IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: JR 1374/16

In the matter between:

G4S CASH SOLUTIONS (PTY) LTD **Applicant**

And

SATAWU obo SIBUSISO SIBEKO **First Respondent**

S.S MOLAPA *N. O* **Second Respondent**

NATIONAL BARGAINING COUNCIL

FOR THE ROAD FREIGHT AND LOGISTICS INDUSTRY **Third Respondent**

Heard: **7 November 2018**

Delivered: **14 May 2019**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] With this application, the Applicant (G4S) seeks an order reviewing and setting aside the arbitration award dated 6 June 2016 issued by the Second Respondent (the Arbitrator) under the auspices of the Third Respondent, the National Bargaining Council for the Road Freight and Logistics Industry (NBCFLI). In his arbitration award, the Arbitrator found that the dismissal of the Mr Sibusiso Sibeko (Sibeko) on the grounds of *inter alia* negligence and breach of trust was procedurally fair but substantively unfair. Sibeko as assisted by SATAWU opposed the review application.

Condonation:

[2] The review application was filed outside of the statutory time limits and G4S seeks condonation in that regard. Under the provisions of section 145(1A) of the Labour Relations Act (LRA)[1], this Court enjoys a discretion to condone the non-compliance with the timeframes set-out section 145(1) of the LRA on good cause shown.

[3] The requirement of *good cause* entails a consideration of whether it is in the interests of justice to grant condonation, having had regard to the extent of the delay, the explanation thereof, whether there are reasonable prospects of success in the review application, and the prejudice that the parties will suffer should condonation be granted or refused.[2]

[1] Act 66 of 1995 (as amended)

[2] *Brummer v Gorfil Brothers Investments* (Pty) Ltd 2000 (5) BCLR 465 ;2000 (2) SA 837 (CC) at para 3; *See* also *Ndlovu v S 2017* (10) BCLR 1286 (CC); 2017 (2) SACR 305 (CC) (15 June 2017) at paras 22 – 23*; Van Wyk v Unitas Hospital (Open Democratic Advice Centre as amicus curiae)* 2008 (2) SA 472 (CC) at 477A-B; *SA Post Office Ltd v CCMA* [2012] 1 BLLR 30 (LAC) at para [23], where it was stated that;

> 'In my view, each condonation application must be decided on its own facts bearing in mind the general criteria. While the rules are there to be applied, they are not inflexible but the flexibility is directly linked to and apportioned in accordance with the interests of justice; prejudice; prospects of success; and finally, degree of delay and the explanation thereof. The issue of delay must be viewed in relation to the expedition with which the law expects the principal matter to be resolve

[4] The arbitration award is dated 6 June 2016 and the review application was filed on 8 November 2016. The delay is some two months and two weeks, which in my view is excessive *albeit* not in the extreme.

[5] I have had regard to the founding affidavit deposed to by Nicolette Cronje, the G4S's Head of Human Resource Department, and the explanation proffered for the delay. I have also had regard to the issues of prejudice raised by Cronje and G4S's prospects of success. Having considered these and Sibeko's opposition thereto, I am satisfied that on the whole, good cause was shown and ultimately, the considerations of the interests of justice dictate that condonation be granted.

The background to the dispute:

[6] Sibeko was employed by G4S on 1 June 2011 as a Crewman. G4S is in the business of *inter alia*, collecting, delivering and generally transporting cash between clients and banks. On 16 April 2015, Sibeko was issued with a notice to attend a disciplinary hearing to answer to allegations of misconduct preferred against him.[3] The allegations of pertained to gross negligence, the alleged failure to follow proper procedures when collecting money from a client, and breach of trust.

[7] The nub of G4S's case against Sibeko is that in the performance of his duties as a Crewman, he manually collected bags of money from a Pick 'n Pay branch in the Carlton Centre, Johannesburg instead of using the required normal HHT Scanner. As a result, only two bags were delivered to what is called the Box room Marshall instead of three bags that were collected. In the process, a bag containing R19 000.00 could not be accounted for.

