared to do the daily banking. In this regard they placed the cash in a stop loss bag, sealed it and then put it inside the separate lockable space on the shelves after which Mrs Jacobs locked it. The main door to the walk-in safe remained open during trading hours. The reason for this, Mr Jacobs contends, is because Tellers moved in and out of the safe during the day in order to gain access to the stock and their lockers.

[9] When the security officers arrived at approximately 16h15 that same day, Mrs Jacobs went to the walk-in safe, unlocked the separate lockable space safe and took the stop loss bag to the table where the CIT officer was waiting. At that stage, she discovered that there had been tampering with the stop loss bag and it had been opened. In fact, she discovered that it was not even the same stop loss bag that she and Ms Joubert used to make up the banking

earlier that day and placed in the separate lockable space. The stop loss bag also no longer had her handwriting on. Upon opening the stop loss bag, she discovered that the money inside made been removed from the bag and had been replaced with paper. The stop loss bag that was initially used was never found. Despite a search for the initial stop loss bag, they could not find it.

[10] Mrs Jacobs suspected that a co-employee was responsible for taking the money. This co-employee resigned 24 hours after this incident.

[11] In so far as the second charge is concerned, Mrs Jacobs contended that she only forgot to hand over the cheques received that day for daily banking, as required in terms of the policy, because the commotion around the missing stop loss bag that day.

[12] On previous occasions when items such as credit cards and other items went missing, she requested a standalone safe from the area manager. This request was not adhered to.

[13] On 23 November 2010, the Post Office issued Mrs Jacobs with a notice to attend a disciplinary enquiry. In terms of the said notice, Mrs Jacobs was charged with gross negligence in that she failed to safeguard banking lodgement amounting to R42 250.00 which resulted in the Post Office suffering a loss in this amount. Mrs Jacobs was further charged with failing to hand over banking amounting to R61 114.86 on the same day which she prepared it, as was required in terms of the policy.

[14] Pursuant to the disciplinary enquiry, Mrs Jacobs was found guilty of both the charges levelled against her and accordingly dismissed. Mrs Jacobs appealed against the outcome of the disciplinary enquiry but the findings and sanction of dismissal was upheld.

[15] Aggrieved by the outcome, Mrs Jacobs referred a dispute to the CCMA contending that her dismissal was substantively unfair. The procedural fairness of her dismissal was not placed in dispute. Conciliation failed and

the matter proceeded to arbitration, which arbitration forms the subject matter of this review application.

Arbitration proceedings

[16] Both parties were represented during the arbitration proceedings, albeit not by legal practitioners. In addition to documentary evidence, the Post Office presented the evidence of its area manager Mr Lephuthing; the chairman of the disciplinary hearing, Mr Maphutha, who also happened to be an area manager and Mrs Swanepoel who conducted an investigation into the incident. Mrs Jacobs testified herself and did not call any witnesses. An inspection *in loco* was also conducted.

[17] In terms of the arbitration award the Commissioner found the dismissal to be substantively unfair and ordered the applicant to reinstate Mrs Jacobs and pay her four months remuneration being the equivalent of the period she would have been remunerated had she not been dismissed.

Grounds of review

[18] I understand the grounds upon which the Post Office contends the award falls to be reviewed and set aside to be the following:

18.1 The Commissioner's finding concerning the inconsistent application of discipline by the Post Office is based on a misapprehension of the applicable legal principles.

18.2 The Commissioner's finding that the Post Office's representative *'… was being over ambitious in even suggesting that failure to safe guard [sic] was at issue in the enquiry'* is not that of a reasonable decision-maker.

18.3 The Commissioner committed a reviewable irregularity by disregarding material evidence when he arrived at the conclusion that the parties were in agreement that Mrs Jacobs complied with the operational procedure and standard to the letter.

18.4 The Commissioner's findings that the Post Office's case was based on suspicion and not supported by the evidence and that it exploited its position of power by dismissing Mrs Jacobs are not those of a reasonable decision-maker.

[19] I deal with each one of these grounds of review hereunder.

