



IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

Not Reportable

Case No: PR 140/13

In the matter between

CHERYL LORRAINE PETZER

Applicant

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

COMMISSIONER THOBELA NCETHEZO N.O.

Second Respondent

BUILDERS TRADE DEPOT (PTY) LTD

Third Respondent

Heard: 23 November 2016

Delivered: 19 January 2018

Summary: Notwithstanding errors made by a commissioner in the conduct of arbitration proceedings, an award will not be reviewed and set aside if it falls within bounds of reasonableness.

JUDGMENT

LALLIE, J

- [1] The applicant seeks an order reviewing and setting aside the arbitration award of the second respondent who will be referred to as the commissioner in this judgment. The application is opposed by the third respondent. The applicant filed an application to have her late filing of the application condoned. The condonation application is unopposed. The extent of the delay is a day and the applicant has given reasonable explanation for the lateness. The application must, in the circumstances, succeed.
- [2] The applicant was employed by the third respondent as its administration and credit controller. Her responsibilities included ensuring that all staff members were aware of the third respondent's policies and procedures. A number of employees including Mrs Bosch (Bosch), the third respondent's banking clerk reported to her. Bosch's duties included depositing money paid by the third respondent's customers in a drop safe which was located in the third respondent's strong room/cash office. In terms of the third respondent's policy two employees had to sign a document confirming the deposit before money was deposited in the drop safe. On 26 November 2012, Bosch made a deposit of R54 000.00 in the drop safe without obtaining the signature of a second signatory who had to be one of her seniors at the administration block where the drop safe was located. The third respondent was subsequently informed by its bank that the actual cash deposited by Bosch was in the amount of R50 000.00. The third respondent investigated the shortage.
- [3] On 8 December 2012, before the cause of the shortage was discovered an amount of R19, 000.00 disappeared from the third respondent's safe. The circumstances surrounding the disappearance of the money were that during the morning of 8 December 2012, Bosch informed the applicant that she had misplaced the safe key. The safe was locked. The administration block staff looked for the key. They did not find it. At about 11h45 the applicant went to a shop. On her return 15 minutes later she was notified that the safe had been opened and an amount of R19, 000 was missing. As a consequence of the two incidents the third respondent charged the applicant with gross negligence/ recklessness for failure to double count the amount deposited by Bosch in the drop safe on 26 November 2012 which resulted in the loss of R4

000, 00 and her failure to secure the strong room on 8 December 2012, causing the third respondent to suffer a financial loss of R19, 000.00. A disciplinary enquiry into the allegations was held and she was found guilty of both charges and dismissed. She referred an unfair dismissal dispute to the first respondent which will be referred to as the CCMA in this judgment. The commissioner found her dismissal both substantively and procedurally fair. It is that finding which the applicant seeks this court to review and set aside.

- [4] The applicant attacked the reasonableness of the findings of both the substantive and procedural fairness of her dismissal. She submitted that the award stands to be reviewed and set aside because the commissioner abrogated her responsibility to consider all the evidence and legal principles governing the determination of the substantive and procedural fairness of her dismissal. She failed to have adequate regard to her evidence and submissions. She failed to properly conceptualise the legal issues to be determined and arrived at conclusions that were not rationally connected with the evidence before him. The third respondent's basis for opposing the application is that the grounds the applicant sought to rely on are invalid. A further submission was that the award is reasonable and based on the evidence tendered at the arbitration.
- [5] Not every error made by a commissioner renders that commissioner's award reviewable, this is trite. Only errors whose distorting effect have an impact on the reasonableness of the award will justify having an award reviewed.¹ It is common cause that the applicant's duty was to ensure that the third respondent's employees were made aware of policies and procedures. The reason the commissioner found the applicant guilty of the first charge was that Bosch reported to her and she was aware that a huge amount of money which had to be verified was being counted in the strong room. The commissioner expected the applicant to have been proactive and co-signed before Bosch made the deposit in the drop safe. The applicant correctly argued that the commissioner's finding overlooked her evidence that it was not her sole responsibility to co-sign before a deposit was made in the drop

¹ *Head of the Department of Education v Mofokeng* [2015] 1 BLLR 50 (LAC)

safe. Any employee senior to Bosch in the administration block had the responsibility to verify amounts and co-sign before deposits were made in the drop safe. Her responsibility was to check monthly whether that policy had been complied with. Absent evidence to the effect that it was the applicant's sole responsibility to co-sign before the deposit was made in the drop safe, the commissioner's decision that the applicant was either negligent or reckless by not co-signing was unreasonable. Having the responsibility of ensuring that employees were aware of the policies and being the custodian of policies did not constitute proof that the applicant committed misconduct by not co-signing.

- [6] The commissioner did not err in finding that the applicant made herself guilty of misconduct by leaving the third respondent's premises after she had been made aware that the safe key was missing. By the applicant's own admission she did not lock the strong room. The commissioner correctly found that the applicant should have been cautious and safeguarded the third respondent's money particularly because the incident which resulted in the loss of R4 000.00 was still fresh. The commissioner's finding that the gravity of the misconduct justified dismissal is reasonable.
- [7] The applicant's allegation that the commissioner's finding that her dismissal was procedurally fair is unreasonable is not supported by evidence. The commissioner's reliance on the decision in *Avril Elizabeth Home for the Mentally Handicapped v CCMA and others*² cannot be faulted as it correctly supported her finding that the applicant was afforded the right to state a case before the decision to dismiss her was taken. The commissioner's award falls within bounds of reasonableness.
- [8] In the premises the following order is made:

Order:

1. The late filing of the application is condoned.
2. The application is dismissed.

² (2006) 27 ILJ1644 (LC).

3. No order is made as to costs.

Z Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr Van Der Veen of Wheeldon Rushmere & Cole Inc

For the Third Respondent: Mr Titus of Macgregor Erasmus Attorneys

LABOUR COURT