



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case Number: JR1568/12

In the matter between:

NATIONAL UNION OF MINEWORKERS

1st Applicant

MATSHIDISO ELIZABETH DIPALE

2nd Applicant

MOLAHLEHI DAVID MAJAKE

3rd Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

1st Respondent

COMMISSIONER S NTOMBELA N.O

2nd Respondent

ESKOM HOLDINGS SOC LTD:

LETHABO POWER STATION

3rd Respondent

Heard: 11 July 2017

Delivered: 30 November 2017

Summary: Application of review test to review application, based on award finding that dismissal for misconduct was fair. No grounds for review established. Matter dismissed.

JUDGMENT

FOURIE.AJ

- [1] This is an opposed review application in which the applicants, Ms Dipale and Mr Majake, represented by their trade union, NUM, seek to review and set aside the award of the arbitrator finding that their dismissals were fair.
- [2] The events in question took place several years ago, and involve a mass of evidence, presented both at the disciplinary inquiry and at the arbitration (which was heard over 9 days). The events and evidence are fully summarised in the arbitration award, and little purpose is served in providing anything but the briefest of summaries, particularly as this matter raises no novel questions of law or issues of public interest – it is merely a review on the facts, to be determined by application of the now-settled review test.
- [3] The allegations against the individual applicants were of the most serious nature – in essence, they were accused of having entered into a conspiracy to have two fellow Eskom employees kidnapped and murdered. Dipale was accused of having concocted the scheme, while Makaje assisted her in procuring a firearm for purposes of carrying out the 'hit'.
- [4] The employees denied all claims, and presented detailed oral evidence on their respective versions of events. They in turn alleged that the charges and evidence against them were trumped up as part of a conspiracy to have them dismissed.
- [5] Faced with a morass of evidence, and diametrically opposed

versions, the arbitrator engaged in a detailed reasoning process, and after a careful evaluation of the competing versions, he rejected the versions of Dipale and Majake as being less probable than those of Eskom's witnesses.

- [6] On review, the applicants, while pleading the usual litany of reviewable irregularities, focussed primarily on re-arguing the matter on the detail of the evidence in the transcript. While part of the review process inevitably involves considering the material placed before the arbitrator, a court sitting on review is not able or required to conduct a rehearing on the papers. The aim of referring to detailed evidence should be to support allegations of (or conclusions of) reviewable conduct by the arbitrator.
- [7] I am satisfied that the arbitrator applied his mind properly to the primary question before him, being which of the competing versions was more probable, and that his conclusion that the version of the employer was far more probable than that of the employees, is one that a reasonable arbitrator could have reached on the evidence before him.
- [8] In rejecting the versions of the individual applicants as not credible, and overall less likely than the competing version and evidence, the arbitrator followed a rational process of reasoning, correctly applied his mind to the key issues before him, and dealt with the substance of the dispute in a clear and convincing manner. I see no basis on which to interfere with the arbitrator's reasoning, findings of fact, or ultimate conclusion that the dismissals were fair.
- [9] In the circumstances, the review application stands to be dismissed.

Given the ongoing relationship between NUM and Eskom, I am not inclined to order costs.

[10] Therefore, I make the following order:

Order:

1. The review application is dismissed.
2. There is no order as to costs..

Greg Fourie
Acting Judge of the Labour Court

Appearances:

For the Applicant: Attorney P Motaung

For the Third Respondent: Attorney D Masher – ENS Africa