Applicable legal framework

The review-test

[20] The proper approach to be adopted by this Court in dealing with arbitration reviews is trite. It has been clearly set out in a number of decided cases, chief amongst which is *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others*.[1] In a nutshell, the test is whether a reasonable decision-maker could reasonably arrive at the same conclusion that the decision-maker whose decision is under review, has arrived at.[2]

[21] The *Sidumo* test has been confirmed in *Edcon Ltd v Pillemer NO and Others*,[3] where it was further held that the focal point of the enquiry into arbitration awards in review applications is the reasonableness of the award and that the Court should focus not only on the conclusion arrived at, but also on the material before the Commissioner when making the award.[4]

[22] The operation of the *Sidumo* test was also addressed by the Supreme Court of Appeal (*'SCA'*) in *Samancor Tubatse Ferrochrome v MEIBC & others*.[5]

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1 2008 (2) SA 24 (CC); also reported at (2007) 28 ILJ 2405 (CC) and also at [2007] 12BLLR 1097 (CC)

2 Ehrke v Standard Bank of SA & Another (2010) 31 ILJ 1397 (LC) at p 1404, par [19] B/C-D; See also Fidelity Cash Management Service & Others v CCMA & Others (2008) 29 ILJ 964 (LAC); also reported at [2008] 3 BLLR 197 (LAC)

3 (2009) 30 ILJ 2642 (SCA)

4 Ehrke v Standard Bank of SA & Another (2010) 31 ILJ 1397 (LC) at p 1404, par [19] F-H

5 National Union of Mineworkers v Samancor Ltd (2011) 32 ILJ 1618 (SCA); Also see Samancor Tubatse Ferrochrome v MEIBC & others (2010) 31 ILJ 1838 (LAC)

[23] This judgment, in relation to the operation of the *Sidumo* test, demonstrates what has been stated by both the SCA and Labour Appeal Court (*'LAC'*) in the past about the *Sidumo* test[6], namely that:

23.1 the *Sidumo* test is a result-based test, which tests the reasonableness of the result / outcome of the award;

23.2 in order to assail an award on the basis of the *Sidumo* test, an applicant must thus assail not only the commissioner's reasons, but also the result of the award;

23.3 the reasonableness of the result of the award stands to be determined on all the material that was before the commissioner (with the result that the award can be sustained for reasons not considered by the commissioner);

23.4 the focus is on whether the result of the award falls within a range of reasonable outcomes, as opposed to whether it was correct (this so as to maintain the distinction between a review and an appeal); and

23.5 seen in the context of the above, the fact that a commissioner (as occurred in *Samancor*) commits an error in the process of his/her reasoning will not result in the *Sidumo* test being met, unless the result of the award is incapable of justification on all the material before the commissioner.[7]

23.6 The SCA's judgment reiterates the fact that the *Sidumo* test is a conservative one, and that an award will only fail the test if it is truly incapable of (reasonable) justification. This was well expressed recently by Davis JA in *Bestel v Astral Operations Ltd & others* [8], in the context of commenting on the *Sidumo* test:

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6 See, in particular, Edcon Ltd v Pillemer NO & others [2010] 1 BLLR 1 (SCA); Fidelity Cash Management Service v CCMA & others [2008] 3 BLLR 197 (LAC)

7 *'Reviewing the Review Test: Recent Judgments and Developments'* by Anton Myburgh SC (2011) 32 ILJ 1497

8 [2011] 2 BLLR 129 (LAC); Also see: Southern Sun Hotel Interests (Pty) Ltd v CCMA & others [2009] 11 BLLR 1128 (LC); SA Airways (Pty) Ltd v Blackburn & others [2010] 3 BLLR 305 (LC) at 313D-E; Lithotech Manufacturing Cape, a division of Bidpaper Plus (Pty) Ltd v Statutory Council Printing, Newspaper & Packaging Industries & others [2010] 6 BLLR 652 (LC) at para

