



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR291/16

In the matter between:

NONHLANHLA HLEZA

Applicant

And

**COMMISSIONER THEMBEKILE
SIBANYONI N.O**

First Respondent

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

**TSOGO SUN CASINOS PROPRIETARY
LIMITED in respect of MONTE CASINO**

Third Respondent

Heard: 17 July 2018

Delivered: 24 August 2018

Summary: This is an application in terms of section 145 of the Labour Relations Act of 1995 to review and set aside the arbitration award made by the First Respondent under case number GAJB16781-15 dated the 5th day February 2016 in terms of which the Commissioner found that the dismissal of

the Applicant by the Third respondent was procedurally and substantively fair and dismissed the referral of an unfair dismissal dispute to the CCMA.

JUDGMENT

SEDILE. AJ

Brief background

- [1] The Applicant was employed by Tsogo Sun Casinos Proprietary Limited at Monte Casino on 30 November 2001 as a Slot Supervisor. She was dismissed on 17 July 2015 for misconduct involving dishonesty and failure to comply with the Company's standard operating procedures.
- [2] On 1 June 2015, the Applicant transferred an unclaimed amount of R193.50 from a slot machine to a card in her possession and cashed out an amount of R200 (in two R100 notes) from the Tuscany cash desk.
- [3] The applicant proceeded to fold the cashed amount and pretended to deposit it into the unclaimed credit box at the Venice cash desk, which is a different cash desk from the one at which she cashed the amount. Accordingly, the allegation against the Applicant was that she did not in fact deposit the cash into the unclaimed credit box. Surveillance cameras captured her folding the money but it does not show her actually depositing the money into the unclaimed credit box because her back was turned towards the camera, and that when the unclaimed cash box was opened to be cleared, there were no folded hundred rand notes found inside the box.
- [4] On 03 June 2015, a discrepancy was discovered by the Shift Manager in the Applicant's transactions of 01 June 2015. An investigation was conducted and it became apparent that the money was not deposited by the Applicant and that the relevant procedure was not followed by her in terms of the company's rules.

[5] In particular, all the unclaimed credit cash boxes were opened. In the unclaimed credit cash box located at the Venice Cash desk where the Applicant alleges that she inserted the cash, no R100 notes were found. Only one blue note of foreign currency was found in that cash box. In the unclaimed cash box that was located at the Tuscany cash desk, one R100 note was found. This R100 note was not folded in any way and it therefore could not have been one of the notes which the Applicant alleges that she inserted in the cash box in circumstances where the video footage clearly showed the Applicant folding the notes before she pretended to insert them at the Venice cash desk.

[6] On or about 24 June 2015, the Applicant was issued with a notice of suspension and was charged with dishonesty and breach of the standard operating procedures as follows:

“Dishonesty in that on the 1st of June 2015 you cashed out an amount of R200 from your slots area, unclaimed card at Tuscany cash desk and pretended to deposit the folded two times R100 notes into an unclaimed box at Venice cash desk”

“Breach of Standard operating Procedures in that in the 1st of June 2015, you, with regards with the same two R100 notes, despite being aware of the procedures, deliberately failed to carry them out.”

[7] On 30 June 2015, the Applicant was issued with a notice to attend a disciplinary hearing. The disciplinary hearing commenced on 3 July 2015 and was concluded on 17 July 2015. The Applicant was found guilty of the alleged misconduct and was dismissed on 17 July 2015.

[8] On 7 September 2015, the Applicant referred an unfair dismissal dispute to the Commission for Conciliation Mediation and Arbitration (CCMA). The arbitration was held on 24 November 2015, 18 January 2016 and was concluded on 19 January 2016. Video footage of the process of clearing the cash boxes and what was found in the cash boxes were presented to the

commissioner during the arbitration hearing. On 5 February 2016, the commissioner delivered the award in which she ruled that the Applicant's dismissal was both procedurally and substantively fair.

Submissions made by the parties

[9] The Applicant submits that the award should be reviewed and set aside because the commissioner:

- 9.1 committed a gross irregularity and/or misconduct in the conduct of the arbitration proceedings, in that she failed to comprehend that the arbitration hearing was a hearing *de novo*;
- 9.2 made a decision which was not supported by any of the evidence that served before her and reached a decision that is manifestly unfair; and
- 9.3 ignored relevant evidence.

[10] The Third Respondent submits that the Applicant's review application has no merit whatsoever, because the applicant has not established any ground as contained in section 145 of the Labour Relations Act¹ (LRA) upon which the award may be reviewed and set aside nor has she been able to show that the decision reached is one that a reasonable commissioner could reach.

Analysis of the matter

[11] An applicant who seeks to have an arbitration award reviewed and set aside must not only allege the prescribed grounds of review as set out in section 145 of the LRA or allege that the award was unreasonable, but an applicant must also set out the factual basis upon which it alleges that such grounds have been established.

¹ 66 of 1995, as amended.

- [12] One of the Applicant's grounds of review is that the commissioner acted unreasonably, however no factual basis has been advanced for this ground of review
- [13] The commissioner conducted the arbitration proceedings in a fair and objective manner. The commissioner was entitled in the proceedings to hear the evidence in a manner that she considered appropriate. The commissioner was then required to analyse that evidence applying the applicable rules of evidence and to make a determination as to whether the Applicant's dismissal was fair or not.
- [14] The commissioner did exactly that and therefore the allegations by the Applicant that the commissioner committed gross irregularities has no merit whatsoever. Not all irregularities in the conduct of arbitration proceedings constitute gross irregularities or misconduct for the purposes of section 145 of the LRA.
- [15] The irregularity or misdirection relied upon must render the outcome of the proceedings unreasonable, in the sense that a reasonable decision-maker could not reach the decision to which the commissioner came to in light of all the evidence before him or her.
- [16] The Applicant in the present instance has not pleaded any proper factual basis on which she submits that the First Respondent committed any gross irregularity in the conduct of the proceedings under review. Further, there is no averment in the Founding Affidavit to the effect that the outcome of the proceedings failed to meet the reasonableness threshold as described above.
- [17] In the circumstances, the Applicant failed to make out a proper case for review on the papers submitted and the oral evidence adduced during the review court proceedings.
- [18] For the above reasons the following order is made:

Order

1. The applicant's review application is dismissed;
2. There is no order as to costs.

P. Sedile

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the applicant: In Person

For the third respondent: M. Khoza of Edward Nathan Sonnenbergs Inc., Sandton