



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1445-14

Not Reportable

In the matter between:

HRR SCHAEFER VERVOER (EMDS) BPK

Applicant

and

SATAWU obo MFANA MOLETA

First Respondent

NBCRFLI

Second Respondent

THABANG T SERERO N.O

Third Respondent

Heard: 6 February 2018

Delivered: 6 February 2018

EX TEMPORE JUDGMENT

WHITCHER, J:

- [1] This is an unopposed application to review and set aside the arbitration award dated 13 June 2014 issued by the third respondent, in which award he found that the first respondent's dismissal was substantively unfair and ordered the applicant to retrospectively reinstate the first respondent and pay him back-pay of eight (8) months' salary.

- [2] The first respondent's service was terminated on 13 September 2013, after he was found guilty of negligent and/or dangerous driving and disobeying traffic ordinances.
- [3] It is evident from the award that the arbitrator accepted that the applicant had proved that the first respondent did attempt to reverse a 22-meter vehicle (consisting of a horse and trailer) in on-coming traffic, on a blind rise and in misty weather conditions. Evidence was also led on the high value of the vehicle and its contents.
- [4] Further thereto the arbitrator found that the employee conduct was serious and had been potentially dangerous to life and property.
- [5] The arbitrator, however, indicated that he could not find that the employee's conduct had destroyed the trust relationship, as it was the employee's first offence. In the result, he found that the sanction of dismissal was unfairly "harsh". In his view, the employee should have been issued with a warning.
- [6] I agree with the applicant that, in reasoning so, the arbitrator failed to appreciate the following material factors:
- (i) The employee had been employed in a position of trust. He was employed as a professional code 14 driver, he was entrusted with valuable company property and clients' loads and trusted to drive with the necessary care without supervision.
 - (ii) The offence was a serious driving violation, and made more serious by the potential damage to life and valuable property that could have been caused had there been a collision. The courts have held that where the consequences of a single act or omission are particularly serious or where an employee holds a position of trust in which negligence on a single occasion may have had disastrous consequences, dismissal may be justified on the first occasion.¹
 - (iii) The applicant led evidence to the effect that it could no longer trust the employee as a driver, particularly with such a high end vehicle.

¹ See for instance, *Somyo v Ross Poultry Breeders (Pty) Ltd* (1997) 7 BLLR 862 (LAC)

(iv) The employee conceded during cross examination that his offence was a dismissal offence.

[7] Had the arbitrator appreciated these factors and case law on the subject, he would have been constrained to find that the dismissal was substantively fair.

[8] Further to the above, it was not within the purview of the arbitrator to decide what he would have done (for example, issue a warning). The only decision he had the power to decide was whether the applicant acted fairly in dismissing the employee.

[9] In light of my findings, there is no need to consider whether the back-pay awarded was unreasonably excessive.

[10] The applicant agreed not to pursue a cost order.

Order:

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

1. The arbitration award issued by the third respondent under the auspices of the second respondent is set aside on review and substituted with an award that the dismissal of the first respondent [M Moleta] was substantively fair.
2. The application to make the award an order of court is dismissed.

B Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the applicant:

Ms S Bernhardt

Instructed by:

Yusuf Nagdee Attorneys

For the first respondent:

Mr B Mokoena, union official

LABOUR COURT