



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR1285/22

In the matter between:

LINDILE GULA

Applicant

and

NORTHAM PLATINUM ZONDEREINDE

First Respondent

MORAKA ABEL MAKGAA N.O

Second Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

Third Respondent

Heard: 20 March 2025

Delivered: 15 October 2025

JUDGMENT

MUSIKER, AJ

Introduction

- [1] This is a review application, in terms of which the Applicant (Gula) seeks to review and set aside the arbitration award of the Second Respondent (Commissioner) dated 25 April 2022.

[2] The review application is opposed by the First Respondent.

Background

[3] Gula was employed by the First Respondent as a Shift Supervisor reporting to Ms Sibitso Sulman (Sulman), the Mine overseer.

[4] On 1 October 2021, Gula was legally appointed by Sulman for sections 4/16 and 4/19 UG stopes. The legal appointment was for a period of one month.

[5] It is common cause between the parties that Gula did not proceed underground on 14 and 15 October 2021.

[6] Gula was charged with the following acts of alleged misconduct:

'failure to adhere to your legal responsibilities and duties in that on 14 October 2021 and 15 October 2021 respectively, you failed to follow a lawful and reasonable instruction issued to you by your Mine Overseer (S Sulman) to report underground to your working places, 4/16 Stope and 4/19 Stope, to perform your legal responsibilities and duties as a section 2.15.1 appointee in terms of the Mine Health and Safety Act, as a result another Shift Supervisor was appointed in your area of responsibility.'

[7] On 14 December 2022, Gula was dismissed by the First Respondent. Aggrieved by the dismissal, an unfair dismissal dispute was lodged at the Third Respondent.

[8] The unfair dismissal dispute was arbitrated on 22 April 2022 by the Commissioner, who ultimately dismissed the Applicant's case.

[9] Gula now seeks to review and set aside the findings of the Commissioner, and in so doing, raises the following grounds for review:

9.1 The decision of the Commissioner is unreasonable;

9.2 The Commissioner committed misconduct in relation to his duties as commissioner;

9.3 Gross irregularities in the conduct of arbitration proceedings; and

9.4 The Commissioner failed to apply the principle of probable version.

Grounds for review

[10] In his founding and supplementary papers, the Applicant sets out his grounds for review as follows:

The decision of the Commissioner was unreasonable

10.1 It is the Applicant's case that he was humiliated by Sulman, and the Commissioner accepted her version over the version presented by Gula.

10.2 The Commissioner relied upon hearsay evidence.

10.3 The appointment of William Komane.

10.4 There was no instruction given.

Misconduct in relation to the duties of the Commissioner

10.5 The Commissioner relied upon the disputed minutes of the disciplinary enquiry.

Gross irregularities in the conduct of the arbitration proceedings

10.6 The Commissioner failed to assist an unrepresented individual.

Failure to apply the principles of probable version

10.7 The Commissioner failed to make an assessment on the probable version, as he had two mutually destructive versions before him

[11] The grounds for review were largely narrowed at the hearing of the review application in that the Applicant focused primarily on the theme that the award rendered by the Commissioner was irrational and unreasonable in that he failed to consider that:

11.1 Gula was humiliated by his superior shortly prior to the incident;

11.2 The verbal instruction given to Gula; and

11.3 The legal responsibilities that are contained in the charge.

Gula was humiliated by his superior shortly before the incident:

[12] The Applicant claimed that the Commissioner failed to consider that Gula was humiliated by Sulman in the presence of his colleagues when Sulman told Gula that he was 'useless'. The Applicant goes further in alleging that the Commissioner failed in his duties to explain to Gula, an unrepresented individual, that he was required to put this version to Sulman during cross-examination.

[13] The First Respondent argued that the Commissioner considered that Gula was unable to prove that there was some kind of *mala fide* abuse of position on the part of Ms Sulman. Gula failed to establish that Sulman embarrassed him in the presence of his peers, as the allegations were never put to Sulman, and as such, the evidence of the alleged embarrassment remained untested.

[14] The First Respondent states that the Commissioner did not fail in his duties and advised Gula that he was obliged to put versions to the witness. This is evidenced by the following exchange between Gula and the Commissioner:

'COMMISSIONER: I was under no obligation to go underground you must put it to her... (intervenes)

MR GULA: Yes Commissioner, I was going to put that on my closing argument but.... (intervenes)

COMMISSIONER: no but you must allow her to comment ne.

MR GULA: all right.

COMMISSIONER: you must not.... (intervenes) to leave because that evidence will be unchallenged.'

