

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

CASE NO JR 255/06

In the matter between:

GEZANI JULIUS BALOYI

Applicant

and

**THE MEMBER OF THE EXECUTIVE
COUNCIL FOR HEALTH & SOCIAL
DEVELOPMENT, LIMPOPO**

First Respondent

**THE HEAD OF DEPARTMENT
HEALTH & SOCIAL DEVELOPMENT,
LIMPOPO**

Second Respondent

PHWSBC

Third Respondent

DENGA MULIMA

Fourth Respondent

JUDGMENT

COETZEE AJ:

Introduction

1. Applicant seeks to review and set aside the arbitration award finding his dismissal both procedurally and substantively fair.

Background

2. The Employer dismissed Applicant on charges relating to the requisitioning of services to repair equipment at various clinics while the services were not required and had not been rendered.
3. In addition, it is alleged that Applicant authorised payment for those services without ensuring that the services had been rendered.
4. A transcript of the Arbitrator's handwritten notes discloses that Applicant challenged the procedural fairness of his dismissal on the basis that he had not been afforded the opportunity to cross-examine the Employer's witnesses whose signatures appear on the tender documentation.
5. In addition, Applicant in the arbitration challenged the substantive fairness of his dismissal on the basis that there was not sufficient evidence before the disciplinary enquiry that warrants a dismissal.
6. Applicant challenges the Arbitrator's understanding of the procurement procedures and payment approvals.
7. The Applicant does not succinctly set out the grounds for review in his founding affidavit.
8. The matter was previously set down, but postponed to enable Applicant to file a proper transcript of the proceedings. Applicant filed a transcript.
9. The record now consists of the *handwritten notes* of the Arbitrator and the transcript thereof accompanied by a supplementary affidavit filed 8 April 2009.
10. The handwritten notes appear on pages 34 to 50 of the Court Record and the transcription on pages 87 to 94.
11. The Arbitrator in his handwritten notes ("the handwritten notes" recorded a number of concessions made by the Applicant in cross-examination.

The concessions have been transcribed and appear on pages 93 and 94 and are not repeated in this judgment.

12. When Applicant filed his notice in terms of Rule 7A(8)(b) on 27 March 2008 accompanied by the handwritten notes, he elected to stand by his notice of motion and called upon Respondents to deliver their answering affidavits should they wish to oppose the application.
13. At that time, Applicant had no complaint with regard to the correctness of the handwritten notes.
14. When filing the supplementary affidavit of 2 September 2008 Applicant challenged the correctness of the handwritten notes of Fourth Respondent on the basis that the Arbitrator recorded the concessions while no such concessions had been made.
15. Applicant did not raise in his founding affidavit a complaint against the correctness of the record of the proceedings before the Arbitrator. This is probably so because, at the time, he might not have had a copy thereof available.
16. Applicant had the opportunity when filing his initial supplementary affidavit with the transcript of the proceedings, to deal with the correctness of the Arbitrator's notes containing the concessions. Instead, he elected to stand by his founding affidavit and filed the notes with the concessions.
17. Applicant has not served his recent objections to the notes on the author thereof for his comments.
18. The supplementary affidavit containing the comments was served on the attorneys for the First and Second Respondents only.
19. I am of the view that the matter should be considered on the record of the proceedings as contained in the Arbitrator's handwritten notes (as typed) and not as the Applicant wishes them to be corrected.

20. Applicant has initially also elected not to pursue an argument in the heads of argument filed on his behalf that the notes should be corrected by deleting the concessions. In the subsequent heads dated 10 December 2010 reference is made thereto.
21. Applicant has formulated his attack on the arbitration award in the form of complaints:
- 18.1 The Arbitrator has showed a lack of understanding of the internal procedures.
- 18.2 The Arbitrator failed to deal with the substantial merits of the dispute.
- 18.3 The Arbitrator's findings are based on what the Arbitrator termed "uncontradicted and/or undisputed submission by the Employer that the management of the clinics would use "internal works order form" to sanction transactions while that was not true.
- 18.4 The Arbitrator lost sight of the fact that in Government service offices worked "in tandem" which means that when Applicant received an instruction that certain equipment required service he would give effect to that instruction.
- 18.5 The Arbitrator's award goes against the weight of evidence and certain crucial matters were either ignored or deliberately "disturbed".

ANALYSIS OF THE EVIDENCE AND ARGUMENT

22. Applicant's complaints are in the nature of an appeal rather than in the form of a review.
23. The Arbitrator in the award deals extensively with the evidence presented in the arbitration.

24. The Arbitrator quite correctly held that Applicant was not denied the opportunity to cross-examine the witnesses during the disciplinary enquiry as alleged in the Arbitration.

25. Taking into account the concessions Applicant made in the arbitration the Arbitrator's award is not one that a reasonable Arbitrator could not have made.

Order

26. The application is dismissed.

27. There is no order as to costs.

COETZEE AJ
ACTING JUDGE OF THE LABOUR COURT

DATE OF HEARING: 21 DECEMBER 2010

DATE OF JUDGMENT: 21 December 2010

APPEARANCES:
FOR APPLICANT: Mr Ramushu of attorneys Ramushu Mashile
Twala Inc

FOR THE RESPONDENTS: No appearance