

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR831/23

In the matter between:

LEGEND LOGISTICS

Applicant

and

SATAWU OBO T[...] M[...]

First Respondent

COMMISSIONER MDUDUZI PRICEMAN MNGOMEZULU

Second Respondent

**NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT & LOGISTICS INDUSTRY**

Third Respondent

Heard: 25 February 2025

Delivered: 27 February 2025

Summary: Unopposed review application – employee dismissed for falsely alleging that her colleague impregnated her – fairness of dismissal.

JUDGMENT

MKWIBISO, AJ

Introduction

- [1] In this matter the applicant (the employer) seeks to set aside on review an arbitration award that declared its dismissal of the first respondent, Ms M[...] (the employee) substantively unfair.
- [2] The issue is whether the second respondent (the Commissioner) unreasonably found the dismissal of the employee to be substantively unfair.

Relevant facts and evidence

- [3] The relevant facts of this matter are common cause.
- [4] The employee commenced her employment with the employer on 08 October 2018 and occupied the position of Debtors Clerk. She was dismissed by the employer on 13 April 2023, following a disciplinary hearing in which she was found guilty of the following allegation: “*giving false information or evidence, deliberately giving untrue erroneous or misleading information*”.
- [5] The employee had been involved in a romantic relationship with a colleague who was employed by the employer as a Chef and resided on the premises of the employer. It seems the employee also had a romantic relationship with another gentleman, with whom she said they had engaged in protected sexual intercourse.
- [6] The employee fell pregnant and went on maternity leave. She strongly suspected that her colleague was the father of her child, in fact she was certain that he was the father as she did not suspect the other gentleman of being the father because she had engaged in protected sex with him.

- [7] The employee had a private discussion with her colleague about the child that was born out of her pregnancy. Her colleague disputed that he was the father of the child and refused to part-take in a paternity test.
- [8] The employee then approached the maintenance court seeking an order that her colleague pay maintenance toward her child as the alleged father of the child. The maintenance court was seemingly aware that the employee's colleague was disputing paternity, and it ordered that the South African Police Service serve on him a notice to participate in a paternity test.
- [9] The police served the notice from the maintenance court on the employee's colleague, at work. It seems there was some commotion at the workplace caused by the service of the court notice. In the fullness of time, the employee's colleague complied with the court notice by part-taking in the paternity test. The results were that he was not the father. When the employer became aware of these results, it decided to charge the employee and dismiss her for the allegation set out above.
- [10] At the disciplinary hearing, the employee had written a statement in which she accepted that her allegation that her colleague was the father of her child was incorrect, in light of the results of the paternity test.
- [11] Unsatisfied with her dismissal, the employee referred an unfair dismissal dispute to the third respondent (the Bargaining Council). She initially sought reinstatement with full retrospective effect, but it seems she later changed her mind and claimed compensation instead.
- [12] At the arbitration hearing, the employer's first witness, Mr van Blerk, testified that he was the Chairperson of the disciplinary hearing that led to the employee's dismissal. He applied his mind to the fact that the trust relationship between the employee and her colleague was damaged as her colleague was put through the trauma of being accused of being a father.

[13] Mr van Blerk said the transgression of the employee fell under common law. When he was asked to explain the rule that the employee had breached in the workplace, he said:

“Giving false information or evidence, deliberately giving untrue erroneous or misleading information by saying someone is the father of your child, going to the maintenance court, bringing the SAPS to the company. If she had brought them to his house that wouldn’t have been a problem, but inside the company premises is not on”.

[14] However, Mr van Blerk later accepted that the employee’s colleague resided on the employer’s premises, which is why the Police had served the court notice on him at the workplace. He also later confirmed that the employee was not charged for the Police coming to the workplace, but was charged for making untrue statements about a colleague being the father of her child.

[15] The employee averred that this incident did not involve the employer as it involved conduct outside the workplace.

[16] The Commissioner rendered an award finding that the employee had not committed misconduct and that her dismissal was substantively unfair. The Commissioner awarded compensation to the employee in the amount of R156 000.00, being her eight months’ salary. The employer complains that the Commissioner’s decision is not one that a reasonable decision-maker would make based on the evidence that was presented at the arbitration.

