



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: JR 2495/18

In the matter between:

UMBHABA ESTATES (PTY) LTD

Applicant

and

OVAMBO SINGWANE

First Respondent

COMMISSIONER SOLLY MASHEGO

Second Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Third Respondent

ENROLLED: 21 May 2020, in view of the measures implemented as a result of the Covid-19 outbreak this matter was decided on papers.

DELIVERED: This judgment was handed down electronically by circulation to the parties representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 12h00 on 22 May 2020.

JUDGMENT

MABASO, AJ:

- [1] The applicant is challenging the arbitration award only on the arbitrator's finding that the dismissal was procedurally unfair. The applicant also asks this Court to make an order that it is exempted from complying with the provisions of section 145(8)(b) of the Labour Relations Act¹ (LRA). I have considered the supporting grounds of the latter prayer and am not satisfied that there are proper grounds thereof. Neither of the respondents delivered opposing papers.
- [2] The applicant in its founding papers, states the grounds of review thus. It contends that the arbitrator failed to apply his mind to the evidence that was presented before him specifically in respect of the notice to attend the disciplinary hearing that was issued to the employee as being short notice. It alleges that the employee neither raised as a point during the disciplinary hearing nor the arbitration. That during the disciplinary hearing the employee advised that he was ready to proceed. It is further contended that since the employee did not raise the issue of the short notice is a concern as this was only raised by the arbitrator, thus he committed a reviewable irregularity.
- [3] It is an acceptable ground of review where an applicant can show that an arbitrator failed to apply their mind to issues that were material to the determination of a case which resulted in them misunderstanding the issues called upon to decide or result in an unreasonable outcome.² The Commissioner is expected to assist an unrepresented party in an arbitration. However, such assistance should not be unfair whereby he tells the parties what evidence must be presented.
- [4] During the arbitration, the applicant led the evidence of Mr Cloete which is summarised hereinafter. The employee was given the notice to attend the disciplinary hearing. The applicant complied with schedule 8(4), which

¹ No. 66 of 1995, as amended.

² *Goldfields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA and others* (2014) 35 ILJ 943 (LAC).

requires that an employee should be given a reasonable time to prepare for the inquiry. The employee was given 24 hours notice to prepare for the hearing, and the nature of the charges against him was not complex. During the hearing, the employee indicated that he was ready to proceed with the hearing³. Further, the employee's rights were explained to him and the employee chose not to call witnesses.

- [5] Following the testimony of Mr Cloete, the arbitrator explained to the employee that it was now time for cross-examination. He then further stated that: *"I hope that those things that you are disputing you will put the version to him"*.⁴ The employee did not state that the period for him to prepare for the hearing was short.
- [6] It is alleged that the arbitrator misdirected himself in that he was the one who raised the issue of the short notice. I have perused the transcripts, and it transpires that the notice issue was dealt with during the narrowing of the issues by the arbitrator, which was triggered by the fact that the employee had initially indicated that he had not received a notice to attend the disciplinary hearing.⁵ Therefore, I conclude that the arbitrator did not commit any misdirection in enquiring about the period of the notice because it is based on what was presented before him.
- [7] However, the arbitrator failed to apply his mind to the relevant evidence that was presented before him, in that there was evidence that the employee stated that he was ready to proceed with the hearing. The notice was given to the employee more than 48 hours before the hearing. The employee in tendering his testimony did not raise this as an issue anymore. Mr Cloete explained the nature of the charges against the employee. Furthermore, he pointed out that the employee, after being served with a notice to attend the hearing, was not given any task by the employer who allowed him to prepare for the hearing. Based on this evidence, I conclude that the arbitrator should

³ P. 41 of the records.

⁴ P. 48 records.

⁵ Ring—pa8 of the records.

have applied his mind to these points. Therefore, the award that he issued in respect of the procedural aspect is one that a reasonable decision-maker could not have made.

[8] Under the circumstances, I conclude that the dismissal was procedurally fair. Therefore, part of the arbitration award is substituted as per the order below.

[9] In the premises the following order is made:

Order

1. The arbitration award in respect of the finding by the Commissioner that the dismissal was procedurally unfair, is reviewed and set aside and substituted with a finding that the dismissal was procedurally fair.
2. There is no orders as to costs.

S Mabaso

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Yusuf Nagdee Attorney