



REPUBLIC OF SOUTH AFRICA
THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

Not Reportable
Case no : JR 2071/13

In the matter between:

SATAWU obo RS MULAUDZI

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

D P SEOPELA

Second Respondent

MULAUDZI TRANSPORT SERVICES

Third Respondent

Date Heard: 19 December 2014

Date Delivered: 03 February 2015

JUDGMENT

VAN DER MERWE, AJ

Introduction

- [1] This is an unopposed review application in which the Applicant seeks the review and setting aside of the First Respondent's ("the arbitrator") arbitration award in terms of Section 145 of the Labour Relations Act 66 of 1995, as amended. The Applicant further seeks condonation for the late filing of the review application which was filed approximately 6 weeks out of time.
- [2] The Applicant was employed by the Third Respondent as a bus driver.
- [3] The Applicant was subjected to a disciplinary hearing for misconduct and dismissed on 28 December 2012.
- [4] The Applicant then referred the dispute to the CCMA, which was arbitrated upon on 20 June 2013.
- [5] On 01 July 2013, the Second Respondent found that the Applicant's dismissal was both procedurally and substantively fair.

Condonation

- [6] The arbitration award was received by the Applicant's union from the arbitrator on or about 1 July 2013.
- [7] On or about 8 July 2013, the Applicant's union contacted the Applicant and informed the Applicant of the outcome.
- [8] After the Applicant consulted with his union, seemingly on 1 August 2013, the matter was referred to SATAWU's legal department for consideration. The date on which the matter was so referred is not stated in the affidavits.
- [9] The 6 weeks within which the review application was to be filed expired on 19 August 2013.

- [10] On 26 August 2013 SATAWU's legal department reverted to the Applicant's union official and informed him, inter alia, that due to the complexity of the matter, the attorney of record was to be approached for a legal opinion.
- [11] The Applicant's attorney was instructed on 12 September 2014 and the founding affidavit in the review application was signed on 30 September 2013. The review application was filed in the Labour Court on 3 October 2013 i.e. more than 6 weeks late.
- [12] In *Melane v Santam Insurance Co Ltd*¹ Holmes JA explained the relevant principles applicable to an Application for Condonation as follows: “the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant, is the degree of lateness, the explanation therefor, save of course that if there are no prospects of success there would be no point in granting condonation.”

THE ARBITRATION

- [13] The arbitration was conducted on 20 June 2013 at the Thohoyandou Labour Centre, Limpopo Province and the arbitrator found the dismissal of the Applicant both substantively and procedurally fair.

REVIEW PROCEEDINGS

- [14] In the review papers the Applicant challenged the finding by the arbitrator and alleged that he committed a gross irregularity, misconduct in relation to his duties and/or his decision was not one that a reasonable decision maker could have reached in that:

¹ 1962 (4) SA 532 (A)

- 14.1 the arbitrator failed to apply his mind to the issues placed before him having regard to his finding on the procedural aspect in holding that it was not contested and in finding that the procedure was fair on the basis that an opportunity was given to cross-examine and such opportunity was not utilised;
- 14.2 the ticket numbering supported the Applicant's case that Ramsimu was the last person to board the bus at Khoroni bus stop on 3 December 2012. Ramsimu was waiting at the same bus stop with the other four passengers;
- 14.3 the arbitrator despite having noted that he was confronted with two versions which were not corroborated, failed to apply the rules of evidence to come to a fair conclusion in cases where mutually destructive versions are presented;
- 14.4 the arbitrator accepted Ramasimu's unconfirmed hearsay evidence; and
- 14.5 the arbitrator's conclusions as set out in the award are not supported by reasons and that demonstrates that his decision is not that of a reasonable decision maker.

THE COMMISSIONERS FINDINGS

- [15] The arbitrator's award dated 1 July 2013 is a document of some 8 pages. It contains a thorough summary of the evidence and a reasoned evaluation thereof.
- [16] The arbitrator demonstrated through the award that he was very much alive to the issues before him and his conclusions were supported by the facts.
- [17] With regards the first charge relating to 3 December 2012 the arbitrator found that it was common cause that the four tickets were issued at 18h21 the very same time upon which the tag tickets were issued.

- [18] The arbitrator further recorded that Ms Ramasimu testified that she was the first person to board the bus at Khoroni bus stop, that the passengers in question were already in the bus and that these passengers boarded the bus at Thohoyandou bus rank. The Applicant's evidence, however was that the passengers in question boarded the bus at Khoroni and the arbitrator was alive to the fact that he had two conflicting versions before him.
- [19] The arbitrator then proceeded to apply the law of evidence and found in favour of the Third Respondent on the first charge on a balance of probabilities.
- [20] With regards to the second charge relating to 18 December 2012, the arbitrator recorded that it was common cause that a person was found on the bus without a bus ticket. The arbitrator was again faced with two conflicting versions as to the explanation for this passenger being without a ticket.
- [21] The arbitrator found that it was the responsibility of the driver to check if all passengers were in position of a valid bus ticket. The arbitrator then again proceeded to apply the law of evidence and found in favour of the Third Respondent on the first charge on a balance of probabilities and specifically found that it does not make sense that the inspector would fabricate her evidence and implicate the Applicant.
- [22] The arbitrator also applied his mind to the procedural challenge presented by the Applicant as was agreed by the parties during the pre-arbitration meeting and he concluded that the Applicant was indeed afforded an opportunity to cross-examine the witness. The arbitrator finally came to the conclusion that the the dismissal of the Applicant was procedurally fair.
- [23] I accordingly find no merit in the grounds of review. I also find that the finding by the arbitrator is that of a reasonable decision maker.

[24] Given that there are no prospects of success in the review application there would be no point in granting condonation.

Order

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

25.1 The application for condonation is dismissed.

25.2 The Applicant's Review Application is dismissed.

25.3 There is no order as to costs.

G van der Merwe

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate PMW Botha

Instructed by: MM Baloyi Attorneys

For the Respondent: Unopposed