IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN NOT REPORTABLE

CASE NO **D196/01**

DATE HEARD: 27/02/03

DATE DELIVERED: 27/02/03

In the matter between:

IRIS NGOBESE AND FOUR OTHERS Applicants

and

PHILIP Van Zyl AND OTHERS Respondents

JUDGMENT ON DELIVERED BY THE HONOURABLE MS JUSTICE PILLAY ON 27 FEBRUARY 2003

TRANSCRIBER
SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN

JUDGMENT 27 FEBRUARY 2003

PILLAY J

[1] This is an application to review and set aside the award of the first respondent Commissioner. The Commissioner confirmed the dismissal of the applicants. The applicants

had been charged with, firstly, the failure to control stock losses at under 2%, as per the company norm, (the losses amounted to 16,25%) and secondly, the failure to comply with agreed stock loss action planned.

[2] I do not intend to deal with all the grounds of review that the applicant raises. The first ground of review is that the Commissioner committed a gross irregularity by holding that the stock loss norm of 2% was agreed to between the respondent and two trade unions. Whatever the Commissioner's comments were about the agreement between the respondent and two trade unions, the material aspect of that evidence is that the norm of 2% was accepted as being that of the respondent's standard for compliance.

[3] The further ground of review relating to membership of the applicants to certain trade unions was irrelevant to the issues in dispute before the Commissioner.

[4] The next ground of review was that the Commissioner committed a gross irregularity in failing to appreciate that the cause of the shrinkage was beyond the applicants'

control, that the applicants were overworked and that there were insufficient employees at the branch.

[5] The undisputed fact before the Commissioner was that the parties had agreed to a stock loss plan. That was the plan that the applicants had to implement. It was common cause that the applicants had not implemented that plan, and the Commissioner was entitled to find as he did.

[6] Be that as it may, even if the Commissioner was wrong in this regard, his reasons appear on page 22 of the record, where he states as follows,

> "Iris complained about Grobler not listening to her complaints and not giving her his support. Much of the applicants' case was based on this lack of support. It is, however, significant to note that Grobler was also the area manager when the stock loss was at its lowest level of approximately 1,33%. Grobler, in any case, explained that the staff

> complement was determined according to the turnover of a store. A number of other stores which had a similar turnover had a similar staff complement."

[7] Clearly the Commissioner applied his mind to the applicants' complaints and defence. He obviously rejected it and preferred the evidence of Mr Grobler. From Mr Grobler's evidence it is manifest that there is an objective norm for the staffing of stores. The Commissioner was entitled to accept that evidence and to reject that of the applicants.

[8] The next ground of review is that the Commissioner committed a gross irregularity in failing to find that the company was responsible for the stock losses at the branch because the company's witnesses admitted during the arbitration that it was the administration which caused the stock loss.

[9] Here again the evidence before the Commissioner was that the stock losses had fluctuated as follows: in 1997 the stock

loss amounted to 4,78%; in 1998, 24,10%; during 1999, 1,33%. If the administration was the cause of the stock loss then it would have persisted over that period. These statistics clearly indicate that the problem could not have been one of administration because, if it was, then there would have been a consistent trend in the stock losses over those years.

[10] Another ground of review is that the Commissioner committed a gross irregularity in failing to find that the theft committed by outsiders was one of the main reasons for the shrinkage. The Commissioner applied his mind to this submission, and his reasoning appears as follows,

> "Much was made about the lack of security guards, but again both Grobler and Stone explained that there was no correlation between the number of security guards and the level of stock loss. It was also significant to note that not a single case of shoplifting or grab-and-run had been reported to the police between

> 8 February 2000 and 15 March 2000. The single incident referred to by Iris could in no way have been responsible for a loss of more than R150 000-00."

It is implied from this reasoning that the Commissioner did not accept the submission that outsiders were the main causes of the shrinkage.

[11] These were the main grounds of review and I do not intend to deal with any of the others. In any event, they were not crucial to the Commissioner's decision.

[12] In all the circumstances the application is dismissed with costs to be paid by the applicants, jointly and severally the one paying the others to absolved.

PILLAY, J

APPEARANCES:

FOR THE APPLICANT : MR JAFTA OF JAFTA & CO.

FOR THE RESPONDENT : MR ALEXANDER OF DENEYS

REITZ INC.