



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2296/16

In the matter between:

SAMWU obo L.D. SKOSANA

Applicant

and

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

First Respondent

JOSEPH MPHAPHULI N.O.

Second Respondent

CITY OF TSHAWANE MUNICIPALITY

Third Respondent

Date heard: 17 October 2018

Delivered: 4 December 2018

JUDGMENT

RABKIN-NAICKER, J

[1] This is an opposed application to review and set aside an arbitration award under case number PMD021524. The review was launched some 5 days late and the condonation application was unopposed. Condonation is granted and I proceed to consider the merits of the review. The second respondent (the arbitrator) found that the dismissal of Mr L.D. Skosana (Skosana) was substantively fair.

[2] The charge of which Skosana was found guilty at his disciplinary hearing and led to his dismissal was as follows:

“Charge: 2

You have Contravened Clause 1.1 of the Standard of Conduct in which all employees are expected to comply read in particular with clause 1.2.5 ‘conduct themselves with honesty and integrity.’

In that on or about the 21st of November 2013 at Akasia Revenue Offices you created an irregular arrangement for reconnection of services which had been suspended by the council whilst the amount paid by the client was not sufficient to make such an arrangement.’

ALTERNATIVELY:

You contravened Clause 1.1 of the Standard of Conduct in which all employees are expected to comply read in particular with Clause 1.2.3 ‘perform their tasks and job responsibilities diligently carefully and to the best of their ability.’

In that on or about the 21st November 2013 at Akasia Revenue Offices you negligently created an irregular arrangement contrary to the Credit Control Policy by accepting an amount of R3000.00 (three thousand rands) to reconnect the services which had been suspended by the council.”

[3] Skosana was employed by the third respondent (the Municipality) in 1995 until his dismissal in February 2015, and was in the position of an administrative

officer at the time of his dismissal. His founding affidavit in this review is deposed to by a union official who submits that the Award is subject to review on all the grounds as set out in s 145 of the Labour Relations Act¹ (LRA). The following paragraphs of the founding affidavit bear recording:

"I submit that the fact the power supply of a client that the Applicant advised pay less than the 60% of the amount owed to the Third Respondent was restored does not mean that the Applicant is the one who reconnected the power supply of the client.

The conclusion of the Commissioner that the Applicant's act of accepting the amount of R200.00 is sufficient evidence to prove that the Applicant was dishonest is irregular in that the money was given to the Applicant to hand over to another employee of the Third Respondent.

I submit that the Commissioner committed gross irregularity in relation to his duties in making the award that the dismissal of the Applicant was for a fair reason without evidence before the Commissioner to prove that the Applicant effected the restoration of the client's power supply.

The Commissioner was unreasonable in assuming that the applicant had a strong hand in the current matter based on the evidence that the client and the Applicant are familiar with each other and the allegations that the Applicant had on a previous occasion attempted to initiate water supply using under hand means in favour of the client as the Applicant was not before the Commissioner to answer to this previous allegations against him which he was never charged or found guilty of committing.

I further submit that the Commissioner was bias against the Applicant in concluding that the testimony of the Applicant is unreliable merely because it is incoherent and inconsistent with the facts proven by the Applicant's witness."

[4] Skosana's testimony in chief and under cross examination at arbitration, as reflected in the record, is the following:

¹ 66 of 1995, as amended.

- 4.1 He knew Mr Goosen, the customer, because most of the times it was the applicant who had assisted him.
- 4.2 On the day in question he told Mr Goosen to pay and bring back a receipt and that Mr Goosen came back with the receipt and asked that his reconnection be done quickly and gave him R200.00.
- 4.3 He testified that he then took the receipt to fellow administrator Mr Van Vuuren but he refused to do the reconnection because the money that had been paid by Mr Goosen was less than he was supposed to pay.
- 4.4 He confirmed that he prepared a spreadsheet showing that Mr Goosen has paid despite the fact that the payment was not enough for reconnection.
- 4.5 He confirmed that he had previously been warned about reconnection arrangements for Mr Goosen, without following the procedures.
- 4.6 He confirmed that Mr Goosen gave him R200 for assisting him with the reconnection of the lights. He confirmed that he knew that Mr Goosen did not have enough money for a reconnection.

[5] The Arbitrator records that the Municipality's four witnesses led evidence about the procedure to be followed where a customer is in default or arrears of payment and wished their power to be reconnected. This was not contested. He records the following in his analysis of the evidence:

"Messrs Goosen and Van Vuuren's testimony related to the events of 21 November 2013. The common denominator of the witnesses' testimony was that the customer's power supply was disconnected, that an amount of R200.00 was exchanged.

According to Mr Van Vuuren the amount was offered by the Applicant as money for cool drink. It was common cause that Mr Goosen did not have sufficient funds to make payment to initiate payment arrangements or deferral. Also common cause was that no payment arrangements were made. There was no dispute that nonetheless Mr Goosen's power supply was restored."

- [6] The Arbitrator found Skosana's testimony incoherent and inconsistent with proven facts and unreliable while at the same time he found the evidence of Mr Goosen and Mr Van Vuuren to have been consistent and reliable. A reading of the record before the arbitrator confirms his finding in this respect. It also reflects that Skosana's testimony at his disciplinary hearing was at odds with his version at arbitration.
- [7] In my view the finding that Skosana's act in accepting the R200 on that day alone, was sufficient evidence to prove that he was dishonest and that there was sufficient ground for dismissal, was well within the band of reasonableness. The material submission made on Skosana's behalf was that there was no evidence to support the conclusion that as a final result of the interaction between Skosana and Goosen the latter's electricity was connected. The evidence established that the person who reconnected the electricity was one Mphahlele.
- [8] Taking the approach outlined in *Fidelity Cash Management Service v Commission for Conciliation, Mediation & Arbitration & others*², the record as a whole supports the Arbitrator's finding. The written report of the disciplinary hearing reflects that Skosana said he knew Maphalele who does the same work as he does, that he was stationed at the Soshanguve office and was at work on the day in question. I have no hesitation in finding that the ultimate decision of the arbitrator is not susceptible to review. His findings are in line with the evidence before him.
- [8] I must agree with the submission of Mr Matyolo for the Municipality that the review application was without merit or a proper basis. I take account of this for the purposes of my order as to costs below. I make the following order:

² (2008) 29 ILJ 964 (LAC) at paragraph 102.

Order

1. The review application is dismissed with costs.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: PH Kirstein

Instructed by: Maenetja Attorneys

For the Third Respondent: XD Matyolo

Instructed by: Gildenhuys Malatji Inc.

LABOUR COURT