



IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C25/2019

In the matter between:

THE PSA obo DE WEE

Applicant

and

THE MINISTER: DEPARTMENT OF

HOME AFFAIRS

First Respondent

THE HEAD OF DEPARTMENT: DEPARTMENT OF

HOME AFFAIRS

Second Respondent

COMMISSIONER RAMABULANA N.O.

Third Respondent

GPSSBC

Fourth Respondent

Date heard: 12 May 2020 in Chambers

Delivered: By email on 12 May 2020

JUDGMENT

RABKIN-NAICKER, J

- [1] On the 5 May 2020 the State Attorney Kimberley, on behalf of the first and second respondents, withdrew their opposition to an application for condonation

and review. On the basis of the Directions of the Judge President regarding the National Lockdown, the applicant confirmed that the matter should proceed on the papers.

- [2] The applicant seeks condonation for the late filing of the review application, a period of two months delay. In as far as the review application is concerned, it seeks the setting aside and remittal of the Award under case number GPBC 1361-17.
- [3] Given that the application for condonation is unopposed and the duration of the delay which occurred over the festive season is not excessive, I grant condonation and proceed to consider the review on the merits.
- [4] This is a matter where *ex facie* the Award, it is clear that the Arbitrator committed a gross irregularity and misconstrued the nature of his enquiry, which led to an award that a reasonable decision-maker could not make. The following two paragraphs of the award bear recording:

“65. In relation to charge 1 (which also applies to charge 1 (sic)) applicant’s conduct amounts to more than just being negligent/gross negligent he purposely solemnize and registered an illegal marriage. He created a none-existent marriage for Van Wyk and clouded the National Population register with illegalities and contaminated the national population register.

66. I am satisfied that the respondent proved that the applicant involved himself in misconduct (two acts as per the charge), they have preferred to charge applicant with gross negligent.

67. I have however described applicant’s conduct as amounting to more than just being gross negligent and since this is a hearing de novo, I believe I am entitled to make that conclusion.

68. I can understand the respondent’s interest in removing a delinquent employee who contaminate the National population register on purpose and for personal gain.”
- [5] The Commissioner’s finding on procedural and substantive fairness was thus propelled by the fallacy that he was entitled to find that the employee should have been charged and found guilty of intentional misconduct. A hearing de novo does

not entitle an arbitrator to take on the mantle of employer in this way and decide what the charges against an employee should have been I do not find it necessary to delve into further issues arising from the record before me that support the setting aside of the award.

[6] The applicant seeks that the dispute be remitted to the fourth respondent for adjudication de novo. Given the above I make the following order.

Order

1. The application for condonation is granted.
2. The Award under case number GPB1361/2017 is reviewed and set aside and remitted to the fourth respondent for hearing anew before an arbitrator other than third respondent.



H. Rabkin-Naicker

Judge of the Labour Court

Representation:

Applicant: P.M. Venter instructed by Lovius Block Attorneys