

IN THE LABOUR COURT OF SOUTH AFRICA

Case Number: J362/98

Before Landman J

In the matter between:

**MARIA MATHEWS**

Applicant

and

**ADV W HUTCHINSON**

1st Respondent

**CCMA**

2nd Respondent

**WOOLWORTHS STORES**

2nd Respondent

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**PRESIDING JUDGE:**

**Landman J**

**ON BEHALF OF APPLICANT:**

**Mr Matshaba of SACCAWU**

**ON BEHALF OF RESPONDENT:**

**Adv F A Boda instructed by Werksmans Attorneys**

**PLACE OF HEARING:**

**Johannesburg**

**DATE OF HEARING:**

**10 June 1998**

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**JUDGMENT**

[1] Maria Mathews, the applicant, was employed as a trainee manager by Woolworths Stores, the 3rd respondent. She was charged with intentional/negligent conduct regarding the store's cash float count sheet and dismissed. She referred a dispute to the CCMA, the 2nd respondent. The alleged unfair dismissal was arbitrated by a commissioner, the 1st respondent.

[2] The applicant was dissatisfied with the award and seeks to have the award reviewed and set aside in this court.

[3] The application was out of time but having regards to the prospects of success I have decided to condone the late application.

[4] I have had some difficulty in ascertaining precisely what evidence served before the commissioner. I was assisted in this respect by the notes which

Tanya Cohen (the Human Resources manager) took of the arbitration proceedings and by reading the bundle of documents which served before the commissioner. The commissioner's own notes have not been supplied. Evidently the commissioner became aware of this review for he wrote to the parties drawing their attention to the fact that the papers had not been served upon him. Mr Matshaba, for the union, assured me that the papers were re-served. It does not appear as if the commissioner was contacted thereafter. This should have been done.

[5] The applicant's application does not set out clearly the defect which would entitle this court to interfere with the award. I am however able to draw an inference as to what is meant but the union should take note that in future its papers must identify the defect as contemplated in s 145 of the Act or some other applicable section.

[6] It is unacceptable to present the court with copies of exhibits and moreover copies which are incomplete. Both parties are guilty in this respect.

[7] My reading of the evidence before the commissioner has caused me grave doubts as to whether justice has been done in this case. In my opinion the

commissioner has misdirected himself in the following respects regarding the evidence presented to him:

1. The commissioner states that the applicant was in overall charge of the float at the Woolworths branch. This is true as from 16:00 on 3 April 1997. Prior to that time one Rambau was in charge of the float. When the money went missing, as it is common cause it did, it was during the period that Rambau was in charge of the float. The commissioner did not appreciate this.

2. The commissioner says that R18 500 was taken from the safe. This is incorrect and an over simplification of the facts. The applicant received R18 500 from a cashier. The applicant and the cashier verified and signed for the amount. This amount is recorded in the cash office documentation. See page 150 of the papers. This amount was placed in a transparent bag and sealed. It was placed by the applicant in the safe. It was there when the applicant went on an hour long lunch break. During the break and thereafter the money was in the custody of Rambau although applicant access to it. Applicant says that Rambau broke the seal on the bag.

3. The commissioner found that the cash was counted. The person who would have done this would have been Rambau and not the applicant. The

commissioner seems not to have appreciated this.

4. When the float sheet was being prepared it was done by the applicant. Rambau called out the figure of R13 500 to her. She entered this on the float sheet. There is no reason why the figure should not have been less than the amount taken from the cashier as some of this money was used to pay casual wages. The practice of calling out tallies was one known to the applicant's supervisor Govender. In theory the applicant should have counted the money and checked but she did not do this.

5. Because the applicant had followed the usual practice known to her employer there was no reason, at this stage, for the applicant to have suspected that money was missing or that there was a shortfall. If there was a discrepancy she should have picked it up at the stage that she balanced the float sheet using the "brought forward figures". This stage has not yet been reached but the commissioner has found that the discrepancy should have been picked up. This finding is not supported by the evidence.

6. The next stage was to balance the float count sheet. To do this the applicant had to have the "brought forward figure". This figure was entered in a

book. The book was missing. The book appears to have been under the control of Rambau. The next day the applicant reported the book missing. Govendor confirms this.

7. In the meanwhile there were two permissible way to obtain the “brought forward figure”. The one was to phone Fidelity Guards. The other was to work back to the figure. The applicant chose to work back to the figure. She did this. She says it balanced. She gave details of her calculations. The commissioner rejected her evidence. He found that she would have found a R5000 shortage or if she made an error in her calculations she could not have made an R5000 error. There was no attempt to show that the calculations which the applicant said she made were incorrect. Nor, more importantly, is there in evidence to show that the R5000 shortage would have been shown up by making a correct calculation. It might have but then it must at least have been demonstrated. It is a grave misdirection not to have considered this.

8. As the exercise described above was not done it does not follow that it can be said that the applicant fabricated a balance as the commissioner says she did.

9. The commissioner concludes that if the applicant had not been negligent the shortage would have been immediately pinpointed to its source. This is not borne out by the evidence. The shortage of cash can be pinpointed. It was in the custody of Rambau and the applicant would also have had access to it. There may have been others but there is no evidence to this effect.

10. The commissioner castigates the applicant for a breach of trust saying that she raised a false defence (I have dealt with this) and by saying that she refused to accept responsibility for the loss. If she did not steal the money, and it is not alleged that she did, she is entitled to say that she was not responsible even though, from a formal point of view, she bears the responsibility for the shortage and must make it good.

11. The general attack on the integrity of the applicant ignores material evidence. The applicant reported the book missing. The applicant discovered the shortage and brought it to the attention of her superior. This does not smack of a coverup. It indicates honesty.

12. It is incomprehensible that a credibility finding can be made regarding the application without hearing the evidence of Rambau. It means that the

commissioner probably relied on unreliable hearsay evidence.

13. The applicant was negligent in executing her duty by not checking the cash and by relying on Rambau. Does this mean that continuation of the employment relationship was intolerable. The employee had been employed for 7 years and was a trainee. There is no suggestion why a transfer to a position not involving the control of money was not considered. This was a material omission. Having regard to the size and nature of Woolworths the organisation must have been able to have accommodated her in a non-custodian position.

[8] In the result the cumulative effect of the misdirections amount to a gross irregularity and failure of justice. The commissioner did not apply his mind to the evidence and the subtle nuances of the evidence. He misunderstood the import of the evidence and attributed motives to the applicant which could not reasonably be drawn. He relied on suspect evidence.

[9] Having said this the commissioner is correct in finding that the applicant was guilty of negligence. Her dismissal however was unwarranted. The arbitration award is accordingly reviewed and set aside and substituted by an award reading:



“The applicant is found guilty of negligence. The applicant is given a final written warning for this offence. The applicant is reinstated in her employment with Woolworths save that Woolworths is entitled to transfer her to any other suitable department or position for which she is qualified. The applicant is directed, without prejudice to her right to recover the amount from the thief, to make good the loss of R5000 to Woolworths by 31 December 1998.

[10] The Respondent is ordered to pay the applicant’s costs.

**SIGNED AND DATED AT JOHANNESBURG ON THIS 12TH DAY OF JUNE  
1998**

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**JUDGE A A LANDMAN**