



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Case no: C 943/12

In the matter between:

VOERMOL FEEDS (PTY) LTD

Applicant

and

CCMA

First Respondent

COMMISSIONER M LOYSON N.O.

Second Respondent

DR JASPER COETZEE

Third Respondent

Delivered: 29 November 2013

RULING ON LEAVE TO APPEAL

STEENKAMP J

Introduction

- [1] The applicant seeks leave to appeal against my *ex tempore* judgment of 9 October 2013.
- [2] I found that the arbitration award by the second respondent was not so unreasonable that no other commissioner could have come to the same conclusion.

Grounds of appeal

[3] The applicant raises the following grounds of appeal:

- 3.1 The court failed to distinguish between charges preferred against the employee, namely submitting duplicate claims and incurring “quick succession” claims.
- 3.2 The court (and the arbitrator) disregarded evidence of fraud.
- 3.3 The award of compensation was not “just and equitable”.
- 3.4 The court should have set aside the arbitrator’s finding on costs.

Evaluation / Analysis

[4] Although the grounds of review were not clearly delineated, I will deal with them under these broad categories.

Distinguishing between the charges

[5] The applicant says that the employee benefitted from the “quick succession” claims. But it is common cause that the claims were not in breach of any rule. The arbitrator’s findings in this regard are not open to review, and there is no reasonable prospect that another court will come to a different conclusion.

[6] The award, quite simply, ticks all the boxes enumerated by the LAC in *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA & others*¹:

- 6.1 In terms of his duty to deal with the matter with a minimum of legal formalities, the process that the arbitrator employed gave the parties a full opportunity to have their say in respect of the dispute.
- 6.2 The arbitrator properly identified the dispute. He was required to arbitrate.
- 6.3 The arbitrator understood the nature of the dispute. He was required to arbitrate.

¹ JA 2/2012, 4 November 2012 at para [20].

6.4 The arbitrator dealt with the substantial merits of the dispute.

6.5 The arbitrator's decision was not so unreasonable that no other arbitrator could have come to the same decision.

Evidence of fraud

[7] It is clear from Moulton's evidence that, in response to a question whether, in his experience as a state prosecutor, he would proceed with a fraud claim in court, his response was in the negative. Even though that referred to his experience in a criminal court, the fact remains that he did not find any evidence of fraud.

Duplicate invoices submitted in error

[8] Moulton accepted that the duplicate aims were submitted in error. That was, in his view, the only "legitimate explanation". The arbitrator found that the extent of the employee's errors was minimal. That is not an unreasonable conclusion.

No intention to defraud

[9] Moulton conceded that, in his view, the employee did not have any intention to defraud the employer. That is the evidence. There is no reasonable prospect that another court will come to a different conclusion, and thus find that the conclusion reached by the arbitrator was unreasonable.

Credibility findings

[10] It would be exceptional for a court in review proceedings to interfere with an arbitrator's findings on credibility. There is no basis for this court or another court to do so in this case.

Compensation and costs

[11] When awarding compensation and costs an arbitrator is exercising a discretion. A court will not lightly interfere with such a discretion, especially not on review.

[12] Even on appeal, a higher court will not lightly interfere with the discretion of the court *a quo* on compensation. As the Labour Appeal Court pointed out in *Kemp t/a Centralmed v Rawlins*:²

“There are many factors that are relevant to the question whether the court should or should not order the employer to pay compensation.

...

From the above it is clear that in the case of a narrow discretion – that is, a situation where the tribunal or court has available to it a number of courses from which to choose – its decision can only be interfered with by a court of appeal on very limited grounds such as where the tribunal or court –

- (a) did not exercise a judicial discretion; or
- (b) exercised its discretion capriciously; or
- (c) exercised its discretion upon a wrong principle; or
- (d) has not brought its unbiased judgment to bear on the question; or
- (e) has not acted for substantial reasons (see *Ex Parte Neethling* 1951 (4) SA 331 (A) at 335); or
- (f) has misconducted itself on the facts (Constitutional Court judgment in *National Coalition for Gay & Lesbian Equality* at para 11); or
- (g) reached a decision in which the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles (Constitutional Court judgment in *National Coalition for Gay & Lesbian Equality* at para 11).

...

If the court or arbitrator answers that the requirements of fairness will be better met by awarding the employee compensation, then compensation will be awarded.”

[13] Even though the court may have awarded a different sum of compensation, and even if this court were of the view that it would not have awarded costs at arbitration, the decision reached by the arbitrator in this regard is not so unreasonable that no other arbitrator could have come to that decision.

² (2009) 30 ILJ 2677 (LAC); [2009] 11 BLLR 1027 (LAC) paras [20] – [21].

[14] In conclusion, there are no reasonable prospects that another court will come to a different conclusion, given the strict test of review outlined in *Kloof Gold Mining*.

Order

The application for leave to appeal is dismissed with costs.

Steenkamp J

APPEARANCES

APPLICANT: Edward Nathan Sonnenbergs.

THIRD RESPONDENT: Andre Olivier attorney.