



REPUBLIC OF SOUTH AFRICA

Not reportable
Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN
JUDGMENT

Case no: J 1031/10

In the matter between:

GIOVANNI JACOBS

Applicant

and

CCMA

First Respondent

JOSEPH THEE N.O.

Second Respondent

SOUTH AFRICAN POST OFFICE

Third Respondent

Heard: 10 February 2015

Delivered: 13 February 2015

Summary: Review – misconduct – conclusion reasonable.

JUDGMENT

STEENKAMP J

Introduction

- [1] The applicant, Mr Giovanni Jacobs, seeks to have an arbitration award by the second respondent, commissioner Joseph Thee, reviewed and set aside.

- [2] Jacobs was dismissed by the third respondent, the South African Post Office. The commissioner found that his dismissal was fair.

Background facts

- [3] Jacobs was a branch manager at the West Coast Mall. The branch manager at Vredenburg, Llewellyn Visagie, was instructed to conduct a stock audit at the West Coast Mall branch. When he got there, Jacobs volunteered the information that his “float” was short in an amount of R100, 00. He had put in the amount of R490 instead of R590.
- [4] Visagie checked the money and found that R100 was short. He offered Jacobs the opportunity to pay in the money but Jacobs refused.
- [5] An investigator, Andre Opperman, testified that Jacobs at first admitted that the money was short, but then denied it.
- [6] At a disciplinary hearing, the chairperson found that Jacobs had indeed overstated the cash on hand. The Post Office dismissed him.
- [7] The arbitrator was satisfied that the Post Office had a rule in place dealing with the procedure to be followed in dealing with shortages and discrepancies. Jacobs was aware of the rule. The arbitrator found Visagie’s evidence more credible than that of Jacobs, who simply denied the misconduct after initially having admitted that the amount was short. With regard to sanction, the arbitrator considered the fact that Jacobs was this earlier admission; and that he had shown no remorse. He found dismissal to be fair.

Evaluation

- [8] In the review hearing, Mr *Van Zyl*, for the applicant, essentially re-argued his client’s case. He attempted to cast doubt on the way the investigation was conducted, e.g. the question whether two people were present when the money was counted. He also argued that there was no clear evidence that the R100 actually went missing.
- [9] Neither in the founding affidavit nor in the oral argument did the applicant set out any clear grounds of review. This was a case that was squarely premised on the *Sidumo* test, i.e. whether the conclusion reached by the

arbitrator was so unreasonable that no other arbitrator could have come to the same conclusion. (The test is not, as Mr *Van Zyl* submitted, whether another arbitrator could have come to a different conclusion. It is the exact opposite. It may well be that another arbitrator could reasonably have come to a different conclusion. That does not make the award reviewable. It is only open to review if it is so unreasonable that *no* other arbitrator could have come to the same conclusion).

- [10] The arbitrator carefully analysed the evidence before him. He assessed the credibility of the witnesses. He made a factual finding that Jacobs had contravened the rule in question. He considered the question whether, taking the contravention and the employee's responsibilities into account, dismissal was a fair sanction. He concluded that it was. That falls within a range of reasonable outcomes. The award is not open to review, as opposed to appeal.

Order

The application for review is dismissed.

Steenkamp J

APPEARANCES

APPLICANT: G van Zyl (attorney).