

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 2783/17

In the matter between:

NCEBA STEVEN VENA

Applicant

and

CCMA

First Respondent

COMMISSIONER JABULANI MASHABA

Second Respondent

DDL SECURITY SERVICES (PTY) LTD T/A

24/7 SECURITY SERVICES

Third Respondent

Heard: 31 July 2019

Delivered: 2 August 2019

Summary: An opposed review application – The outcome is one that a reasonable decision maker can arrive at. Held: (1) The application is dismissed. (2) Each party to pay its own costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] This is an application seeking to review and set aside an award issued by the second respondent in terms of which, it was found that the dismissal of the applicant was fair. The applicant contends that the award is tainted with defects and thus reviewable under the provisions of

section 145 of the Labour Relations Act¹ (LRA). The application is opposed by the third respondent.

Background facts

- [2] The applicant was employed as a Cluster Manager effective 29 September 2014. He was dismissed on 05 July 2017. On or about 20 June 2017, the third respondent's control room was advised that there was an armed robbery in Parkmore. The applicant advised the caller that one Raider Mushwane (Mushwane) was the night shift manager and should attend to the reported robbery. The applicant left the control room after handing over the phone to Mushwane.
- [3] The third respondent's Operations Manager was contacted and advised of the applicant's refusal to attend to the incident in his area of responsibility-Parkmore. The Operations Manager attempted to speak to the applicant to no success. Owing to that, Mushwane was instructed to attend to the matter instead. Resultantly, the applicant was charged with acts of misconduct. Following a disciplinary hearing, the applicant was found guilty and dismissed. Aggrieved by his dismissal, the applicant referred a dispute alleging unfair dismissal. After hearing evidence at arbitration, the second respondent issued the award under attack. The applicant was displeased with the award and approached this Court for relief.

Grounds of Review

- [4] The applicant alleges that the second respondent committed gross irregularities by failing to take into account evidence, refusing to allow valid evidence, ignoring statutory and legal principles with regard to overtime work, ignored his inputs, unduly assisted the third respondent, failed to apply mind and delivered a biased award.

Evaluation

¹ Act 66 of 1995, as amended.

[5] By now it is trite what the test for review is in this court. The question that needs to be asked is whether the decision is one that a reasonable decision maker may arrive at². Proper consideration of the applicant's grounds of review reveals that what the applicant is actually seeking is an appeal, which power this Court does not have over an arbitration award. There is no dispute that the applicant failed to attend to the incident as reported. There is absolutely no justification for the failure to attend. A finding that the applicant was guilty as charged is consistent with the evidence presented and certainly one that a reasonable commissioner may arrive at. The grounds relied upon by the applicant lack merit.

[6] This finding fits with the evidence presented like a glove. There can be no suggestion that this finding is inconsistent with the evidence presented before him. Thus, this application is bound to fail.

[7] In summary, the second respondent did not commit any irregularity nor misconduct. His findings fall within the bounds of reasonableness. The award is free of any defect thus not reviewable in law.

[8] Regarding costs, I am of a view that an appropriate order to make is for each party to bear its own costs.

[9] In the results I make the following order:

Order

1. The application is dismissed.
2. Each Party to pay its own costs.

GN Moshwana

² See: *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* (2008) 27 ILJ 2405 (CC).

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In Person

For the 3rd Respondent: Mr C Levin of Clifford Levin Inc, Cheltondale.

LABOUR COURT