



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR 1169/14

In the matter between:

NUM obo PHILIP MALAPANE & 2 OTHERS

APPLICANT

and

CCMA

FIRST RESPONDENT

L SIKWANE N.O.

SECOND RESPONDENT

WANLI STONE BELFAST (PTY) LTD

THIRD RESPONDENT

Heard: 8 September 2015

Delivered: 10 September 2015

JUDGMENT

VAN NIEKERK J

- [1] This is an unopposed application to review and set aside an arbitration award made by the second respondent, to whom I shall refer as the commissioner. In her award, issued on 15 April 2014, the commissioner found that the individual employees on whose behalf the applicant union acts were fairly dismissed by the third respondent.
- [2] The applicant seeks to review and set aside the award on the basis of what it avers to be misconduct on the part of the commissioner in relation to her duties as arbitrator. One of the primary grounds for review is that the commissioner mistakenly made reference to that part of the statutory code of practice which regulates dismissals for poor work performance. There is a more general averment to the effect that the commissioner failed to apply mind to the evidence before her when she concluded, as she did, that the employees had committed the misconduct with which they were charged.
- [3] The employees were dismissed after having been found guilty in a disciplinary hearing of threatening and intimidating colleagues. The relevant facts are recorded in the award and I do not intend to repeat them here. It is sufficient to say for present purposes that the employees were dismissed for act of misconduct committed during the course of a strike in September 2013. The version put up by the employees at the arbitration hearing was one of a pure denial – they disputed that they had engaged in any act of misconduct and averred that they had dispersed peacefully after a briefing given by the shop steward.

- [4] The legal principles to be applied are well-established. This court is entitled to intervene if and only if the decision to which the commissioner came was so unreasonable that no reasonable decision-maker could come to that decision. To the extent that the applicant appears to have based its case solely on what it contends to constitute a gross irregularity in the commissioner's conduct of the arbitration proceedings, this is not in itself a basis for review. The relevant authorities have made clear that a mistake of law, the failure to have regard to relevant evidence or having regard to evidence that is irrelevant, or failing properly to assess the probabilities of competing versions are not in themselves a basis for review. It seemed to me during the course of argument that the applicant failed to appreciate the hurdle that confronted it or that it must necessarily be established that the outcome of the proceedings, represented by the commissioner's award, fails to meet the reasonableness threshold in the sense described above.
- [5] This is not the case which is sought to be made out in the papers before me and for that reason alone, the present application stands to be dismissed. Even if I were to afford the founding and supplementary affidavits a generous reading and regard the case made as one that irregularities on the part of the commissioner had the consequence of a decision that no reasonable decision-maker could reach on the available material, I am not persuaded that this is so. Regardless of any reviewable irregularities that may have been committed by the commissioner, the evidence that served before her clearly establishes, on a balance of probability that the employees were guilty of the misconduct with which they were charged. Of some significance in this regard is the fact that the employees' version, as the commissioner found, amounted to a bare denial and that there was no reason why the witnesses who testified as to the employees' conduct should have implicated them falsely. It is also clear, as the commissioner found, that the third respondent's witnesses gave evidence that was consistent. There was no internal consistency on the evidence proffered by the employees, but for the bare denial to which I have referred. In short, the evidence disclosed during the course of the proceedings under review sustains the reasonableness

of the ruling made by the commissioner, i.e. that the employees' committed the misconduct with which they were charged, and that dismissal was an appropriate sanction.

For the above reasons, I make the following order:

1. The application is dismissed.

ANDRÉ VAN NIEKERK

JUDGE OF THE LABOUR COURT

APPEARANCES

For the Applicant: Mr. L Tshingana, Mothobi Attorneys