



IN THE LABOUR COURT OF SOUTH AFRICA

(HELD IN JOHANNESBURG)

Case no: JR 1939/22

Not Reportable

In the matter between:

PRIME SPOT TRADING 23 (PTY) LTD T/A

MANNY'S HARDWARE

Applicant

and

CCMA

First Respondent

COMMISSIONER D E MATLALTLE N.O.

Second Respondent

SOLLY SERAKE SEKOATI

Third Respondent

Heard: 10 June 2025

Judgment delivered: 2 October 2025

JUDGMENT

WHITCHER J

[1] This is a review application in terms of section 145 of the Labour Relations Act, 1995 to have reviewed and set aside the following arbitration award: The award reads as follows:

The dismissal of [Mr Sekoati] is found to be procedurally fair but substantively unfair.

The [company] is ordered to back pay [Mr Sekoati] from the date of his dismissal (i.e. 1 March 2022).

The [company] is further ordered to reinstate [Mr Sekoati] to his position on the same terms and conditions that were applicable at the time of his dismissal with effect from 15 August 2022.

- [2] I agree with the applicant's main pleaded ground of review¹ that the commissioner failed to appreciate that the real issue before him was whether Mr Sekoati had been dismissed by the applicant and that the evidence adduced demonstrated that there had been no 'dismissal' as defined by section 186 (1) of the LRA. Accordingly, the CCMA thus lacked jurisdiction to entertain Mr Sekoati's claim of dismissal.

The real issue before the commissioner

- [3] In his opening address at the arbitration, Mr Sekoati stated that he was dismissed:

I was questioning about the shortage of my salary...I did not get help from the supervisor whom I was asking for help from. I therefore looked for one of the managers to help. According to the company I was wrong for going to a certain manager looking for help. Those are the reasons for my dismissal.

- [4] The applicant's representative, however, in his opening address pointed out that Mr Sekoati had claimed in his referral that he had been constructively dismissed.

- [5] More crucially, in the opening address and again in the narrowing of issues, the applicant's representative indicated that the applicant's case was that Mr Sekoati had not been dismissed.

- [6] Following a disciplinary enquiry at work, Mr Sekoati was found guilty of misconduct (not for the reasons claimed by Mr Sekoati) and handed a written disciplinary outcome which stated in bold:

As an alternative to dismissal, the period of the defendant's suspension will be unpaid. The defendant is to resume his duties on the 01-03-22.

¹ Founding and supplementary affidavit.

[7] Mr Sekoati rejected the sanction of suspension without pay, left the workplace and did not return on 1 March 2022.

There was no dismissal

[8] The following extracts from the record of evidence establish that Mr Sekoati had not been dismissed, a fact the commissioner himself appreciated during the proceedings.

[9] A witness for the applicant, Mr Lucas testified that he delivered the written disciplinary outcome to Mr Sekoati, which document stated in bold:

As an alternative to dismissal, the period of the defendant's suspension will be unpaid. The defendant is to resume his duties on the 01-03-22.

[10] At the bottom end of the document, he inserted a signed handwritten note which reads:

Solly decided not to reject the alternative to dismissal and opted to be dismissed and have his suspension paid.

Cross examination of Mr Lucas

[11] Mr Sekoati: *What you wrote here is not what I told you. It's what you wrote because you said to me if don't opt for suspension without pay, then it means I opt for dismissal.*

[12] Lucas: *It's a blatant lie what he's saying. You are now lying. I'm sorry to say that straight. He is lying.*

Mr Sekoati's testimony

[13] Mr Sekoati: *They gave me a letter of choice. He produced this letter where he made me choose whether I'm going back to work without pay or I choose to be dismissed.*

[14] Applicant's Rep: *Clearly the chairperson in his ruling, he did not make a ruling that you must be dismissed. Do you agree with me?*

[15] Mr Sekoati: *[Inaudible]*

[16] *No, my question is clear. The chairperson never made a decision that you should be dismissed.*

[17] Mr Sekoati: *The decision that was given to me told me that I'm dismissed*

[18] Commissioner: *Agree you were given this document, yes?*

[19] Mr Sekoati: *[mother tongue]*

[20] Commissioner: No, you were given this document?

