



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 850/16

In the matter between:

SUPREME POULTRY (PTY) LTD

APPLICANT

and

RICHARD CHRISTO BROWN

First Respondent

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

COMMISSIONER ANNELIE BEVAN N.O.

Third Respondent

Heard: 19 July 2018

Delivered: 27 September 2018

Summary: The arbitration award issued by the Third Respondent under the auspices of Second Respondent under case reference number NWKD3381-15 dated 24 March 2016 be reviewed, set aside and corrected with an order that First Respondent's dismissal was substantively fair.

JUDGMENT

SEDILE, AJ

- [1] First Respondent was employed by Applicant as a Foreman: Refrigeration from 29 November 2007 until the date of his dismissal.
- [2] On 07 September 2015 there was a breakdown at the Applicant's refrigeration plant. The general manager, Mr Juan Ferreira (Ferreira) went to check on the progress of restoring the breakdown and noticed that the coupling guards were missing on two ammonia compressors (number 2 and 9) and that the oil pump on the compressor number 3 was missing.
- [3] Mr Ferreira instructed First Respondent's direct supervisor, Mr S Modau (Modau) to ensure the coupling guards were replaced. Mr Modau instructed the First Respondent orally on 07 September 2015 to replace the coupling guards, but due to a breakdown in the plant they could not be replaced.
- [4] The First Respondent explained to Mr Modau that the coupling guards were not on the compressors as he was in the process of checking the mechanical seals of the compressors due to an ammonia leak.
- [5] On 11 September 2015, Mr Modau asked the First Respondent whether or not the coupling guards were replaced and the First Respondent indicated that it was not yet done, but that he would do it over the weekend.
- [6] On 14 September 2015, when Mr Modau asked the First Respondent whether the coupling guards were replaced, First Respondent indicated that he was too busy over the weekend and that the coupling guards would be replaced that night during night shift.
- [7] On 15 September 2015, Mr Modau was called by Mr Ferreira and the maintenance manager and instructed to replace the coupling guards himself.

- [8] Mr Ferreira arranged that the plant could be stopped to enable Mr Modau and Mr C Adams to replace the coupling guards.
- [9] The Applicant instituted disciplinary action against the First Respondent, alleging gross negligence and insubordinate conduct. A disciplinary hearing was convened on 22 September 2015.
- [10] The First Respondent was found to have committed the misconduct in both instances and dismissed.
- [11] The First Respondent referred an unfair dismissal dispute to Second Respondent alleging that his dismissal was substantively unfair. The arbitration was conducted by the Third Respondent on 27 January 2016 and 22 March 2016.

Grounds for review

- [12] The Applicant contends that the arbitration award is unreasonable as it is one that a reasonable arbitrator could not reach on all the material that was before the Commissioner in that she:

12.1 Failed to assess the seriousness of the Employee's failure to comply with his duties as per his appointment in terms of the applicable legislation;

12.2 Failed to make a credibility finding in respect of the evidence presented by the employee and disregarded the evidence presented by the Employer's witnesses in finding that the Employee took the right decision in weighing up the risks posed to the plant room in circumstances where there was no basis for such a finding;

12.3 Incorrectly concluded that the Employer failed to prove that the insubordination was serious, persistent and deliberate.

Analysis of the review

- [13] The First Respondent has been in the employment of the Applicant for a quite considerate time of more than eight years and such he was fully aware of what has to be done in the fulfilment of his tasks in the plant.
- [14] The Respondent has been an excellent employee and supervisor and ensured that he maintained the plant room with standard of care and skills and has always been exemplary.
- [15] The Respondent was in the process of investigating an ammonia leak after he initiated such an investigation by removing the coupling guards off the machines one at a time and that such couplings remained off for a period of time and clearly during this period nothing which can be regarded as being of hazardous nature occurred in the plant
- [16] The Applicant clearly accepted in the arbitration proceedings that the Respondent made arrangements with Mr Modau, that he will place the coupling guards back onto the machines during his night shift on 15 September 2015 as he was very busy during the past weekend.
- [17] The Respondent was later informed by Mr Danga that he was not to place the coupling guards back onto the machines and further informed Respondent that he was suspended.
- [18] Respondent acted responsibly to remove coupling guards although it might have been risky to do that, but Respondent was certainly permitted to do so and he had placed adequate preventative measures in place to ensure that there was little to no risk and nothing of risk or danger to health of other employees did occur. Therefore, the removal of the coupling guards was a necessity in the investigation process of the ammonia leaks.

[19] The Respondent has never persistently defied the lawful and reasonable instructions of his immediate supervisors and as such never disobeyed those instructions to perform his duties.

[20] It is now clear from a number of judgments by the Labour Appeal Court that it is not sufficient simply to plead one or more irregularities or misdirections on the part of an arbitrator. First, not all irregularities in the conduct of arbitration proceedings constitute gross irregularities or misconduct for the purposes of section 145. 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 arbitrator came in the light of all the evidence before him or her. The applicant in the present instance has not pleaded any proper factual basis on which it submits that Third 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. In the circumstances, the Applicant has patently failed to make out a proper case for review on the papers and submissions made in court.

[21] For the above reasons, I make the following order:

Order

1. The Applicant's Review Application is dismissed with costs.

P.T Sedile

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: G. Cassells of Maserumule Incorporated

For the Respondent: Mr A. Goldberg of Goldberg Attorneys

LABOUR COURT