



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR593/23

GAJB 20220-22

In the matter between:

UNILEC SA (PTY) LTD

Applicant

and

EVANS NTSBADI MAHLO

First Respondent

COMMISSIONER LUNGILE MATSHAKA

Second Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Third Respondent

Heard: 29 May 2025

Delivered: 10 October 2025

JUDGMENT

PANGO, AJ

Introduction

- [1] This is a review application launched in terms of Section 145 of the Labour Relations Act.¹ In this review application, the application seeks to review and set aside the arbitration award issued by the Second Respondent under the auspices of the Commission for Conciliation, Mediation and Arbitration, the Third Respondent in these proceedings.

Background Facts

- [2] The First Respondent was employed by the Applicant as a general worker since December 2021.
- [3] On 19 September 2022, the First Respondent went to his workplace to visit the Applicant's in-house doctor as he was not feeling well. On his way, he met his supervisor, Mr Dlamini, who confronted him seeking reasons as to why he was not at work.
- [4] The First Respondent, after that proceeded to the doctor, who after examining, found that he was sick and booked off from work.
- [5] The following day, the First Respondent was examined by a different doctor who also found that the First Respondent was sick and also booked him off sick to 21 September 2022.
- [6] Sometime later, the First Respondent was charged with being under the influence of an intoxicating substance during working hours on Monday, 19 September 2022. He was found guilty of the charge and dismissed immediately.
- [7] The First Respondent, dissatisfied with the outcome of the disciplinary hearing, referred a dispute challenging both the procedural and substantive fairness of his dismissal.
- [8] The matter was ultimately referred to arbitration before the Second Respondent,

¹ Act 66 of 1995, as amended.

who found that the First Respondent's dismissal was both procedurally and substantively unfair.

Grounds for review

- [9] The Applicant's grounds for review are mainly that the Commissioner failed to apply his mind to the evidence and that his findings are not those of a reasonable decision maker.
- [10] The Applicant contends that the First Respondent was under the influence of alcohol during work hours and the Commissioner ought to have found as such. Further, the Commissioner was unreasonable in relying on the fact that none of the medical doctors detected that the First Respondent was under the influence of alcohol. According to the Applicant, the Commissioner should have found that the First Respondent was under the influence since there was direct evidence regarding.
- [11] According to the First Respondent, the Applicant failed to provide any evidence that the First Respondent was on the day in question not sick and instead intoxicated. The First Respondent was off sick on the day in question, and this is supported by at least two medical doctors whom the First Respondent went to visit on that day. None of these doctors picked up or at the very least indicated that there were any signs of intoxication.
- [12] In *Herholdt v Nedbank Ltd (Congress of South African Trade Unions as amicus curiae)*² the Supreme Court of Appeal found that material errors of fact, as well as the weight and relevance to be attached to particular facts are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable on the test enunciated in *Sidumo & another v Rustenburg Platinum Mines Ltd & others*³.

² [2013] 11 BLLR 1074 (SCA); (2013) 34 ILJ 2795 (LAC) at para 25.

³ [2007] 12 BLLR 1097 (CC); (2007) 28 ILJ 2405 (CC) at para 110, the test being: "Is the decision reached by the commissioner one that a reasonable decision-maker could not reach?".

- [13] The test for a review is whether the arbitrator's decision or the conclusion reached by the arbitrator was so unreasonable that no other arbitrator or reasonable decision-maker could have come to the same conclusion. The result of an award would be considered to be reasonable when there is a material connection between the evidence and the result, or, put differently, when the result is reasonably supported by some evidence or is connected with the evidence.

Analysis

- [14] The Commissioner found that the First Respondent's dismissal was both substantively and procedurally unfair. The *ratio* for such findings is premised on the fact that the commissioner, on a balance of probabilities, accepted the First Respondent's version that he was off sick on 19 September 2022, and that the doctors who tested him did not detect any alcohol instead, they confirmed his illness. The First Respondent only attended his workplace to visit the company doctor.
- [15] It is quite evident that in arriving at this conclusion, the Commissioner applied his mind to the evidence before him. Considering the fact that the First Respondent was charged with being under the influence of alcohol, the Employer did not support this with sufficient evidence. There were no blood tests submitted to prove that the First Respondent was under the influence of an intoxicating substance. The only evidence presented was an invoice which reflected the nature of tests that were taken. This was not proof that the First Respondent was under the influence of an intoxicating substance.
- [16] During the hearing of this matter, the Counsel for the Applicant attempted to hand to the court new documentary evidence from the Bar. The court refused to accept such documents. These proceedings concern the review of the Commissioner's award for failing to consider *inter alia*, the relevant evidence before him. It is not in dispute that such evidence was never presented in the arbitration proceedings, and I am not sure what purpose it will serve at this point

to furnish this court with evidence that was never placed before the Commissioner. The Applicant failed to prove its case. It cannot now, through the back door, seek to rely on evidence that was never placed before the Commissioner. A Commissioner should base its decision on material before him, which is what was done in this matter.

[17] In the circumstances for the reasons mentioned above, I find that the decision of the Commissioner was reasonable and based on the facts and evidence before him.

[18] In the circumstances, I make the following order.

Order

1. The Applicant's review application is dismissed.
2. The Applicant is ordered to pay First Respondent's costs.

Pango AJ

Acting Judge of the Labour Court of South Africa

Appearance:

For the Applicant: Adv M Du Plessis

Instructed by: Kruger Wilkens Attorneys

For the First Respondent: Ms R Crisp

Instructed by: R Crisp Attorneys

LABOUR COURT