The verbal instruction:

- [15] Gula contests the fact that there was no written instruction for Gula to proceed underground, and thus Sulman's alleged instruction amounts to no instruction at all.
- [16] The First Respondent submits that it is the very function of a shift supervisor to proceed underground daily and that a written instruction for Gula to have fulfilled his function is not reasonably necessary or practical under the circumstances.
- [17] The Commissioner found that it would not have been practically possible for Sulman to have, in every instance, issued a written instruction to her subordinates and that a verbal instruction given by Sulman to Gula was indeed an instruction; Gula's failure to abide by the instruction was illogical.

The legal responsibilities as contained in The Regulation:

- [18] As the First Respondent operates a mine, the provisions of the Mine Health and Safety Act¹, together with its Regulations², apply to it and its employees. In terms of Regulation 2.15.5:

'Each shift boss shall inspect all workings in his section as frequently as he may deem necessary in the interest of safety and health: Provided that –

- a. He shall inspect every working face in his section which has been blasted and in which persons are working within two working days of each blast therein;
- b. He shall inspect all other workings at least once every week at intervals not exceeding 10 days; and
- c. He shall daily during his shift –
 - (i) Inspect at least one working of each ganger or miner under his charge who is directly concerned with current blasting operations, and

¹ Act 29 of 1996.

² GNR 992 of 1970: Mines and Works Regulations.

- (ii) Satisfy himself by consultation with each such ganger or miner, or by personal inspection, that work is proceeding safely and in accordance with the regulations in every working of such ganger or miner. Each such consultation shall take place within the area for which the ganger or miner is responsible.'

[19] The Applicant and the First Respondent differ in their interpretation of the Regulation:

- 19.1 The Applicant contends that a shift supervisor is required to proceed underground '*as frequently as he may deem necessary*'. Thus, there is no obligation on the Shift Supervisor to proceed underground daily;
- 19.2 The First Respondent submits that the Regulation sets out that the shift supervisor '*shall daily inspect at least one working each granger or miner under his charge*', resulting in an obligation to proceed underground on a daily basis;
- 19.3 The First Respondent further submits that the normal and regular function of a shift supervisor is to proceed underground on a daily basis.

[20] The Commissioner, in dismissing the unfair dismissal dispute, concludes that Gula's absence from the underground constitutes an unauthorised absence which essentially left the First Respondent vulnerable to health and safety risks as well as potential financial and reputational harm.

Analysis

[21] An underlying theme of the dispute before me was whether the Commissioner erred in finding that Gula was obligated, in terms of his appointment under Regulation 2.15.5, to proceed underground on 14 and 15 October 2021. Three themes are common cause between both parties:

- 21.1 Gula was appointed as a shift boss;
- 21.2 Gula's appointment is regulated by Regulation 2.15.5; and

21.3 Gula did not proceed underground on 14 and 15 October 2022.

- [22] Upon interpretation of the Regulation, it is clear that the employee is required to inspect one ganger or miner and ensure that the mining is being done safely and in accordance with Regulations in the area that the ganger or miner conducts their business. The Regulation clearly states that the inspection is to be done daily.
- [23] As Gula did not proceed underground on 14 October 2021, and in satisfaction of the Regulation, Sulman was required to appoint Kumane in order to fulfil the function and comply with safety standards. There would be no reason for Sulman to have appointed Kumane if there was no need for Gula to have proceeded underground on that day.
- [24] I am of the view that even if the Commissioner were to have accepted that Sulman embarrassed Gula in the presence of his peers, I do not believe that this would have taken the dispute any further. Gula was obliged by the content of the Regulation to proceed underground, regardless of the interactions and exchange between himself and Sulman. Gula, through his actions, proved that he had no intention to proceed underground.
- [25] I believe that Gula's interpretation of the Regulation was incorrect and no more than a convenient way in which to circumvent his obligations to proceed underground on 14 and 15 October 2022. I believe that Gula was duty-bound to proceed underground and that his failure to do so not only constitutes a safety risk but also gross misconduct.
- [26] Safety in the mining industry is to be safeguarded at all costs, and any deviation therefrom is to be considered gross misconduct.
- [27] There is no proof before me that the Commissioner deviated from the duties of a reasonable commissioner. The Commissioner guided Gula in his cross-examination. In this regard, the record of proceedings speaks for itself.
- [28] It is as a result of the above that I do not believe that another decision maker, faced with the same facts as the Commissioner, would have arrived at a

finding substantially different to that of the Commissioner. Accordingly, the arbitration award of the Commissioner has not met the threshold for this Court to justify an intervention in the findings of the Commissioner. Accordingly, the review application must fail.

Costs

[29] I have had regard to the requirements of law and fairness in considering costs, and having done so, I am of the view that a cost order is not warranted in this matter.

[30] In the premises, I make the following orders:

Order

1. The review application is dismissed.
2. There is no order as to costs.

N.S. Musiker

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: C.P Naude

Instructed by: Isaac Teke Mothibe Attorneys

For the Respondent: Victor Mndebele

Instructed by: Webber Wentzel

LABOUR COURT