



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable/Not Reportable

Case No: JR2021/14

In the matter between:

STANLEY MARTINS

Applicant

and

**COMMISSIONER FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

COMMISSIONER JOYCE NKOPANE N.O.

Second Respondent

MR PRICE SPORT

Third Respondent

Heard: 12 JULY 2017

Delivered: 22 November 2017

JUDGMENT

THOMPSON, AJ

Background.

- [1] This is an application to review and set aside the arbitration award issued on 5 September 2014 under case number GAJB1033/14.

- [2] The Applicant also sought to apply for condonation of the late filing of the record in the arbitration proceedings as well as late filing of the notice in terms of Rule 7A(8)(a) of the Labour Court Rules¹ and accompanying papers. The application for condonation is not opposed. I note the endeavours by the Applicant's attorney and the prevailing postal strike. I also take note that the Third Respondent's attorneys only came on record on 4 December 2014. I am of the view that the Applicant has shown just cause to condone the late filing of the record and Rule 7A (8)(b) notification.

The review.

- [3] The Applicant seeks to review and set aside the arbitration award in which his dismissal was found to be both procedurally and substantively fair. The Applicant was employed as an Area Manager and was dismissed on 9 April 2014.

- [4] Mr Buckley for the Applicant argued that the award was unreasonable in that the Arbitrator failed to attach sufficient weight to the fact that the evidence of the Respondent's witness, Ms Julie Van Zyl, and that Ms Van Zyl was an unreliable witness and who lied under oath. The Applicant stated that Ms Van Zyl could not remember dates and times. She was not accurate regarding the date that she left the employer. The witness also confused dates, stating that it was 19 March 2014 instead of 19 February 2014. There is no evidence to suggest that either 19 February or 19 March 2014 is the correct date. I am of the view that this is not central to any fact in dispute.

- [5] The Applicant submits that Ms Van Zyl acknowledged that she had no idea how stock counts work. Ms Van Zyl's testimony is clear that she was

¹ (8) The applicant must within 10 days after the registrar has made the record available either-
 (a) by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit; or
 (b) deliver a notice that the applicant stands by its notice of motion

instructed by the Applicant to copy and paste the previous week's counts and was asked not to tell.² This was challenged by the Applicant in cross examination.³

- [6] The Applicant submits that Ms Van Zyl was extremely vague as she testified that she has no idea how the stock counts work in the stores. This may be so but the witness' evidence is clear relating to an instruction she received from the Applicant to cut and paste the previous week's counts. Her ignorance relating to the method in which the accounts are written up in the store is not in question. The Applicant has failed to demonstrate that the Arbitrator's finding in accepting Van Zyl's version is such that no reasonable arbitrators would not have accepted her version on a balance of probabilities.
- [7] The Applicant further argues that the issue of which petty cash policy was in place at that time and the witness, Mr Olivier's confusion in this regard was raised. It is of significant importance that both policies require authorisation. The question is whether petty cash should have been used for a personal taxi fee and whether it had been authorised. The Applicant was late and I can find no reason for the Third Respondent to pay for his transport without authorisation.
- [8] The Applicant's evidence⁴ is not clear at all. The submission that on previous occasions authorisation had been obtained in terms of the policy, takes the matter no further. The Applicant does not suggest or refer this Court to any evidence led or proof that petty cash had been authorised for such a reason. An arbitration process is a *de novo* proceeding and I take note of charge 3 which specifically reads i.e. (Kempton Park Week 1- Boksburg Week 2). These are examples of the transgression and does not exclude evidence on further transgressions of a similar nature.
- [9] The Applicant in his fourth ground of review refers to the evidence of Mr Frank Mosipa who allegedly changed his evidence regarding material aspects. Mosipa contradicts himself relating to the date of introduction of the policy,

² Page 46 line 10 of the typed transcript

³ See page 62 of the paginated bundle, line 18

⁴ See paragraph 12.23 of the supplementary affidavit, p.57 of the paginated bundle

specifically end of 2013 and beginning of 2014. I am of the view that the 48 hour rule and its introduction is of secondary importance. What is central to charge 2 is authorisation and the holding of the funds. The Applicant withdraws R800-00 from petty cash ostensibly to rent a trailer which he does not hire and holds the money for 9 days. The Applicant's version that he had to travel is unconvincing. Significantly the Applicant had no authorisation to withdraw petty cash.

- [10] The Third Respondent's counsel raised the issue that the factual and legal grounds upon which the Applicant relies should be set out in his founding papers. In *Northam Platinum Ltd vs Fganygo NO and Others*⁵, it is clear that a ground for review raised for the first time in argument cannot be sustained. I cannot take cognisance of the further grounds presented by the Applicant in its argument for example the appropriateness of the sanction and the failure to lead evidence by the Third Respondent of the breakdown of the trust relationship.
- [11] In terms of the two prevailing policies the arbitrator finds that the Applicant did not comply with either of the procedures. Both policies require prior authorisation. The applicant states that on the second occasion, he received authorisation telephonically from Olivier. Olivier denies this. The Arbitrator considered the contradictory versions of both the Applicant and Olivier and makes the determination that Olivier's version is more probable. The Applicant in his submissions stated that all the witnesses lied under oath and the arbitrator was biased. The Applicant has not provided any substance to these arguments to the required degree. The Applicant has failed to illustrate that the arbitration award is such that no reasonable arbitrator would make such a finding.
- [12] Under the circumstances, the following order is made:

⁵ (2010) 31 ILJ 713 (LC)

Order

1. The application to review and set aside the arbitration award under case number GAJB10333/14 is dismissed.
2. There is no order as to costs.

JM THOMPSON

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate H. Buckeley

For the Respondent: Advocate Z. Ngwenya

Instructed by: Shepstone and Wylie

LABOUR COURT