[3] …Kindly take note that you are to attend a disciplinary hearing to answer the following charges:
- Gross Negligence: In that you fail[ed] to hand in bag 30214568200 to the box room marshal Mr Mathenjwa when you hand[ed] in your consignment to the box room on the 18/10/2014.
- Misconduct: In that, you fail[ed] to follow the proper reception procedure by collecting three bags at the client with a manual receipt while the HHT did not have a problem. When you deliver[ed] your consignment only two bags of Pick 'N Pay Carlton Centre appear on the E-Viper but the bag in question does not appear. Therefore your behaviour was inappropriate.
- Breach of Trust: In that the trust between [the] employer and employee has been perished and also the name of the company has been in disrepute and therefore the company suffer a loss of R19 000.

[8] Following a disciplinary enquiry, Sibeko was found guilty of the charges and dismissed on 4 May 2015. SATAWU acting on his behalf then referred an unfair dismissal dispute to the NBCRFL. When attempts at conciliation failed, the dispute came before the Arbitrator for determination.

Arbitration proceedings:

[9] The evidence of G4S's Technical Support Officer, Mr Pieter Rustoff (Rustoff) was that:

9.1. G4S uses an electronic system called eViper system for collecting and delivering cash consignment to and from the designated clients. The Crewmen are equipped with a handheld HHT scanner to record each moneybag collected from clients. If a Crewman had problems with the HHT scanner or a client's consignment was not uploaded on the scanner, a duty was on the Crewman to report the problem to the G4S' Control room.

9.2. Once scanned, the moneybags were then to be removed from the client's premises by the Crewman into the armed vehicle, wherein the bags would be scanned into the eViper system, using a scanner mounted in the armed vehicle.

9.3. Once the Crewmen had made all the scheduled collections, it would be expected of them to go to the depot to deliver all cash consignments to the Box-room Marshall who must in turn reconcile the delivered consignment against the eViper system, and further scan and tick every moneybags delivered to the Box-room.

9.4. According to Rustoff, on 14 October 2014, Sibeko had in the performance of his duties as a Crewman, collected three moneybags from Pick 'n Pay. Sibeko however failed to utilise the HHT scanner when collecting the money bags, and instead used a manual receipt book. As a result, only two moneybags were accounted for when they were delivered to the Box room Marshall at the depot, resulting in a

loss of a moneybag containing R19 000.00, which was money destined for ABSA bank.

9.5. Sibeko had according to Rustoff, also submitted his bulk book to the Box room containing the list of consignments collected on the day in question, but the missing bag was not listed therein despite the manual receipt showing that three bags were collected from the client. In the end, the eViper system recorded that only two bags were delivered, and the one bag could not be accounted for.

[10] Under cross-examination, Rustoff testified that;

10.1 ABSA being a client had suffered a loss and had claimed from G4S. He could not however produce documents in that regard nor could he produce proof that G4S repaid ABSA the missing amounts. He alleged that he had those documents somewhere in his office or the Head Office.

10.2 He further testified that in instances where the Box-room Marshall had identified disparities in the consignment collected and delivered against the records of the quality and value of the consignment, he had the responsibility to balance the consignment against each item on the Crewman's receipt book, whether the HHT and /or the manual receipt was used which should correspond with the consignments.

10.3 Once the Box-room Marshall had identified disparities, it was his duty to inform the Crewman concerned of the shortage. Once the problem was identified, the Technical Support Officer (TSO) would then actively assist in the search of the armed vehicle for any missing consignment, and the Crewman would be prevented from leaving the premises until investigations were completed with a view of finding the missing consignment. In the event that the disparity was not remedied, the TSO would then have the matter reported to the SAPS. If however the records and the consignments balanced, there would be no need to keep the Crewman.

