



Not reportable

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT CAPE TOWN

Case no: C831/2018

In the matter between:

**LEWIS STORES (PTY) LTD T/A
BEST HOME AND ELECTRIC**

Applicant

and

NADIA JANSE VAN RENSBURG

First Respondent

SAMUEL BARON (N.O.)

Second Respondent

**THE COMMISSION FOR
MEDIATION, CONCILIATION &
ARBITRATION**

Third Respondent

Date of Set Down: 18 August 2020

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 13h00 on 18 August 2020.

Summary: (Review – unopposed – misconstruing essence of charge)

JUDGMENT

LAGRANGE J

- [1] This is an unopposed review application. The matter was decided on the papers in chambers in keeping with the directives of the court in conducting proceedings during the state of disaster owing to the Covid-19 contagion.
- [2] The first respondent, Ms N Janse van Rensburg ('Janse van Rensburg' or 'the employee'), was dismissed on three charges, which may be summarized thus:
- 2.1 manipulation of stock accounts conducted at three branches of the applicant to reflect nil variances despite the existence of stock shortages amounting in total to approximately R 240,000;
 - 2.2 dereliction of duty in the management of excessive damaged stock, which prevented the ordering of new stock by stores, and
 - 2.3 failing to perform a proper handover to a new branch manager.
- [3] The arbitrator found that Janse van Rensburg's dismissal was procedurally fair but substantively unfair and awarded her four months' remuneration as compensation.
- [4] The arbitrator found Janse van Rensburg not guilty of the first charge. His reasoning was that:
- 4.1 although there was a stock loss at the Knysna store, no evidence was led that Janse van Rensburg had manipulated the stock count;
 - 4.2 similarly, although there was evidence of stock losses at the Oudtshoorn store, there was no evidence of manipulation by Janse van Rensburg;
 - 4.3 although stock was not physically counted for the stock take at the George store, the fact that the wrong procedure was used did not

amount to manipulation by Janse van Rensburg, and there was no evidence that she was aware of stock shortages at the time, and

4.4 the arbitrator also believed that Janse van Rensburg should have been charged with simply following the wrong stock take procedure, which is what her subordinate was charged with.

- [5] In relation to the second charge, the arbitrator accepted that the administration of control of damaged stock was in a dire situation, but that Janse van Rensburg was actively involved in trying to remedy the situation and therefore could not be accused of a complete dereliction of duty in that regard.
- [6] On the third charge, the arbitrator found that the primary reason for the failure to do a proper handover to the incoming store manager at the Oudtshoorn branch was due to a computer failure and in the end the new manager was not held responsible for stock shortages which existed. Moreover even if Janse van Rensburg had contravened the handover policy, there was no deliberate attempt on her part to conceal stock.
- [7] The applicant ('Lewis Stores' or 'the employer') relies principally on the following grounds of review pertaining to his findings on the first charge. The employer claims in this regard that the arbitrator misconstrued the essential nature of the first charge and that the nature of the alleged misconduct was the same as her subordinate was charged with.
- [8] In summary, the first complaint is that the arbitrator failed to appreciate that it was not merely the fact that a physical stock count was not undertaken by Janse van Rensburg, but that she effectively misrepresented that a proper stock take had been done. She also failed to mention that she had been unable to do a physical stock take at the George store because she could not gain access to do so. The essence of the complaint about her conduct was that she represented that a proper physical and stock take had been taken, when she knew it had not and that was fundamentally dishonest.
- [9] Effectively, what Janse van Rensburg did was to take the figures of stock from the stock valuation report, which was the employer's record of what stock ought to be in a particular store and simply entered that on the stock

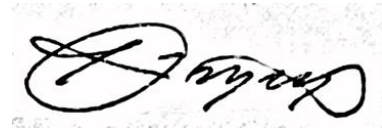
count sheets, which were supposed to reflect the quantity of physical stock identified. Because the two figures would be the same, any discrepancy would not be revealed.

- [10] The second issue was that the arbitrator failed to appreciate that Janse van Rensburg's subordinate was following the wrong procedure simply because Janse van Rensburg had chosen to conduct the stock take in the incorrect manner and, at the time, he was not aware of this.
- [11] It is true that the first charge implied that Janse van Rensburg was aware of stock shortages when she did not conduct a proper physical stock count and in that sense the arbitrator was not unreasonable in finding that she had not intentionally concealed shortages. However, I also agree that this still meant her conduct was fundamentally dishonest in portraying that a proper stock count was done, in circumstances where she would have known that any stock shortages that did exist it would not be revealed because of the way she had compiled the stock count figures deriving them from the valuation report. Essentially she made a misrepresentation that the physical stock had been counted and compared with the recorded stock valuation and no discrepancy was found. In truth, it would have been patently obvious to her that any discrepancies that were found to exist between the actual stock and the stock valuation would have been concealed. Part of her misrepresentations included concealing the fact that she had not been able to gain access to the premises in George to conduct a stock check. Given her senior position as a regional controller responsible for managing a number of stores such conduct was serious enough to warrant her dismissal.
- [12] In relation to the comparison with her subordinate, it is inexplicable why the arbitrator equated his conduct with Janse van Rensburg's. Their levels of responsibility and accountability were clearly different and, he was essentially acting under Janse van Rensburg's instruction in how they conducted the stock take and had been trained by her to perform the stock take in that manner.
- [13] In the circumstances, the arbitrator's findings, in relation to the first charge are not findings that any reasonable arbitrator could have reached on the

evidence before him. All the evidence is contained in the record that was filed, and this is not a matter in which they would be any purpose in remitting the matter back for a fresh arbitration hearing. For the reasons mentioned, the finding of the arbitrator on the first charge and on the substantive fairness of the dismissal stand to be set aside.

Order

- [1] The finding of the second respondent in the arbitration award in case number WEGE 2815-17 handed down on 4 July 2018 in relation to the first charge against the first respondent and his finding that her dismissal was substantively unfair, together with the award of compensation made, are reviewed and set aside and substituted with a finding that the first respondent was guilty on the first charge and that her dismissal was substantively fair.
- [2] No order is made as to costs.



Lagrange J
Judge of the Labour Court of South Africa

Representatives -

For the Applicant:

ENS Incorporated