

SOUTH AFRICA / JUDGMENT

**EBS Security Admin (Pty) Ltd v
Commission for Conciliation, Mediation
And Arbitration and Others (JR1314/13)
[2014] ZALCJHB 522 (17 December 2014)
[2014] ZALCJHB 522**

COURT

Labour Court Johannesburg

BEFORE

G van der Merwe

CASE / FILE NUMBER

JR1314/13

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case No: JR1314/13

DATE: 17 DECEMBER 2014

In the matter between

EBS SECURITY ADMIN (PTY) LTD.....Applicant

And

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION.....First Respondent

COMMISSIONER LUFUNO RAMABULANA.....Second Respondent

ANDRÉ VAN DER HEEVER.....Third Respondent

Date heard: 17 December 2014

Date edited: 17 December 2014

Date delivered: 17 December 2014

EX-TEMPORE

JUDGMENT

VAN DER MERWE, AJ

- [1] The Applicant seeks to review a CCMA arbitration award dated 24 May 2013 made by the Second Respondent, which was received by the Applicant on 29 May 2013.
- [2] The review application was dated 21 June 2013 and the review was brought in terms of sections 145, alternatively section 158(1)(g) of the Labour Relations Act, 66 of 1995, as amended.
- [3] The review application is unopposed.

The arbitration record

- [4] The record in this review application is incomplete. The Applicant presented the court with a scanty, incomplete record and illegible notes made by the Commissioner. They cannot be regarded as a comprehensive reflection of the arbitration proceedings.
- [5] The Applicant's representative conceded that the record was incomplete and illegible, but maintained that the application can be determined without a record by merely considering the award itself.
- [6] I do not agree. It is correct that sometimes in the absence of a complete record, the courts have been robust in determining the matter on the available information.[1] But these instances are limited to where the irregularity may be so patent from the award itself, that a record might not be necessary[2] or because there was no "material dispute of fact going to the very heart of the review application." [3]
- [7] This court has generally been reluctant to review an award on its merits on an incomplete record, as a decision as to whether an award is reasonable can only be taken after a careful consideration of all the evidence that was before the Commissioner.
- [8] In my view, the matter at hand is a matter that requires a complete record. The debate in court on the merits of the review

confirmed this. The Applicant was obliged to have the handwritten notes of the arbitrator transcribed. In the absence

of a complete record of proceedings, which would have included a reconstruction if the handwritten notes[4], the court is in no position to adjudicate properly on the application before it and the review application should on this ground alone be dismissed.[5]

- [9] There is no justification why the Applicant did not produce a proper record and no attempt has been made by the Applicant to reconstruct the record.

[10] In as much as the Applicant's representative suggested that the application can be determined without the record by merely

considering the award itself, it should be noted that the Applicant's representative himself resorted to the evidence when it was pointed out to him that the employee, Mr Van der Heever, stated in his Curriculum Vitae that he had firearm training and not firearm competency.

[11] The above presented a dichotomy of two approaches which are manifestly incompatible. This point serves to confirm the

critical importance of a complete record in this matter.

[12] As a final remark, I also do not see any merit in the Applicant's submission that the contradiction in the award itself opens the award to review. The alleged contradictions by the Commissioner in the award by making references to a "competency certificate" and then thereafter to a "competency card", does not in my view constitute a reviewable irregularity as per the Sidumo test[6] in the sense that no reasonable Commissioner, acting reasonably, could have reached the decision on the evidence before him or her and the inferences drawn from it.

Order

[13] In the circumstances, I make the following order:

1. The application to review the arbitration award issued by the Second Respondent, is dismissed.
2. There is no order as to costs.

G van der Merwe

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Quentin Donaldson

For the Respondent: Unopposed

[1] Popane v Van Aarde No & Others

(2007) 28 ILJ 2561 (LAC)

[2] Shoprite Checkers (Pty) Ltd v CCMA (2002 23 ILJ 943 (LC) at para 11

[3] Ram Hand- to- Hand Couriers v National Bargaining Council for the Road Freight Industry (C 174/2007) [2009] ZALC 169 (Not Reportable) and Lifecare Special Health Services (Pty) Ltd et al (DA 15/02) [2003] ZALAC 3 (Not Reportable)

[4] JDG Trading (Pty) Ltd t/a Russells v Witcher N.O. & Another,

[2005] ZALC 1; (2011) 3 BLLR 300 (LAC)

[5] Metalogik Engineering and Manufacturing CC v Fernandes and Others

(2002) 10 BLLR 985 (LC)

[6] Sidumo & Another v Rustenburg Platinum Mines Ltd & Others 2008 (2) SA 24 (CC) para 51

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