10.4 Rustoff further testified that the Box-room Marshall had his own receipt book (*In List*), which he utilised to record all the items that were delivered to the Box-room. The *In List* is a computer printout generated by the consignments scanned into the Box-room. In circumstances where the consignments were collected manually, the moneybags would be physically handed over to the Box-room Marshall and checked against the entry on the manual receipt book of the Crewman by affixing a tick next to the serial number. He confirmed that the Box room Marshall, Mathenjwa, did not tick any of the other two consignments and did not follow procedures.

10.5 On being asked whether all the consignments collected for the day were scanned, his response was that none were scanned for the day, and all were manually picked up. He however could not provide proof in respect of the other consignments that were allegedly manually picked.

10.6 He confirmed that despite the missing bag, no standard procedures were put in place to initiate an investigation on the same day and/or the immediate morning, and that there was no indication that Mathenjwa had brought the disparities in the number of consignments to Sibeko's attention. He further confirmed that no criminal case was opened with the SAPS in respect of the loss in compliance with standard procedures.

10.7 He confirmed that Mathenjwa was disciplined and dismissed from the employ of G4S on charges of misconduct related to the theft of R95 000.00, which offence was unrelated to the present case.

[11] Sibeko's evidence was as follows;

11.1 On 18 October 2014, he was scheduled to collect consignments from seven different clients. He had with him his HHT scanner, a receipt book and a 'Bulk book'.

11.2 In circumstances where the client was not uploaded onto the HHT scanner such as Pick ‘n Pay, the procedure was that the Crewman should complete the collection by using a manual receipt book. Having manually recorded the consignment, he would then transfer that information to the Bulk book, which is only used for bags that were manually collected.

11.3 He confirmed having collected three consignments from Pick ‘n Pay, which he had then handed over to Mathenjwa, together with others collected from other clients, and the Bulk book. Each bag used by G4S had a bar code, and Mathenjwa was then supposed to count and scan all the bags as they were taken out of the armoured vehicle.

11.4 After scanning and counting the bags, he (Sibeko) was supposed to be given a receipt from the Bulk book and for him and Mathenjwa to sign confirmation of the number of consignment delivered. All that information would then be passed on to Rustoff or TSO for his records.

11.5 He confirmed that once a moneybag was collected from a client, the Crewman was obliged to scan it onto the on-board scanner in the armed vehicle, which meant that there would be a record of a list of all the moneybags that were loaded onto the vehicle, even if they were not scanned with HHT when picked up.

11.6 Once at the depot, it was then for Mathenjwa to use the on-board printout and manual receipt book, to verify that the numbers balanced. Mathenjwa was further required to physically count the moneybags collected using the manual receipt book and also ticking them on his receipt book. Once the reconciliation was done, both he and Mathenjwa would co-sign the *In List* to verify the number of consignments, and that list remained in the custody of Mathenjwa.

11.7 He confirmed the procedures to be followed in circumstances where disparities were discovered, and contended that none of those were followed. He only became aware of the missing moneybag on 9 March 2015 approximately five months after the incident took place,

when the procedure required that he be notified on the same day of any disparities in his deliveries. Since the bag went missing on a Friday, at most, G4S was required to have informed him of the disparities on the same day or the following Monday.

The Arbitration award:

[12] During the arbitration proceedings, and at the completion of the testimony of Rustoff, the representative of G4S had sought a postponement on the basis of the unavailability of its witness. G4S sought to lead the evidence of Ms Nomvula Nkosi of Pick 'n Pay Carlton Centre, Mr Ndwandwe of SATAWU, and its Mr Monyela to testify in regards to the procedural fairness of the dismissal.

[13] Sibeko's representative had opposed the request for a postponement, pointing out that the arbitration proceedings had been ongoing for a period of one year, and had been postponed in the past on no less than three occasions at the instance of G4S.

[14] The Arbitrator had refused the request for a postponement and agreed that the arbitration proceedings were indeed previously postponed three times at the instance of G4S, and that overall, the proceedings had been delayed in direct conflict with the purport and spirit of expeditious dispute resolutions demanded by the LRA.