[21] Mr Sekoati: Hm

[22] Commissioner: This decision that was communicated to you by Willem, it does not say that you were dismissed.

[23] Mr Sekoati: [mother tongue]

[24] Commissioner: Now, can you explain to me how come you said you were dismissed whereas clearly this document does not say you were dismissed. You can only be dismissed if you don't report for work.

[25] Mr Sekoati: [mother tongue]

[26] Commissioner: Huh-uh, now you are giving a new testimony now. What I'm saying that this decision on itself, agree, they gave you this document. It's clear they gave you this document and you read it, ne?

[27] Mr Sekoati: Yes

[28] Commissioner: Did you read it?

[29] Mr Sekoati: Yes

[30] Commissioner: Yes, now this document does not say that they are dismissing you. They said your punishment is suspension which is unpaid. So, this document was never saying that. So where do I get this thing that you are dismissed?

[31] Mr Sekoati: [mother tongue]

[32] Commissioner: This whole document, they gave it to you, and it never said you are dismissed?

[33] Mr Sekoati: Maybe I don't understand this document.

[34] Commissioner: It says "as an alternative to dismissal, the period of the defendant's suspension will be unpaid. The defendant is to resume his duties on the 01-03-22", so they never said you are dismissed. So where did you get that?

[35] Mr Sekoati: [mother tongue]

[36] Commissioner: Hu-uh no man. You don't argue with me. I'm saying this document does not say that: If you are dismissed, they cannot say come to duties on the 1st [March]?

[37] Mr Sekoati: [mother tongue]

[38] Commissioner: Mr Sekoati, this document they give you the outcome on the 28th and then it says that your punishment is...suspension without pay...Now, it does not say you are dismissed, and it makes clear that come to work on the 1st? So, and then from there Willem was here. He said when he gave you this document which you received then you are the one who chose [inaudible]. Now, can you try to convince me as to why I should come to the decision that it was the employer's choice and not yours to say I'm not going to work?

[39] Mr Sekoati: [mother tongue]

[40] Commissioner: No...This document never said that you are dismissed. It said, come to work on the 1st of March. Did you go to work on the 1st of March? Clearly you didn't, isn't it?

[41] ...

[42] Mr Sekoati: [mother tongue]

[43] Commissioner: Then you agree you did not go to work on the 1st?

[44] Mr Sekoati: [mother tongue]

[45] Commissioner: ...It's written that go to work on the day. The defendant is to resume duties on the 1st of March 2022. It's clear, in bold.

[46] Commissioner: No, don't argue with me. Convince me to say that...The chairperson never dismissed you. The message that came to you never said you are dismissed. It says come to work. Now, you did not come to work.

[47] Mr Sekoati: [mother tongue]

[48] Commissioner: No man, don't. The money, the shortage of money we dealt with...Here the dispute before me is not the shortage of money. I understand it is the one which gave rise to this. But the [inaudible] must decide whether...Now here I realised that they never said you are dismissed.

[49] The above exchanges reveal that Mr Lucas testimony was not undermined in any manner. According to his testimony, Mr Sekoati said he chooses dismissal. In other words, Mr Sekoati chose to terminate his employment.

[50] But more crucially, when confronted with documentary evidence that he had not been dismissed and that in fact he chose to leave work and not return to work on 1 March 2022 as directed by the disciplinary outcome, Mr Sekoati became unresponsive and evasive. It is notable that he initially chose to classify his

case as constructive dismissal, probably bearing in mind that he terminated employment.

[51] For all the reasons *supra*, there was no 'dismissal' as defined by section 186 (1) of the LRA. Accordingly, the CCMA thus lacked jurisdiction to entertain Mr Sekpati's claim of dismissal.

[52] As to costs, the requirements of the law and fairness are best satisfied by each party bearing its own costs.

I make the following order:

1. The arbitration award of the second respondent issued by the first respondent under case number GAEK3026-22 on 26 July 2022 is set aside and substituted with the following order:

The applicant's [third respondent's] claim is dismissed.

2. There is no order as to costs.

Benita Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: L.P. Hutchinson, instructed by Soldatos Cooper Inc

For the Third Respondent: D Somo, Legal Aid

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