



**REPUBLIC OF SOUTH AFRICA**

**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

Not Reportable

Case no: JR 2247/09

In the matter between:

**EDCON (PTY) LTD T/A EDGARS CENTURION**

**Applicant**

and

**COMMISSION FOR CONCILIATION**

**MEDIATION AND ARBITRATION (CCMA)**

**First Respondent**

**COMMISSIONER ME MOLEFE N O**

**Second Respondent**

**BRENDA DIMAKATSO CHEPAPE**

**Third Respondent**

**Heard: 10 January 2013**

**Delivered: 12 April 2013**

**Summary: Review – unopposed – respondent dismissed for fraudulent and unprocedural processing of a credit note - award found to contain gross irregularities and findings not founded in logic or evidence – Commissioner’s finding of substantive unfairness not justified or justifiable in terms of the evidence and a gross irregularity – review justified – award reviewed and set aside.**

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## JUDGMENT

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MARCUS, AJ

### Introduction

- [1] This is an application in terms of section 145 (1) and (2) of the Labour Relations Act 1995 to review and set aside an award dated 24 June 2009 issued by the Second Respondent under the auspices of First Respondent under case number GATW 5085-09, in terms of which Third Respondent's dismissal by the Applicant was found to be procedurally fair but substantively unfair. Third Respondent was retrospectively reinstated with back pay. Applicant also filed an application to condone the late filing of the review, which was granted.

### Review unopposed

- [2] Although a notice of intention to oppose the review was lodged, no answering affidavit was filed by third respondent in response to the founding affidavit of the Applicant, nor did third respondent appear in Court, either personally or through a representative, to oppose the review.

### Background

- [3] Third Respondent ("the employee") was employed by the Applicant ("the employer") as a service centre controller (supervisor) at its branch in Centurion for some four years prior to her dismissal on 3 April 2009 for fraudulently processing and authorising a credit note or notes contrary to Applicant's credit procedures. At respondent's hearing, the Applicant adduced evidence that the employee had processed two cash credits contrary to Edgars credit rules which required that the customer be present prior to the processing and authorising of a credit;

that the customer's name, contact number and signature be reflected on the credit slip; and the correctness of the returned merchandise verified. Respondent's witness at the arbitration, Granny Mokhonoane, confirmed that Applicant, as her supervisor had, in breach of the credit rules, processed and authorised a particular credit note for her in the absence of the customer and the returned merchandise. The Commissioner alludes to this testimony in her award, finding that "the whole irregularity was observed in the video recordings not disputed by any witness".<sup>1</sup> In her evidence at respondent's hearing, Granny also confirmed her own awareness of the credit rules contained in annexure "B", and that third respondent had taught her these rules which required her to check the merchandise being returned and obtain the customer's details and contact number and signature on the credit slip which, prior to a refund, had to be authorised by a supervisor like the respondent (record, 80-81).

- [4] Notwithstanding that the testimony of Respondent's own witness confirmed third respondent's knowledge of the procedures for authorising credits which Granny states that she learnt from the respondent as her supervisor to whom she reported, and the testimony of the manager Manewyk that respondent was a supervisor trained in her job and as such fully aware or expected to be aware of the procedures associated with the daily transactions which she is paid to supervise and control, the Commissioner extraordinarily accepted respondent's bald denial of having knowledge of the applicable rules and procedures for authorising credits, holding that she was guilty of negligence rather than dishonesty, for which offence she ought to have received a written warning rather than be dismissed. I agree with applicant's attorney that there is no justification for such conclusions, either in logic or in the evidence before the Commissioner, including that of respondent's own witness Granny. Her finding that dismissal was not appropriate was not one that a reasonable commissioner could come to. These findings, among others, are gross irregularities in terms

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<sup>1</sup> Arbitration award at para 40.

of section 145(2), not supported by logic or by the evidence before the Commissioner, and are subject to review as conclusions which no reasonable Commissioner could have come to, on the application of the standard of review enunciated by the Constitutional Court in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*.<sup>2</sup>

[5] There is no need for me to deal with the further submissions in the applicant's heads of argument. The application for review is not opposed. I am satisfied a review of Second Respondent's award is justified. Nor is there any need to further delay the finalisation of this matter by remitting it to First Respondent to be arbitrated afresh by another Commissioner. All the relevant facts necessary to the determination of the dispute are before me.

[6] I make the following order:

1. The late filing of the application for review is condoned.
2. The award dated 24 June 2009 issued by the Second Respondent under the auspices of First Respondent, is reviewed and set aside and replaced with a finding that;
  - (a) Third Respondent's dismissal by the Applicant was substantively and procedurally fair.
  - (b) Third Respondent's claim for reinstatement is dismissed.
3. There is no order as to costs.

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Marcus, AJ

Acting Judge of the Labour Court

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<sup>2</sup> (2007) 28ILJ 2405 (CC) at para 110.

Appearances:

For the Applicant: Adv P.M.W Botha

*Instructed by:* Kgokong Nameng Tumagole INC

LABOUR COURT