



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR1983/09

In the matter between:

CASHBUILD LTD

Applicant

And

S M RANTHO N.O

First Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

SERVAAS DANIEL VAN HEERDEN

Third Respondent

Heard: 11 July 2017

Delivered: 02 March 2018

JUDGMENT

JULY, AJ

Introduction

- [1] The applicant in this matter brought an application to have the award made by the first respondent under the auspices of the second respondent, reviewed and set aside. The review application is brought in terms of section 145 of the Labour Relations Act¹ (LRA), in that it is defective.
- [2] The test for review is the objective test as set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*² the test is whether the decision reached by the commissioner was one that a reasonable decision maker would have reached.
- [3] In his award the first respondent makes the following order:
- "6.1 I found that the dismissal of the applicant by the respondent was substantially unfair but procedurally fair.
- 6.2 I order the respondent to re-instate the applicant retrospectively to the position he occupied as at the date of his dismissal under the same conditions that applied as at the date of the dismissal. The respondent must re-instate the applicant on or before 10th July 2009."
- [4] Although the third respondent filed a notice of intention to defend, there were no opposition papers, and the founding affidavit made on behalf of the applicant was therefore unopposed.

Background Facts

- [5] The award by the first respondent is not borne by the evidence that was before him. The facts are briefly that the third respondent was appointed as a divisional manager of the applicant. This is a senior position in terms of the organizational structure; the branch managers of all the stores report to him.
- [6] In terms of the policy regulating petty cash, when petty cash is required a petty cash slip must be completed, stating the reasons for the purchase, the

¹ Act 66 of 1995 as amended.

² [2007] 12 BLLR 1097 (CC).

amount paid out and the name and signature of the person making the purchase. It further requires that a person who makes a purchase must return any change and furnish a receipt.

[7] On 6 May 2008, the third respondent attended at the Mokopane store of the applicant and instructed a cashier (Sarah Sekhu) to give him R 1500.00 from the stores petty cash. The third respondent advised the cashier that the money was for company business travel to Louis Trichardt. Upon investigation, it turned out that the money was actually intended for the third respondent's personal use.

[8] Consequently, the third respondent was charged as follows:

- "1. On 9/5/2008 D Van Heerden went to the Mokopane branch of Cashbuild and requested the amount of R1 500 to be issued to him from the petty cash via the system supervisor, Sarah. The monies were issued under the instruction that it was for company use, and this was not the case.
2. Dishonesty – in that on 12 May 2008 after receiving a tip-off the ops manager contacted the employee, D Van Heerden, and questioned him about the monies taken. In turn the ops manager was informed that the monies were intended for a contractor cost and the monies were no longer required to pay said contractor and had been reported. This was a blatant lie.
3. The petty cash procedure was breached due to no signature were supplied by Dannie and no invoices returned to verify the cost." [sic]

[9] A disciplinary hearing was instituted by the operational manager. The third respondent was found guilty and dismissed for misappropriation of funds and dishonesty.

[10] Subsequent to his dismissal he referred a dispute of unfair dismissal to the second respondent. The dispute remained unresolved as at 21 August 2008. The third respondent further referred the dispute to the second respondent for arbitration.

[11] Notwithstanding the uncontested version of the witnesses called by the applicant during the arbitration, the first respondent, in his analysis of the evidence states that:

"Contrary to the evidence of Mr. Van der Merwe Ms. Sarah Sekhu testified that this took place at about 09:00 after she told Mr. Van der Merwe about the incident and after the latter resolved to approach the applicant to submit the slips. Further, according to the evidence of Ms. Sekhu that amount of R 1000.00 was not paid at about 09:00 but later during the course of the day. Therefore, I find that there are contradictions in the evidence of the respondent. I find that logic is missing in the evidence of the respondent and this suggests to me that the version of the respondent is fabricated. Therefore, I find the version of the respondent to be implausible. Besides, I find that the fact that the applicant gave Mr. Van der Merwe the money without having been requested to do so gives credibility to his contention that he borrowed the money from Mr. Van der Merwe. "

[12] This analysis is nonsensical and has led to the unreasonable finding made by the first respondent. I thus find that the reasoning of the first respondent is irrational.

[13] I therefore make the following order:

Order

1. The arbitration award dated 4 June 2009, under case number LP4452 - 08, is reviewed and set aside.
2. The dismissal of the third respondent was both substantially and procedurally fair.
3. There is no order as to costs.

S July

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Thandi Moyo

Instructed by Snyman attorneys

For the Respondent:

LABOUR COURT