



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG**

Case No: JR 2250-16

In the matter between:

FOKO BEN PALISO

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

SHAAM FRIEDMAN N.O

Second Respondent

E R SIGNS & SAFETY

Third Respondent

Heard: 14 March 2017

Delivered: 17 March 2017

Summary: (Review – materially incomplete record – grounds of review not properly pleaded – no application for condonation)

INTERLOCUTORY ORDER

LAGRANGE J

Introduction

- [1] In this matter, the applicant has applied to review and set aside an arbitration award in which his dismissal for misconduct was found to be fair.
- [2] The employer led three witnesses in the arbitration proceedings and the applicant was the only witness in his own defence.
- [3] The applicant contends that the commissioner ignored relevant evidence and took account of irrelevant evidence without specifying what evidence he had in mind. He also reiterated his denial that he refused to obey instructions or to sign for acknowledgment of work procedures and argues that he was never issued with a warning for such misconduct in the past.
- [4] In his notice under Rule 7A (8), he stood by this founding affidavit.
- [5] His founding affidavit is an insufficient basis for establishing grounds of review as he never set out the details of any evidence which the arbitrator allegedly ignored or those the arbitrator took account of but should have ignored as irrelevant. If his application was to be determined as it stands, it should be dismissed.
- [6] However, it became apparent to the court that the transcript of the arbitration is incomplete as the applicant has failed to provide a transcript of the evidence led by the employer on the first day of the hearing on 8 April 2016. He should have alerted the court to this at the hearing of the matter as he could hardly have been unaware that the transcript he provided omitted the evidence of the employer's first two witnesses and the evidence in chief of the employer's third witness.
- [7] As things stand presently, the applicant has not complied with paragraph 11.2.5 of the Labour Court Practice Manual which requires him to file the record within 60 days of it being made available by the bargaining council, because he only filed a partial record. As such, his application is deemed withdrawn in terms of paragraph 11.2.3 of the Practice Manual as he failed to apply for an extension of time to file the complete record.
- [8] More seriously, it only became apparent on re-examining the file that the application was only served on the third respondent on 21 October 2016,

whereas the award was handed down on 31 August 2016. In terms of s 145 of the Labour Relations Act, 66 of 1995, the court only has jurisdiction to hear a review application if it is filed within six weeks of the date of it being issued or the applicant being made aware of it, whichever is the later, unless the court condones the late filing of the application on good cause shown. The applicant did not apply for condonation and unless and until condonation is granted, the court has no power to consider the review application. On the face of it, the review application should have been served and filed by 6 October 2016 and accordingly was served about two weeks late.

- [9] There are also anomalies about when the review application was filed with the court as the court file shows it was only filed on 14 December 2014, which means the period of delay in filing the application was even longer, namely two and a half months' late.
- [10] Nonetheless, because the applicant is a lay person and the matter is unopposed thus far, the court is willing to grant him an opportunity to rectify the defects in his application regarding the incomplete record and the absence of a condonation application provided he complies with the order below.

Order

- [11] The applicant must serve and file the remainder of the transcript for the arbitration proceedings which took place on 8 April 2016, by 30 April 2017.
- [12] In the event no digital recording of that day's proceedings is available the applicant must, by 30 April 2017, request the first respondent to convene a meeting attended by all the parties to attempt to reconstruct the record before the end of May 2017 and must file any reconstructed portion of the record by 15 June 2017.
- [13] In the event the applicant fails to file the missing portion of the transcript by 30 April 2017 or the reconstructed portion of the record by 15 June 2017, he must, by 17 June 2017, request further directions and, or alternatively an extension of time from the Labour Court to file the reconstructed record.

- [14] The applicant may file a supplementary affidavit in support of his review application within 10 court days of filing the remainder of the record or reconstructed portion of the record.
- [15] In any event, the applicant must serve and file a condonation application for the late filing of his review application by 21 April 2017, if he intends to pursue his review application further.

Lagrange J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

In person

THIRD RESPONDENT:

No appearance.

LABOUR COURT