> *'It is important to emphasise ... that the ultimate principle upon which a review is based is justification for the decision as opposed to it being considered to be correct by the reviewing court; that is whatever this Court might consider to be a better decision is irrelevant to review proceedings as opposed to an appeal. Thus, great care must be taken to ensure that this distinction, however difficult it is to always maintain, is respected' (my emphasis).*[9]

23.7 The LAC, however, has recently stated as follows in Andre Heroldt v Nedbank Limited[10]:

> *'Where a commissioner fails to have regard to material facts, this will constitute a gross irregularity in the conduct of the arbitration proceedings because the commissioner would have unreasonably failed to perform his or her mandate and thereby prevented the aggrieved party from having its case fully and fairly determined. Proper consideration of all relevant and material facts and issues is indispensable to a reasonable decision and if a decision-maker fails to take account of a relevant factor which he or she is bound to consider, the resulting decision will not be reasonable in the dialectical sense. Likewise, where a commissioner does not apply his or her mind to the issues in a case the decision will not be reasonable.'*[11]

[24] In Southern Sun Hotel Interests (Pty) Ltd v CCMA and others[12] van Niekerk J held that a CCMA award is reviewable where it is shown that the commissioner's process related conduct is found wanting. Van Niekerk J further expressed the opinion that the reasonableness requirement is relevant to both process and outcome. In other words an award will be reviewable if it suffers either from dialectical unreasonableness or is substantively unreasonable in its outcome.

[25] There is no requirement that the commissioner must have deprived the aggrieved party of a fair trial by misconceiving the whole nature of enquiry. The threshold for interference is lower than that; it being sufficient that the commissioner has failed to apply his mind to certain of the material facts or issues before him, with such having potential for prejudice and the possibility that the result may have been different. This standard recognises that

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18; Pam Golding Properties (Pty) Ltd v Erasmus & others (2010) 31 ILJ 1460 (LC) at para 8; MEC for Education, Gauteng v Mgijima [2011] 3 BLLR 253 (LC) at par 4

9 At par 18

10 (2012) 23 ILJ 1789 (LAC)

11 at par 36

12 [2009] 11 BLLR 1128 (LC)

dialectical and substantive reasonableness are intrinsically inter-linked and that latent process irregularities carry the inherent risk of causing an unreasonable substantive outcome.[13]

[26] The LAC has recently also stated the follows in Afrox Healthcare Ltd v Commission for Conciliation, Mediation & Arbitration & others[14]:

> *'The fact of the matter is that the reasonable decision maker yardstick crafted in Sidumo, viewed in proper context, is none other than that in the absence of a "rational objective basis" [the Carephone test] between the decision arrived at and the material placed before the decision maker, the relevant decision is clearly not one which a reasonable decision maker would have arrived at.'*

[27] In dismissing the appeal, the LAC has also recently stated in Gaga v Anglo Platinum Ltd & others[15] the following:

> *'Where a commissioner fails properly to apply his mind to material facts and unduly narrows the inquiry by incorrectly construing the scope of an applicable rule, he will not fully and fairly determine the case before him. The ensuing decision inevitably will be tainted by dialectical unreasonableness (process-related unreasonableness), characteristically resulting in a lack of rational connection between the decision and the evidence and most likely an unreasonable outcome (substantive unreasonableness). There will often be an overlap between the ground of review based on a failure to take into consideration a relevant factor and one based on the unreasonableness of a decision. If a commissioner does not take into account a factor that he is bound to take into account, his or her decision invariably will be unreasonable. The flaw in process alone will usually be sufficient to set aside the award on the grounds of it being a latent gross irregularity, permitting a review in terms of section 145(1) read with section 145(2)(a)(ii) of the LRA' (my emphasis).*[16]

[28] It is against this background the Post Office's grounds of review and the arguments presented by the respective parties in this regard are considered.

