



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 630/16

In the matter between:

KARAN BEEF (PTY) LTD

Applicant

and

ITU obo PETRUS ZWANE

First Respondent

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

Second Respondent

COMMISSIONER MARGARET SMITH N.O

Third Respondent

Heard: 9 November 2017

Order: 9 November 2017

Reasons: 11 December 2017

JUDGMENT

WHITCHER, J:

- [1] The applicant is in the business of producing and wholesaling beef products and employed Zwane as a driver until his dismissal on 29 September 2015.

- [2] In May 2015, the first respondent referred a dispute to the Commission for Conciliation Mediation and Arbitration (CCMA) in which it sought to obtain organisational rights at the applicant's City Deep Operation. At the arbitration held on 8 September 2015 Zwane gave evidence on behalf of the first respondent and Mr Loots, the applicant's Group Human Resources Manager, gave evidence on behalf of the applicant.
- [3] Following the arbitration hearing, he was dismissed on the basis of the following charges of misconduct:
- (i) "Gross dishonesty in that you deliberately gave false evidence at the CCMA hearing on 8/9/2015 to influence the CCMA commissioner to rule against the company.
 - (ii) Bringing the company name into disrepute.
- [4] The applicant alleged that Zwane falsely testified that there were 200 employees at the Applicant's City Deep operation and maintained this position throughout the arbitration. He also falsely told the commissioner that the applicant did not have a forum in which the employees could voice their grievances and other issues and that the applicant did not address the employees' grievances. The applicant contended that Zwane led this evidence, despite the applicant having held monthly and weekly meetings to discuss the employees' grievances and having resolved a number of these grievances.
- [5] On 9 November 2017, I dismissed the review application to set aside the third respondent's arbitration award (GAJB20312/15) in which she essentially found that the applicant had failed to prove the charges levelled against Zwane and ordered his reinstatement, with back-pay. These are my reasons, based on the applicant's own version of events and its record of the arbitration held on 8 September 2015.¹
- [6] At the conciliation meeting held on 26 May 2015 in respect of the organisational rights dispute, Mr Loots, the applicant's Group Human

¹ As set out in its founding affidavit.

Resources Manager, informed Zwane that the applicant's City Deep operation and Balfour operation constitutes the applicants' workplace and that the applicant had approximately 200 employees at its City Deep operation. When Zwane testified three months later at the arbitration, he told the commissioner that the applicant had 200 employees at its City Deep operation and he had obtained this information from the applicant at the conciliation meeting. He further testified that the figure of 200 could not have changed because according to his knowledge no employee had died or had been dismissed since the conciliation.

- [7] However, when it was put to Zwane that [three months later] the figure stood at 234, Zwane stated:

"I would dispute nothing because I do not employ, he does employ".

- [8] In this response Zwane effectively told the commissioner that he is not in a position to dispute the applicant's claim that the number of employees had increased. He effectively conceded that the applicant was in a better position to furnish the correct figures.

- [9] In light of this evidence, it was not unreasonable for the Commissioner to find that the applicant had failed to prove that Zwane "was dishonest in that he gave evidence that there are 200 employees at the Applicant's City Deep operation and maintained this position throughout the arbitration".

- [10] The further charge also proved to be baseless. Zwane testified that the employees *joined the union because they did not have "any outlet or forum" where they could voice their issues*; the workers are *voiceless as there is nobody representing / talking on their behalf* and the applicant *disregards their grievances*.

- [11] This testimony is rather vague and ambiguous and cannot reasonably be read as a clear denial that the applicant has monthly meetings with its employees to discuss grievances. Moreover, Zwane's testimony was not given in circumstances where the applicant had already placed its assertion² on record

² That it provides a forum in the form of monthly meetings for employees to air their grievances.

and/or where the assertion had been put to the Zwane during his evidence-in-chief or cross-examination.

[12] In any event, it's not impermissible or unusual for labour and management to disagree on what constitutes a proper forum to air grievances. The same goes for the resolution of grievances - whether they are satisfactorily resolved can be a matter of opinion and not subject to an absolute right or wrong view.

[13] I conclude that it was not unreasonable for the Commissioner to find that the applicant had failed to prove that Zwane "was grossly dishonest" when he testified at the organisational rights arbitration.

Order

[14] In the premises, the following order is made:

1. The review application to set aside the third respondent's arbitration award (GAJB20312/15) is dismissed.

B. Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the applicant:	Edward Nathan Sonnenbergs Inc
For the first respondent:	Inqubelaphambili Trade Union (ITU)

LABOUR COURT