Analysis

[17] The test for setting aside an award on review is trite. In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*,¹ the Constitutional Court held

¹ *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* (2007) 28 ILJ 2405 (CC) at para 110.

that section 145 of the Labour Relations Act² (the LRA) was suffused by the Constitutional standard of reasonableness:

“[110] To summarise, *Carephone* held that section 145 of the LRA was suffused by the then constitutional standard that the outcome of an administrative decision should be justifiable in relation to the reasons given for it. The better approach is that section 145 is now suffused by the constitutional standard of reasonableness. That standard is the one explained in *Bato Star*. Is the decision reached by the commissioner one that a reasonable decision-maker could not reach? Applying it will give effect not only to the constitutional right to fair labour practices, but also to the right to administrative action which is lawful, reasonable and procedurally fair” (own emphasis).

[18] In *Herholdt v Nedbank Ltd*,³ the Supreme Court of Appeal summarised the review test in the following terms:

“[25] In summary, the position regarding the review of CCMA awards is this: A review of a CCMA award is permissible if the defect in the proceedings falls within one of the grounds in s 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)(a)(ii), the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable” (own emphasis).

² No. 66 of 1995.

³ *Herholdt v Nedbank Ltd* (2013) 34 ILJ 2795 (SCA), [2013] 11 BLLR 1074 (SCA), at para 25.

- [19] On the undisputed facts of this case, the employee had sexual intercourse with her colleague, presumably outside the workplace. The employer did not take issue with this conduct. When she fell pregnant, she suspected that her colleague was the father of her child. Upon his refusal to do a paternity test, she took him to the maintenance court, outside the workplace. The only reason why the employer became involved is that the notice directing the employee's colleague to take a paternity test was served by the Police on the employee's colleague at the workplace, which happened to also be his place of residence.
- [20] In *Edcon Limited v Cantamessa and Others*,⁴ the Court held that “*the general rule is that an employer has no jurisdiction or competency to discipline an employee for conduct that is not work related which occurs after working hours and away from the workplace*”.
- [21] In my view, the employee's conduct was not work-related and was away from the workplace. She had no control over the service of the notice to part-take in the paternity test, once she had lodged her complaint with the maintenance court. There are no exceptional factors that would justify a deviation from the general rule set out in *Edcon Limited v Cantamessa*.
- [22] Importantly, the employee's conduct did not amount to misconduct. She was clearly not dishonest at all. An allegation of dishonesty would presuppose that she knew that her colleague was not the father of her child but she nevertheless accused him of being the father of her child. However, this proposition is defeated by the fact that the employee seemingly had no objection to her colleague taking a paternity test. She had privately called upon him to take such a test before approaching the maintenance court for its intervention once he had rejected her request. She would not have made such a request if she knew that its results would contradict her allegation that her colleague was the father of her child, as this would defy common sense or logic, and there is no evidence that she was illogical to that extent.

⁴ *Edcon Limited v Cantamessa and Others* (2020) 41 ILJ 195 (LC), [2020] 2 BLLR 186 (LC) at para 12.

[23] The mere fact that the employee's suspicion was incorrect does not mean she committed misconduct. The employer unfairly focused on the feelings of the male colleague who may have been embarrassed by the allegation that he was the father of the employee's child, and ignored the need to determine with certainty whether the employee's colleague was the father in order to ensure that the child's right to maintenance was properly upheld. The employer was insensitive towards the employee as a woman and a mother and it is unacceptable that she had to lose her job as a result of these baseless allegations that were brought against her.

[24] Under all the circumstances, the Commissioner's decision that the dismissal was substantively unfair is one that a reasonable decision-maker would make, and it should not be disturbed.

Costs

[25] The application was not opposed and as such there should be no order as to costs.

[26] In the premises, the following order is made:

Order

1. The review application is dismissed.
2. There is no order as to costs.

VG Mkwibiso

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Adv L Pillay
Instructed by : Yusuf Nagdee Attorney

For the First Respondent : No appearance

LABOUR COURT