

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: **C502/2017**

In the matter between:

RODNEY BRUCE JACOBS**Applicant**

and

COMMISSION FOR CONCILIATION, MEDIATION**AND ARBITRATION****First Respondent****ZOLA MADOTYENI****Second Respondent****SUPERCARE SERVICES GROUPS (PTY) LTD****Third Respondent****Date heard: 15 October 2019****Delivered: 16 October 2019**

JUDGMENT

CONRADIE, AJ

- [1] In this matter the applicant (the employee) seeks to review the award of the second respondent (the arbitrator) handed down on 28 July 2017.
- [2] The third respondent (employer) is Supercare Services Groups (Pty) Ltd.
- [3] The employee represented himself in this matter which is unopposed.

- [4] Understandably, when an employee represents himself in this court, he or she is normally not familiar with the procedures which need to be followed in order to ensure that their case is ready to be heard and properly presented. Bearing this in mind I have given the employee substantial latitude when he appeared before me to present his case.
- [5] As stated above, the arbitration award in this matter was handed down on 28 July 2017. Shortly thereafter, on 11 August 2017, the employee applied to this court for a case number. The case number was allocated the same day.
- [6] Thereafter the employee did not launch his review application until 21 May 2018. Nowhere in his founding affidavit does the employee state his grounds of review other than to refer to an attached handwritten statement in which he states the following:
- “I, Rodney Bruce Jacobs, state that I was working on construction and at Don’t Waste Ltd at the time. At the time I was to get to the labour court ant I couldn’t get off days to do eny ting becource I hade to work for my family. I really need to get my name clear and finelise this matter because it is japodising my other work. I still have all my documants but I could not get the CD recording pleas; understand” [sic].*
- [7] On 29 June 2018 the employee filed the record in terms of Rule 7A(6).
- [8] The matter was then set down to be heard on 28 November 2018. The employee did not however arrive and the matter was struck from the roll by Steenkamp J.
- [9] It appears from the documentary record filed by the employee that the CCMA lost the digital recording of the arbitration proceedings. The CCMA however made the arbitrator available to reconstruct the record if required. This invitation has not been taken up by the employee.
- [10] At the hearing of the matter I explained to the employee that he needed to decide if he was willing and able to proceed without having been able to transcribe the digital recording. I indicated to him that if he needed to reconstruct the record, he needed to indicate that to me, alternatively if he wished he could proceed to argue the review without the record. The employee elected to proceed without the record.

- [11] I pointed out to the employee that his review application was substantially late but that I was prepared to condone any non-compliance with the time periods of this court in the interests of giving him an opportunity to have this matter heard.
- [12] I also pointed out to the employee that no grounds of review were advanced in his founding affidavit, as mentioned above, but that I would nonetheless allow him to make oral submissions.
- [13] The employee accepted this opportunity and in his oral submissions he largely repeated the argument which he put up at the CCMA. This can be summarised as follows:
- 13.1 His dismissal was unfair in that he had no idea of the warnings that he did not sign and which the witnesses of the employer sought to ascribe to him.
 - 13.2. He blamed his late-coming on his dire financial situation which he argued was caused by the company. As his working hours were reduced for a brief period at some point in time, he claimed that the employer had ruined him to the point that he was unable to buy a train ticket because he only had enough money to just cover his debts. As a result, he boarded trains illegally and was often arrested and taken to Bellville police station.
 - 13.3. The final written warning number 2728, which was issued against him, was set aside by a settlement agreement and there was therefore no final written warning against him at the time of his last transgression.
- [14] The above submissions are not grounds of review but rather an expression of the employee's unhappiness with the decision which the arbitrator reached.
- [15] Even though no basis was laid for the review, I have considered the award and can find no basis for setting it aside. What is clear from the award and the record filed in this matter is the following:

- 15.1. Soon after the employee joined the employer, he started arriving late for work. This was accompanied by the problem of him also failing to report his whereabouts or lateness to management.
- 15.2. While the employee's shifts started at 09h00 and ended at 17h00, the employee would normally arrive between 13h00 and 15h00.
- 15.3. The employee was issued with warnings so that the employer could monitor his persistent lateness and take appropriate action whenever necessary.
- 15.4. The employee acknowledged receipt of some of the warnings which contained his signature but rejected those that he had refused to sign. Where he refused to sign a warning, the supervisor signed as a witness.
- 15.5. On 1 April 2017 the employee arrived five hours late for work and the next day he was three hours late. At this stage he was already under final written warning with reference number 2729.
- 15.6. The employer noticed that a final written warning under reference number 2725, which was previously issued to the employee, had disappeared. This warning was replaced with another final written warning so that there was a record of the final written warning (warning 2728). This warning was subsequently withdrawn by the company as part of a settlement with the employee at the CCMA.
- 15.7. Between March and April 2017, the employee arrived late for work on more than 12 successive occasions. On these occasions he was late by between three and five hours.
- 15.8. It was discovered at the employee's disciplinary hearing that the employee was in possession of the final written warning 2725 which had disappeared.
- 15.9. In light of the employee's long list of warnings, including various final written warnings issued to him, it was clear to the company

that the employee's behaviour would not change. He was accordingly dismissed.

15.10. The employee did not dispute the reasons advanced for his dismissal. The employee rather sought to blame the employer for his continuous late coming.

15.11. There is no merit in the employee's argument that the employer was to blame for his tardiness or that the employer was obliged to transfer the employee to a site closer to his home.

15.12. The employee's persistent late coming disrupted the employer's operations and threatened their contract with their client.

[16] As stated above, the evidence of the company was not rebutted at the arbitration. In my view there is no basis for this court to interfere with the decision of the arbitrator.

Order

In the circumstances I make the following order:

1. The employee's non-compliance with the rules of this court are condoned.
2. The employee's review application is dismissed.
3. As the application was not opposed, there is no order as to costs.

BN Conradie

Acting Judge of the Labour Court

Appearances:

Applicant: In person

Respondent: No appearance