[15] In respect of the merits of the dispute, the Arbitrator having considered the evidence of Sibeko and of Rustoff, concluded that the evidence of Sibeko was more credible taking into account that Rustoff's evidence constituted of hearsay. According to the Commissioner, there was no evidence from G4S to rebut Sibeko's version that he had delivered three moneybags to the Box-room Marshall. In this regard, the Arbitrator's findings on the allegations of misconduct were that:

15.1. Sibeko's version was that Pick 'n Pay Carlton Centre was not loaded onto the eViper systems, thus making the collection with the HHT scanner impossible.

15.2. Rustoff's version that the HHT scanner was fully operational was insufficient to rebut Sibeko's version on the basis that Rustoff was not present during the difficulties experienced with the scanner at Pick 'n Pay when the bags were collected.

15.3. There was no further evidence to indicate that the HHT scanner was inspected prior to Sibeko commencing with his duties on the 18 October 2014, to ascertain whether Pick 'n Pay Carlton Centre was loaded onto the eViper system.

15.4. Sibeko's version that the scanner could not be used at Pick 'n Pay ought to be accepted, taking into account that there was indeed documentary evidence to prove that indeed he had collected the three moneybags utilising the manual receipt book.

15.5. Sibeko's version remained that he had delivered the three moneybags to Mathenjwa, whilst Rustoff's version contained mere denials. There was therefore no evidence to prove that Sibeko had not delivered the three moneybags to the Box-room on 18 October 2014, particularly since Rustoff was not present when the delivery of the consignments was made, and could thus not rebut Sibeko's version.

15.6. The Arbitrator observed that the procedures in instances where there was a disparity were not observed, including informing Sibeko of those disparities, or escalating the matter to the TSO. In this regard, the probabilities favoured Sibeko's version that all the moneybags were delivered to the Box-room, hence the relevant procedures were never activated.

Grounds of review:

[16] G4S contends that the Arbitrator committed a reviewable irregularity by failing to take into consideration all the material evidence placed before him and further for not applying his mind to that evidence, and thus arrived at an unreasonable outcome. In this regard, it was submitted that:

16.1. The Arbitrator committed a reviewable irregularity in refusing the application for postponement, and that he failed to apply the standard test in considering such a request.

16.2. The Arbitrator failed to take into account the evidence and that the charges preferred against Sibeko were serious and rendered the employment relationship intolerable.

16.3. Its rules and procedure required that the moneybags be collected using the HHT equipment and further that Pick 'n Pay had been loaded onto the HHT equipment.

16.4. Sibeko never reported that there were problems with the HHT scanner, and it must therefore be presumed that there were no problems with it, and consequently, there was no reason why the moneybags were collected using a manual receipt book. The evidence in any event revealed that three moneybags were collected from Pick 'n Pay but only two were delivered to the Box-room.

Evaluation:

[17] Prior to dealing with the Arbitrator's findings on the merits, the issue that needs to be disposed of is whether his refusal to postpone the arbitration proceedings was reasonable or not. This is so in that if it is found that the Arbitrator misdirected himself in refusing the request, it would not be necessary to deal in detail with other grounds of review.

[18] In *Carephone (Pty) Ltd v Marcus NO and Others*[4], Froneman DJP (as he then was) reiterated that an application for postponement was not a matter of right. It is an indulgence granted by the court to a litigant in the exercise of a judicial discretion. With regards to proceedings before the CCMA, Froneman DJP further held that:

> "There are at least three reasons why the approach to applications for postponements in arbitration proceedings under the auspices of the

[4] 1999 (3) SA 304 (LAC) at para 54.

