



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2028/16

In the matter between:

LIEUTENANT COLONEL RAMATJA

Applicant

and

SOUTH AFRICAN POLICE SERVICES

First Respondent

BELLA GOLDMAN N.O.

Second Respondent

SAFETY AND SECURITY SECTORAL

BARGAINING COUNCIL

Third Respondent

heard: **8 August 2018**

Delivered: **17 October 2018**

JUDGMENT

RABKIN-NAICKER, J

- [1] This is an opposed application to review and set aside an arbitration award under case number PSSS164-13/14 in which the second respondent (the Arbitrator) found the applicant's dismissal to have been substantively and procedurally fair.

- [2] The applicant commenced employment with the first respondent, the South African Police Services (SAPS) on 3 July 1984. At the time of her dismissal she was holding the rank of Lieutenant Colonel in the Employment Equity division in the Western Cape. On or about the 12 April 2011, SAPS advertised two promotional posts which she applied for.
- [3] During September 2012, the applicant was charged with the following acts of misconduct:

“Charge 1

Contravened any prescribed code for the service which is applicable to you, in that on 16 August 2011 at Custom’s house did not act in an honest manner when you completed an application for promotion by failing to disclose that you have ever been found guilty in a disciplinary matters, PC case numbers 613/2002 and 576/2017

Charge 2

Contravened any prescribed code for the service which is applicable to you, in that on 16 August 2011 at Custom’s house did not act in an honest manner when you completed an application for promotion by failing to disclose any pending cases against you, PC case 1279/2011 (originally also charged with PC case 108/2011 but that was withdrawn)’.

- [4] It was common cause in the arbitration proceedings that in SAPS case 613/2008 the applicant had been found guilty of falsifying her supervisor’s signature in her performance plan and that on 5 June 2009 she was issued with the sanction of a suspended dismissal.
- [5] The arbitrator recorded that in terms of Charge 1 the applicant had not denied her disciplinary record at arbitration. Her defense was that she believed that all the sanctions/processes had lapsed when she applied for promotion. The arbitrator however recorded that:

'The question of the applicant was *Have you ever been found guilty in a disciplinary matter?* This had nothing to do with whether the sanctions/processes had lapsed.

When the applicant answered NO she clearly was dishonest, **she had been found guilty in a disciplinary matter, in fact more than one.** Further it is trite that even though the sanction may lapse for purposes of future sanctions, the fact that an employee has been subjected to a hearing is permanently on record and should be for the purposes of progressive discipline.'

- [6] The arbitrator dealt with Charge 2 in paragraphs 31 – 33 of the award as follows:

'31. With regard to charge 2, the applicant was per her own testimony aware of the incidents to which the two case numbers refer to in that charge and hence I do not understand how it was possible for her to state that she did not know that there was any ...*disciplinary action* pending against her.

32. Her defence was that a complaint is not an investigation. She did not clarify when a complaint becomes an investigation. With regard to the incident which took place in July 2011 the Applicant testified that Colonel Dalton told her in August 2011 that he would charge her with regard to the incident so on her own version she was aware of pending disciplinary action.

33. With regard to the letter requesting the cases referred to in Charge 2 be placed in abeyance ending an investigation, the applicant did not submit evidence that the Provincial Commissioner agreed to the request and she was not charged immediately after the letter, Brigadier May made enquiries from the Provincial Commissioner on 25 June 2012 before continuing with the disciplinary process. However even if the respondent should not have charged with applicant with Charge 2 (which for the reasons submitted I find not to be the case) a finding of guilt on Charge 1 on its own is dismissable.'

- [7] The grounds of review in this matter appear to be that the arbitrator misconstrued the evidence before her and came to an unreasonable result. However, what is evident from the founding affidavit and the heads of argument filed on her behalf, is that essentially the applicant is of the view that the arbitrator got it wrong and should have taken into account and or/construed the closing submissions she made correctly. There was no supplementary affidavit filed in order to specify in which way the record reflects the misconstruing of evidence by the Arbitrator. She also asserts that her dismissal was procedurally unfair as she was never given a formal notice to attend a disciplinary hearing. However, the record reflects that a disciplinary hearing and an appeal process took place.
- [8] In her founding and replying affidavits in this application, the applicant persists with her defense stating in reply that: "As already stated in my founding affidavit, sanctions were valid six months after date of issue and at the expiry thereof we destroyed them in accordance with the 1st Respondents policy. For all intents and purposes my record was clean and I was not obliged to disclose previous sanctions".
- [9] This is a review that should not have been brought to the Court and I am surprised the applicant was advised to pursue the matter. The award is well within the bounds of reasonableness and the Arbitrator in no way misconstrued the enquiry before her. The record displays no material mistakes in evaluating the evidence which could make the award susceptible to review.
- [10] In submission before Court the applicant's representative was able to take the matter no further than to attempt to point out that the applicant was not dishonest in the way she filled out her forms. He also made the unusual proposition that dismissal was too harsh a sanction because the applicant had been punished enough by not being promoted.
- [11] The application stands to be dismissed. The dispute has been dragging on for far too long. I note that a review pertaining to it was previously successful and it was remitted to the third respondent for rehearing. The SAPS have asked

the Court to award costs. The applicant's attorney left the issue of costs in the hands of the Court. This crowned a very lackluster effort to represent the applicant. In *Zungu v Premier of the Province of KwaZulu-Natal and Others*¹, the Constitutional Court stated that:

[24] The rule of practice that costs follow the result does not apply in Labour Court matters. In *Dorkin*, Zondo JP explained the reason for the departure as follows:

'The rule of practice that costs follow the result does not govern the making of orders of costs in this court. The relevant statutory provision is to the effect that orders of costs in this court are to be made in accordance with the requirements of the law and fairness. And the norm ought to be that costs orders are not made unless the requirements are met. In making decisions on costs orders this court should seek to strike a fair balance between on the one hand, not unduly discouraging workers, employers, unions and employers' organizations from approaching the Labour Court and this court to have their disputes dealt with, and, on the other, allowing those parties to bring to the Labour Court and this court frivolous cases that should not be brought to court.'

[12] In applying the above principles in this matter, and given my view that this review should not have come to Court, I am going to make an order of costs against the applicant even given her status as an individual litigant. I make the following order:

Order

1. The application is dismissed with costs.

H. Rabkin-Naicker
Judge of the Labour Court South Africa

¹ (2018) 39 ILJ 523 (CC).

Appearances:

For the Applicant: Advocate P.Botha

Instructed by: MMM Inc

For the First Respondent Advocate Z.L Mapoma

Instructed by: The State Attorney

LABOUR COURT