



REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Not Reportable
C773/2013

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA
T/A METRORAIL

Applicant

And

SHAWN ROMAN
ZOLA MADOTYENI N.O.
THE COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION:

First Respondent
 Second Respondent

Third Respondent

Date heard: 7 October 2014

Delivered: 5 February 2015

JUDGMENT

RABKIN-NAICKER J

- [1] This is an opposed application to review an arbitration award under case number WECT 9981-13.

- [2] The first respondent (the employee) was employed as an area manager by the applicant until he was dismissed on the 25 June 2013, having been found guilty of the following charges in an internal disciplinary enquiry:

“fraud or serious misconduct that you claimed time (January 2013) for Mrs Petula Smith (TSA) knowing that she was absent from work;

serious negligence in that you claimed time (January 2012) for Mrs

Petula Smith (TSA) without verifying that she was on duty for the period time was claimed (SIC);

serious misconduct in that on 17/06/2011, you failed to take corrective action when you were informed by Mr Hartnick (STSA) of Mrs Petula Smith’s unauthorised absence from work with the time claimed;

Serious misconduct in that on 07/06/2012, you disregarded a

reasonable and lawful instruction issued by Mr H Smith (act

CSM/north) to sign on and off daily, during weekdays at your nearest station which is Brackenfell Station”.

- [3] The second respondent (the commissioner) found that the dismissal of the employee was procedurally fair but substantively unfair and ordered his reinstatement with effect from 8 October 2013, to the position he occupied or to a similar position, on the same or similar conditions of service that prevailed before his dismissal. He also ordered that the employer impose a final written warning on the employee.

- [4] The grounds of review set out in the founding papers are that the commissioner ignored relevant and material evidence and failed to apply his mind to it, rendering the outcome of the award manifestly unreasonable. In particular, the applicant states that the commissioner could not have reasonably come to the conclusion that the employment relationship between it and the employee had not broken down. In this finding, it submits, he clearly ignored the acrimonious and open hostility between the parties at the arbitration. It is argued that having noted that the employee was entirely unrepentant and also that he had made false accusations that the

management were corrupt, to then conclude that the relationship was not rendered intolerable and incapable of continuation is glaringly unreasonable.

- [5] It is also submitted that the commissioner committed an error of law in finding that the applicant company had failed to prove that the employee committed fraud.
- [6] It is apparent from the founding papers that the applicant company has not been able to set out the salient material facts in respect of the background of the dispute. The reason for this is that the award itself does not contain a summary of the evidence given at the arbitration in a manner that reveals the background to the dispute. In fact the evidence of the employee in chief, is not recorded in the award, and as a result it is extremely difficult to determine whether the award reached by the commissioner is one that a reasonable commissioner could or could not reach.
- [7] The reason for the problematic content of the arbitration award may well have been the failure of the commissioner to take proper notes during the proceedings. The way that he conducted the proceedings may also have led to his inability to cogently summarize the evidence before him.
- [8] The upshot of the above is that this court is not in a position to properly consider this application. In my view the award, on its face, stands to be reviewed and set aside. Although it is not expected of commissioners to produce a long and detailed award, the very basic task of summarizing the evidence of the parties properly and in logical sequence is required. I therefore consider it to be in the interests of justice that this award be reviewed and set aside and remitted for rehearing before a commissioner other than second respondent.
- [9] In all the circumstances therefor I make the following order:
1. The award under case number WECT 9981-13 is reviewed and set aside
 2. The dispute is referred for rehearing under the auspices of the third respondent, before a commissioner other than second respondent.

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: Werkmans Attorneys

First Respondent: Carlo Swanepoel Attorneys

LABOUR COURT