> commission under the LRA is not necessarily on a par with that in courts of law. The first is that arbitration proceedings must be structured to deal with a dispute fairly and quickly (s 138(1)). Secondly, it must be done with 'the minimum of legal formalities' (s 138(1)). And thirdly, the possibility of making costs orders to counter prejudice in good faith postponement applications is severely restricted. . . "[5]

[19] An application for a postponement ordinarily involves a consideration of various factors including but not limited to;

i. whether it was in the interest of justice and fairness that the postponement be granted or refused;

ii. the prejudice likely to be suffered by either party should the postponement be granted or refused;

iii. whether any prejudice could be cured by an appropriate costs order;

iv. whether the application was made timeously, was *bona fide* or is a merely tactical manoeuvre to delay the finalisation of proceedings[6].

[20] From the above, it can be accepted that when considering a request for a postponement, arbitrators ordinarily exercise a discretion which this Court in review proceedings should not readily interfere with unless a compelling case has been made, including that the decision was influenced by wrong principles or misdirection on the facts, or that the discretion was exercised *capriciously* or considered upon wrong principles.[7]

[21] A postponement was sought on the basis that G4S wanted to subpoena a witness, Ndwandwe, and also call Ms Nomvula Nkosi from Pick 'n Pay. G4S also wanted to call the chairperson of the enquiry, Mr Monyela, who was then

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[5] at para 55

[6] See *Petzer v Independent Broadcasting Authority* (2000) 5 LLD 409 (LC) at 410; *Fundi Projects & Distributors (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others* (2006) 27 ILJ 1136 (LC) at para 10; *Masstores (Pty) Ltd t/a Builders Warehouse v CCMA & others* [2006] 6 BLLR 577 (LC) at para 41; *Insurance & Banking Staff Association & others v SA Mutual Life Assurance Society* (2000) 21 ILJ 386 (LC) at para 44.

[7] See *Ex Parte Neethling and Others* 1951 (4) SA 331 (A); *S v Kearney* 1964 (2) SA 495 (A); *Camdons Reality (Pty) Ltd and Another v Hart* (1993) 14 ILJ 1008 (LAC); *NUMSA v Fibre Flair cc t/a Kango Canopies* (2000) 21 ILJ 1079 (LAC)

allegedly sitting in an urgent management meeting in Krugersdorp.[8] Sibeko's representative had immediately objected, pointing out that there was no need to call Nkosi in the light of Rustoff's evidence that Pick 'n Pay did not suffer any loss as a result of the missing moneybag. Sibeko's representative had also pointed out that the matter was postponed thrice in the past, and that in the last sitting, the parties had narrowed down the issues, and G4S knew which witnesses to bring. He had contended that Sibeko had been prejudiced by the delays in the matter.

[22] Having had regard to the reasons advanced by the Arbitrator, I am satisfied that he acted reasonably in refusing the postponement, and that there is no basis to interfere with his discretion for the following reasons.

22.1 In refusing to grant the postponement, the Arbitrator clearly considered the reasons advanced for the request on basis that G4S had adequate opportunity to secure the evidence of its witnesses in view of the fact that it was aware of the case it was required to meet, particularly in respect of the procedural fairness of the dismissal.

22.2 The Arbitrator correctly rejected the explanation in respect of the absence of Monyela, who it was alleged was detained in an urgent management meeting on basis that he (Monyela) had "prioritised" that meeting over arbitration proceedings, which were serious in nature and particularly since those proceedings were pending for an inordinate period.

22.3 In my view, the argument advanced on behalf of G4S that Monyela was obliged to attend the urgent management meeting due to financial losses G4S had experienced could not have been a primary consideration over the interests of Sibeko to have his unfair dispute expeditiously finalised.

[8] Transcribed record at page 68 Lines 6 - 10

22.4 The Arbitrator correctly accepted that further delays were in conflict with the purport of the expeditious dispute resolution and thus it was not in the interest of justice to postpone the arbitration proceedings.

22.5 The arguments advanced in these proceedings on behalf of G4S that it was under the impression that Sibeko would call Nkosi and Ndwandwe are hardly convincing. In the light of the notice of set down, G4S clearly could have enquired from Sibeko or his representatives whether he intended to call those witnesses or not, and to make the necessary arrangement for their presence if necessary.