Evaluation of grounds of review and arguments

13 Andre Heroldt v Nedbank Limited (2012) 23 ILJ 1789 (LAC) at par [39]; Also see Afrox Healthcare Ltd v Commission for Conciliation, Mediation & Arbitration & others (2012) 33 ILJ 1381 (LAC); [2012] 7 BLLR 649 (LAC); and Gaga v Anglo Platinum Ltd & others (2012) 33 ILJ 329 (LAC); [2012] 3 BLLR 285 (LAC). In each case aforementioned, the LAC either set aside or confirmed the setting aside of the award on review predominantly on the basis of process-related grounds of review.

14 (2012) 33 ILJ 1381 (LAC); [2012] 7 BLLR 649 (LAC) at par 16

15 (2012) 33 ILJ 329 (LAC); [2012] 3 BLLR 285 (LAC); In each case aforementioned, the LAC either set aside or confirmed the setting aside of the award on review predominantly on the basis of process-related grounds of review.

16 at par 44

The Commissioner's finding concerning inconsistency

[29] During the arbitration proceedings, Mrs Jacobs challenged the consistent application of discipline by the Post Office. In this regard she relied on two other instances where branch managers were also charged with gross negligence. They only received final written warnings opposed to the sanction of dismissal as in the case of Mrs Jacobs.

[30] In this regard, the Commissioner finds that *'Both Mr Lephuthing and Mr Maphutha could not point to out what material differences existed in the merits of the cases that led to disciplinary action short of dismissal and the Employee's case that led to her dismissal.'*[17]

[31] In arriving at this conclusion, the Commissioner, in my judgment, disregards the evidence of Mr Lephuthing[18] as well as Mr Maphutha[19] in this regard. Mr Lephuthing explained that in the one instance (concerning the loss of a credit card at the Fontainebleau branch), there was no strong room or walk-in safe. In the second instance, the employee concerned pleaded guilty and showed remorse. Mr Maphutha also explained in detail that in the one instance, the branch manager concerned incorrectly handed a credit card to a fraudster without first checking the six digits or six zeros appearing on the credit card with the relevant bank. He explained that because different banks use either digits or zeros as the first six numbers on the credit cards, there was some confusion that existed that he appears to have accepted as mitigating factors in that case.

[32] In comparing these two instances with that of Mrs Jacobs, Mr Maphutha was further of the view that aggravating factors that weighed heavily against Mrs Jacobs were the fact that she had all the facilities available to her to secure the safekeeping of the money, but still it went missing. Moreover, the fact that she showed no remorse and persisted with her denial that she was not responsible was a distinguishing factor.

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17 Award: p 20, para 5.13
18 Transcript: p 35; pp 60 - 64
19 Transcript: p 99 - 102

[33] Whether or not the chairperson of these respective disciplinary hearings exercised his discretion correctly or not is not the test. The LAC in *SACAWU v Irwin & Johnson Limited,* dealing with the consistent application of discipline,[20] held that: *'… If the chairperson conscientiously and honestly, but incorrectly exercised his or her discretion in a particular way, it would not mean that there was unfairness to other employees. It would mean no more than his or her assessment of the gravity of the disciplinary offence was wrong.'*

[34] There was no evidence that the chairpersons of these disciplinary hearings failed to conscientiously and honestly exercise their discretion by issuing final written warnings.

[35] The Commissioner failed to apply his mind to or misconstrued the legal principles applicable to the consistent application of discipline. In the premises, this ground of review must succeed.

The Commissioner's finding that the Post Office's representatives '… was being over ambitious in even suggesting that failure to safe guard [sic] was at issue in the enquiry.'

[36] This finding by the Commissioner is nothing short of disquieting. Mrs Jacobs' failure to safeguard the stop loss bag containing the money was the focal point of the charge of gross negligence and the evidence presented in this regard.

[37] In addition to the aforesaid, the Commissioner's finding that *'The concept failure to safe guard [sic] is elastic, wide, general and all embracing'* again completely disregards the specific *facta probantia* presented by the Post office specific to the missing stop loss bag.

[38] A symptom of the Commissioner's misdirection in this regard is his analogy between Mrs Jacobs' negligence and, somehow, a branch manager's accountability for loss of valuables as a result of *'… a fire, robbery or theft without having any role in the eventual loss.'* The aforesaid comprise a

[20] (1999) 20 ILJ 2302 (LAC)

broad-spectrum of situations in the absence of analysing and comparing the evidence *in casu* to each one of these situations, in order to justify such equation. Naturally there is a limit to which such safeguarding can apply.

