



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

Not Reportable
C705/2019

In the matter between:

CENTRAL AIR SOLUTIONS (PTY) LTD
 and

Applicant

GADHLE MITTAH SHUPPING

First Respondent

**COMMISSION FOR CONCILIATION.
 MEDIATION & ARBITRATION**

Second Respondent

COMMISSIONER DAVID PETERSEN N.O.

Third Respondent

Date heard: 8 June 2021 on the papers

Delivered: Sent 18 October 2021 by email. Deemed delivered on 19 October at 10.00hr.

JUDGMENT

RABKIN-NAICKER J

- [1] This is an unopposed application to review and set aside an arbitration award under case number NC2368/2019. A substantial portion of the record was in Afrikaans and the Court needed assistance in interpreting same. Thus I regret

there was some delay in delivering what is in fact a short judgement. In terms of the Award, the third respondent (the Commissioner) found that the dismissal of the first respondent (the employee) was substantially unfair and awarded her 12 months compensation.

- [2] Essentially the review application is based on a number of irregularities by the Commissioner. The most glaring being that the employee asked for six months compensation at the arbitration but was awarded twelve.
- [3] In addition, as the transcribed record reflects, as well as the Award, the Commissioner failed to conduct the proceedings in a proper manner in that he did not direct the employee herself to give evidence viva voce, merely referring to the fact that she had made written statements. She called witnesses but did not testify herself.
- [4] This extraordinary conduct, amounting to the commission of gross irregularities and misconduct by the Commissioner prevented a fair trial of the issues and could not lead to a reasonable result. The Award is therefore susceptible to review. Unfortunately, given the nature of the conduct of the proceedings the transcript cannot assist the Court in substituting the Award. I therefore make the following order:

Order

1. The Award under case number NC2368/2019 is reviewed and set aside.
2. The dispute is remitted to the second respondent for rehearing before a Commissioner other than third respondent.



H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Representation:

Applicant: Peuper Austin Inc

LABOUR COURT