22.6 In seeking a postponement, G4S's representative had tendered costs, and it was argued on its behalf that this could have mitigated any prejudice to Sibeko. It is my view however that a tender costs in arbitration proceedings that were previously postponed on three occasions at the request of G4S in the circumstances could not have mitigated the prejudice to Sibeko.

22.7 In arbitration proceedings, and in instances where the employee is represented by a union official, one cannot speak of 'costs' in the ordinary sense as legal costs. Any 'costs' referred to in such instances can only be disbursements, which in the end, are not sufficient to mitigate the self- evident prejudice to a dismissed employee, who had been waiting for a year to have his matter finalised. To this end, there is no basis to interfere with the Arbitrator's discretion to refuse a postponement.

[23] The test on review is settled. As was stated in *Goldfields*, the review court must ascertain whether the arbitrator considered the principal issue before him/her, evaluated the facts presented at the hearing, and came to a conclusion which was reasonable to justify the decisions he or she arrived at[9].

[24] To the extent that G4S's case is that the Arbitrator failed to apply his mind to the evidence and/or committed a misdirection in the assessment of evidence,

[9] *Gold Field Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation Mediation and Arbitration & Others* ZALAC 28; [2014] 1 BLLR 20 (LAC); (2014) 35 ILJ 943 (LAC) at para 16

the Supreme Court of Appeal in *Herholdt v Nedbank Ltd and Another*[10] held that:

> "In summary, the position regarding the review of CCMA award is this: A review of a CCMA award is permissible if the defect in the proceedings fall within one of the grounds in s 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)(a)(ii), the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to the particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of consequence if their effect is to render the outcome unreasonable."

[25] In this case, it can be accepted that on the face of it, the charges preferred against Sibeko were serious, as they entailed allegations of gross negligence in the handling of cash from clients; an alleged failure to follow proper procedures in the handling of moneybags, and breach of trust. The mere fact however that the charges are serious, does not imply that it is given that a dismissal should follow, as the onus remained on G4S to prove those charges and the fairness of a dismissal on a balance of probabilities.

[26] On the common cause facts, it is apparent from the evidence of Rustoff that all the G4S' procedures regarding the handling of the consignment upon delivery at the depot and in the Box room were not followed. In this regard, it is apparent that any disparities in respect of the consignments collected and delivered on 18 October 2014 were only brought to the attention of Sibeko some five months after the fact. It is not clear from the record and the evidence as to the reason that there was this delay. Be that as it may, it is common cause that none of the procedures related to any disparities as confirmed by Rustoff and Sibeko were followed on the day in question. There was further no evidence presented that a criminal case was lodged with the police, or that ABSA had lodged a claim in respect of the missing money, or

[10] 2013 (6) SA 224 (SCA)

that any payment was made by G4S to ABSA in respect of the missing money.

[27] The fact remains however whether Sibeko's dismissal was for a fair reason. It was not in dispute that three moneybags were collected from the client Pick 'n Pay by Sibeko. As I understood G4S's case, the one bag went missing as a result of the non-use of the HHT scanner when collecting the bags, leading to the allegations in regards to gross negligence and failure to follow procedures. At the same time however, it was Rustoff's testimony that on 18 October 2014, the HHT scanner was not used in respect of all the moneybags collected from the seven clients on that day. Nevertheless, Rustoff could not produce documentary evidence in regards to the other moneybags that were manually picked up, and the issue is why would Sibeko not be charged in respect of all the other consignments picked up for the day if the HHT scanner was not used on them at all.

[28] An even more concerning feature of this case is that Mathenjwa broke every rule book when receiving the consignments. He had not ticked the moneybags as he received them nor did he pick up any discrepancies after his own verification exercise. He had according to Sibeko, signed acknowledgement of receipt of all consignments and it is not clear what role he had played leading to the missing bag.

[29] During the evidence of Rustoff, it was indicated by G4S's representative that it intended to subpoena Mathenjwa, but this was not to be so. Even when a request for a postponement was made, Mathenjwa was not given as a reason why a postponement was sought.

