

SOUTH AFRICA / JUDGMENT

## Amazon Development Centre (South Africa) (Pty) Ltd v Mashabela and Others (C1215/2018) [2021] ZALCCT 29 (8 April 2021) [2021] ZALCCT 29

COURT  
Labour Court Cape Town

BEFORE  
Rabkin-Naicker

CASE / FILE NUMBER  
C1215/2018

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### Source record

IN THE LABOUR COURT OF  
SOUTH AFRICA, CAPE TOWN

Not Reportable

Case

no: C1215/2018

In

the matter between:

AMAZON DEVELOPMENT CENTRE  
(SOUTH  
AFRICA) (PTY)  
LTD  
Applicant  
and  
MPHO  
MASHABELA  
First Respondent  
CM  
BENNETT  
N.O.  
Second Respondent  
COMMISSION FOR  
CONCILIATION,  
MEDIATION  
AND  
ARBITRATION  
Third Respondent  
Date heard: 1 December  
2020 on the papers  
Delivered: 8

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April 2021 by means of scanned email

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## JUDGMENT

RABKIN-NAICKER J

[1] This is an unopposed application to review an arbitration award under case number WECT15702-18. The applicant (Amazon) is a leading global commerce and cloud computing centre. It seeks to review an award by the second respondent (the Commissioner) who awarded the first respondent (the employee) an amount of R39,998.00 in compensation for a substantively unfair dismissal for poor work performance.

[2] The Commissioner found that the rating system used to evaluate the performance of the employee was not a sufficiently reliable measure from which to draw any reasonable or reliable conclusion stating that:

*“It is I conclude, based on the evidence presented, a blunt tool. I find that Respondent has failed to discharge the burden of proving the contrary. If the measure is unreliable, then any decisions taken based on that measure are also unreliable Has therefore Respondent*

provide that Applicant was a poor performer in response to which dismissal was appropriate? I find that it has not. As the dismissal

was based on the CCR data and in view of my finding that this data is an unreliable measure, I find that the Applicant’s dismissal was substantively unfair.”

[3] The employee was employed as a Customer Service Agent dealing with customers who use Amazon Web services and their queries about accounts and billing. A customer query is dealt with by telephone call or email. Every contact with a customer generates a request for the customer to provide a rating of the interaction with the Customer Service Agent. This is called a Customer Service Rating (CCR) and ranges on a scale between 1 and 5 stars with 5 being the best. Only about 10 per cent of customers respond. The responses from customers are averaged and a CCR rating given. The target set for Customer Service Agents was 4.61.

[4] In his analysis of the evidence and argument before him, the Commissioner was concerned as to whether the CCR system was fair:

*“16. ....Is this a fair measure? Is it a reliable measure? Is it safe to draw conclusions based on a 10% response rate about an agent’s competence and capability?”*

17. I have in mind the smiley face rating system in use in certain retail outlets. The customer can choose between an unhappy face, an indifferent face and a happy face in order to rate the cashier’s performance. How does the customer know if the cashier is doing his job properly? The reality is that if the customer has had a bad experience in store, he is unlikely to give the cashier a good rating. This has nothing to do with the cashier’s competence and capability. He can of course create unhappy customers or make unhappy ones even more

unhappy, but it is unlikely to be able to turn unhappy customers into happy ones merely by ringing up the sales.”

- [5] The evaluation of the rating system is clearly out of the comfort zone of a Commissioner or this Court, save perhaps relying on expert evidence. However, what is squarely in that zone is what the Commissioner was actually required to decide in the dispute before him. What he needed to decide was whether, as set out in Schedule 8 to the LRA:

*“(a) whether or not the employee failed to meet a performance standard; and*

- (b) if the employee did not meet a required performance standard whether or not-
- (i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
- (ii) the employee was given a fair opportunity to meet the required performance standard; and
- (iii) dismissal was an appropriate sanction for not meeting the required performance standard.”

- [6] The employee was placed on a performance improvement plan on 8 March 2018 after he failed to meet the required targets set for Service Agents in terms of the CCR and Work Items per Hour target. He received weekly coaching sessions as well as monthly review sessions. This training lasted for 4 months. During that time the employee failed to improve his performance to the required levels. A poor performance hearing was held in September 2018. He was then dismissed.

- [7] A reasonable decision maker would have focused the enquiry on the issues set out in the Code of Good Practice and borne those in mind in determining the dispute before him. The evidence before the Commissioner, on record before me, set out that the performance standards were applied to all Service Agents and were objectively determined based on various methodologies. Amazon stressed that customer opinion is its primary focus and that most Service Agents were meeting their target. The Commissioner did not take these facts and circumstances into account but instead ventured into musing on the similarity of the methods used to ‘smiley faces’ in a supermarket. He did not consider whether interference in the setting

of performance standards of the employer was apposite. As the LAC has referenced regarding dismissal for poor work performance:

*“The court must decide on the fairness of the applicant's dismissal by reference to the standards set by the employer provided those standards conform to the yardsticks of commercial rationality (Brassey, Cameron, Cheadle & Olivier The New Labour Law at 75)”[1]*

- [8] In all the circumstances, I find that the Award is one that a reasonable decision-maker could not make. The review must thus succeed. I make the following order:

Order

1. The Award under Case Number WECT1570-18 is reviewed and set aside and substituted with the following order:
2. The dismissal of the first respondent was substantively fair.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Representation Applicant: ENS Africa

[1] *Empangeni Transport (Pty) Ltd v Zulu* (1992) 13 ILJ 352 (LAC) at page 356

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Prepared on 14 October 2026 · Esheria