[39] From the latter finding, it appears that the Commissioner concludes that Mrs Jacobs did not play any role in the stop loss bag and money going missing. This is inconsistent with the evidence properly before him.

[40] In the circumstances, I find that the Commissioner's finding in this regard is not that of a reasonable decision-maker. Consequently, this ground of review must also succeed.

The Commissioner's finding that the parties were in agreement that Mrs Jacobs complied with the operational procedure and standard to the letter

[41] This finding is, once again, in direct contradiction to the evidence presented by the Post Office. What the parties were in agreement with was the fact that Mrs Jacobs failed to keep the main door of the walk-in safe locked and that that she allowed the Tellers free access to their lockers in the safe. The Commissioner clearly disregards the evidence by Mrs Swanepoel in this regard as well as the Post Office's operating procedure requiring of branch managers to *"Ensure that the banking consignments awaiting collection by the CIT Company are safeguarded until they are collected.'*[21]

[42] Consequently, this ground of review must also succeed.

The Commissioner's findings that the Post Office's case was based on suspicion and not supported by the evidence and that it exploited its position of power by dismissing Mrs Jacobs

[43] It is common cause that in addition to the area manager, Mrs Jacobs was the person the Post Office entrusted with the keys to the walk-in safe and she was responsible for the safekeeping of the keys as well as to control access to the walk-in safe.

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[21] Records: p 181 (Operational Update)

[44] It is also common cause that the main door to the walk-in safe remained open during trading hours. The reason for this, Mr Jacobs contends, is because the Tellers moved in and out of the safe during the day in order to gain access to the stock and their lockers, it was practical to keep the main door open during trading hours.

[45] Mrs Jacobs' evidence was that after she and Ms Joubert placed the money in question in the stop loss bag and sealed it, she [Mrs Jacobs] proceeded to place the stop loss bag on the shelf inside the lockable space and locked the mesh door. Mrs Jacobs contend that it remained locked until such time as the CIT officer arrived and she discovered that there had been tampering with the stop loss bag. The Post Office was unable to successfully challenge this part of her evidence.

[46] To find an employee guilty of gross negligence, it presupposes that the employee did something, not just negligently in the ordinary sense of the word, but more severe or over and above the concept of ordinary negligence. This begs the question: what did the employee do or not do that that takes his or her actions or omissions beyond the boundaries of mere negligence to result in gross negligence? This of course, is the *onus* the Post Office had to discharge.

[47] It does not follow automatically that in the event of any contents in the walk-in safe going missing, Mrs Jacobs will be guilty of gross negligence merely the because Post Office entrusted her with the keys and she was responsible for the safekeeping of the keys as well as to control access to the walk-in safe. The Post Office had to place sufficient evidence before the Commissioner to prove what Mrs Jacobs did or did not do, was so grossly negligent that it resulted in the loss of the money in the stop loss bag. Consequently, except for the fact that Mrs Jacobs allowed the main door of the walk-in safe to remain open for the reasons already stated, the Post Office placed no other evidence before the Commissioner to support the charge of gross negligence.

[48] Referring to the mesh door in the lockable space where the stop loss bag was placed, Mr Lephuthing testified as follows:

> *'… through the investigation it was established that there could be a possibility the [Mrs Jacobs] left the door open. There is a possibility, because nothing explains to the fact [sic] that if she locked the door, [sic] that is what she told us, she locked the door and she put the money inside after they have counted [sic]. But when she – when the people came to collect the money and then she was supposed to collect that money, that money was not there. She could have been – I mean she could have yes.'*[22]

[49] The investigation referred to by Mr Lephuthing was conducted by Mrs Swanepoel. She also testified during both the disciplinary hearing as well as the arbitration proceedings. The Post Office did not introduce Mrs Swanepoel's report into evidence during the arbitration proceedings. No explanation was given for this.