[30] It is apparent that to the extent that Sibeko had utilised a manual system in picking up the moneybags from Pick 'n Pay, and further to the extent that Rustoff had testified that all moneybags, whether picked up through the HHT scanner or manually recorded in the receipt book, had to be scanned when received by Mathenjwa, it can be accepted that there was nothing wrong in picking up the moneybags manually from Pick 'n Pay, and furthermore, the manual receipt book appears to have been designed for instances where

bags could not be scanned through the HHT scanner. The submission therefore made in these proceedings that Sibeko had to obtain permission from the Control room before using the manual system has no merit.

[31] Equally so, it is correct as stated on behalf of G4S that Sibeko had custody of the moneybags and had to account for it. In the Arbitrator's view, and with which I agree with, Sibeko had given an account of what happened to all the moneybags on the day in question. He had followed the rules and procedures required of him as a crewman by manually picking up the moneybag from Pick 'n Pay, by completing the receipt and bulk books, and by signing the onboard receipt, which he had handed over to Mathenjwa. Upon Mathenjwa's own verification both signed to confirm that all the bags were accounted for.

[32] For reasons best known to G4S, it had refused to discover at the arbitration proceedings despite a request by Sibeko's representative, certain documentary evidence including the bulk book receipt containing the list of consignments collected from Pick 'n Pay, which would have demonstrated that all the bags were collected and delivered to the Box room. It also refused to discover the onboard printout, which would have demonstrated that all the moneybags were captured in the armoured vehicle. G4S cannot simply rely on documentary evidence that is designed to bolster its case, and yet at the same time refuse to discover documents, which would have assisted Sibeko with his case, or the Arbitrator in arriving at an informed decision.

[33] Ultimately, the question that needs to be posed is if indeed there were disparities on the day in question, why were they not picked up then in the light of the water-tight procedures put in place, and/or why did Rustoff, as the TSO fail to pick up those disparities on the day in question, and why were all known procedures in regards to disparities not followed immediately on the day that they allegedly arose.

[34] Having had regard to the record, the submissions made on behalf of the parties and the award, I am satisfied that the Arbitrator considered the principal issue before him, afforded the parties a fair opportunity to state their respective cases, properly evaluated the facts presented at the hearing, and

came to a conclusion which was reasonable to justify the decisions he arrived at. It follows that all of the grounds of review relied upon by G4S were unsustainable, and that there is no basis to interfere with the Arbitrator's award.

Costs:

[35] G4S' grounds of review and the accompanying averments to sustain the review adopted a piecemeal approach. It sought to criticise the manner in which the Arbitrator considered the evidence and his purported misdirection without sufficiently revealing the basis upon which the outcome reached on the evidence was unreasonable. That approach was specifically warned against in *Goldfields*[11]. Having had regard to the requirements of law and fairness, it is my view that G4S should therefore be burdened with the costs of this application.

[36] In the premises, the following order is made;

Order:

1. The late filing of the review application is condoned.

2. The application to review and set aside the arbitration award issued by the Second Respondent dated 6 June 2016 under case number GPRFBC 35086 is dismissed with costs.

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E. Tlhotlhalemaje

Judge of the Labour Court of South Africa

[11] At para 18, where it was held that;

> "In a review conducted under s145(2)(a)(c) (ii) of the LRA, the review court is not required to take into account every factor individually, consider how the arbitrator treated and dealt with each of those factors and then determine whether a failure by the arbitrator to deal with one or some of the factors amounts to process-related irregularity sufficient to set aside the award. This piecemeal approach of dealing with the arbitrator's award is improper as the review court must necessarily consider the totality of the evidence and then decide whether the decision made by the arbitrator is one that a reasonable decision-maker could make."

Appearances:

For the Applicant:	C Crafford of Crafford Attorneys
For the First Respondent:	G.Z Maphanga, instructed by Dike Attorneys