



**REPUBLIC OF SOUTH AFRICA**

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

**JUDGEMENT**

Not reportable

Case no: JR 2858/12

In the matter between:

**Cailan Trading CC t/a Plexus Samsung**

Applicant

and

**Matome Victor Sehunane N.O**

1<sup>st</sup> Respondent

**C C M A**

2<sup>nd</sup> Respondent

**Sunny Cecil Motloun**

3<sup>rd</sup> Respondent

**Heard:** 9 July 2013

**Delivered:** 11 July 2013

---

**JUDGMENT**

---

**BRUINDERS AJ**

- [1] The employer seeks to review and set aside an arbitration award issued by a CCMA arbitrator dated 24 October 2012 under case number GEAK 5291. Under the award the employee's dismissal was found to be unfair and he was awarded compensation. The application is unopposed. The main ground of review is that no

reasonable arbitrator could reasonably have made this award. I agree. But I am not inclined to find that the dismissal was fair.

- [2] The reason for the dismissal was that the employee had failed to comply with a reasonable instruction. He was instructed to tie a cable. His version was that he was not tall enough. It is common cause that there was no ladder. The employer's version is that there was a spindle he could use to reach the cable. The arbitrator accepted the version of the employee without recourse to the objective evidence. It should have been established by the arbitrator how high the cable was, how tall the employee was and what the height of the spindle was. These simple facts would have enabled him to decide whether the refusal to comply with the instruction was reasonable in the circumstances. That was not done.
- [3] Consequently the order that I make is that the dispute should be remitted to another arbitrator of the CCMA to decide the employee's dismissal dispute. The order I make is the following:
- [a] The arbitration award issued under case number GEAK 5291 is set aside.
  - [b] The unfair dismissal dispute referred to the CCMA by the third respondent is remitted for arbitration by an arbitrator other than the first respondent.
  - [c] There is no costs order.

T J Bruinders

Acting Judge of the Labour Court