[50] Mrs Swanepoel's evidence on whether or not the mesh door to the lockable space was locked on the day in question is confusing to say the least. She was not present on the day in question and is therefore unable to confirm whether or not the mesh door was locked. During her evidence she also seems to change her version on several occasions concerning the question whether or not the mesh door was locked at the time when she visited the Weltevreden Park branch during the conduct of her investigation. I find her evidence to be unreliable and of very little assistance, especially in the absence of her report.

[51] There was further no evidence that Mrs Jacobs left the keys laying around.

[52] The only remaining basis for the Post Office to support the allegation of gross negligence, is to prove that Mrs Jacobs, by failing to keep the main door to the walk-in safe locked at all times, and thereby controlling access to the safe, failed to ensure that the banking consignments awaiting collection by the CIT Company are safeguarded until they are collected.'[23]

[53] Mrs Jacobs explained the practical reason for keeping the main door unlocked. This was not seriously challenged by the witnesses who testified

[22] Transcript: p 43
[23] Records: p 181 (Operational Update)

on behalf of the Post Office. In any event, the stop loss bag was on the shelf in the lockable space behind the locked mesh door inside the walk-in safe.

[54] It seems to me that the Post Office was unable to establish anything more than the loss occurred on Mrs Jacobs' *"watch"*, so to speak, and consequently, she was grossly negligent. This simply does not pass muster.

[55] In the premises, I find that the Commissioner's finding that the Post Office failed to prove that Mrs Jacobs was guilty of gross negligence to be that which a reasonable decision-maker given the lack of evidence before him. Consequently, this ground of review must fail.

[56] Despite the aforesaid, the Commissioner's finding that the Post Office exploited its position of power by dismissing Mrs Jacobs is without any basis and unreasonable. There was simply no evidence before the Commissioner to justify this conclusion.

[57] In so far as the second charge is concerned, Mrs Jacobs explanation that she only forgot to hand over the cheques received that day for daily banking, because the commotion around the missing stop loss bag that day. This is not an unreasonable explanation and does not constitute gross negligence given the circumstances.

<u>Conclusion</u>

[58] It is also important to consider the extensive lapse of time between the time when the stop loss bag with the money went missing and when the Post Office eventually charged Mrs Jacobs. Although the incident occurred on 15th of December 2009, Mrs Jacobs was only charged on the 20th of November 2010, almost a year later. Except for the explanation by Mrs Swanepoel that she was in the process of completing an investigation, the Post Office failed to offer any reasonable explanation why the trust relationship had broken down irretrievable, despite the fact that they did not appear to have any difficulty with allowing Mrs Jacobs to continue in her capacity as branch manager during such period without placing her on suspension. The proverbial high-water mark for the Post Office in this

regard is the evidence by Mr Maphutha. He explained that the reason for the Post Office not suspending Mrs Jacobs was because she first had to be afforded an opportunity to state her case and at the time, she had not yet been found guilty. [24]

[59] Having regard to the aforesaid, I am also not convinced that the Post Office placed sufficient evidence before the Commissioner to prove that the trust relationship had irretrievably broken down.[25]

[60] Despite my findings in respect of the first three grounds of review, in my judgment, this does not result in the award having to be reviewed and set aside. It is the last ground of review that goes to the essence of the award. In this regard, the Post Office has failed for the reasons already stated.

Costs

[61] I can find no reason why the costs should not follow the result in this matter.

Order

[62] In the premises, I make the following order:

62.1 The application is dismissed with costs.

Malan AJ

Acting Judge of the
Labour Court of South Africa

[24] Transcript: p 113
[25] Edcon Ltd v Pillemer NO and Others, (2009) 30 ILJ 2642 (SCA) at paras [19] – [21]

APPEARANCES:

FOR THE APPLICANT:	Adv A Snider, instructed by Cliffe Dekker Hofmeyr
FOR THE FIRST FIRST RESPONDENT:	Attorney G M Moshoana, instructed by Jerry Nkelly & Associates Inc.