

SOUTH AFRICA / JUDGMENT

Hollywood Sportsbook Gauteng v Commission for Conciliation, Mediation and Arbitration and Others (JR 344/22) [2023] ZALCJHB 245 (7 March 2023)

[2023] ZALCJHB 245

COURT

Labour Court Johannesburg

BEFORE

Z Lallie

CASE / FILE NUMBER

JR 344/22

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

CASE

NO: JR 344/22

In

the matter between:

HOLYWOOD
SPORTSBOOK GAUTENG
Applicant
And
COMMISSION
FOR CONCILIATION, MEDIATION
AND
ARBITRATION
First
Respondent
COMMISSIONER
NORMAN MATHEBULA
Second
Respondent
WISEMAN
MNTSANE
Third
Respondent

Heard: 17 February 2023

Delivered: This judgment was handed down electronically by circulation to the Applicant's and the Respondent's legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 15h00 on 7 March 2023.

JUDGMENT

LALLIE, J

- [1] This is an unopposed review application. The applicant seeks an order reviewing and setting aside an arbitration award of the second respondent who will be referred to as the commissioner in this judgment. In the award the commissioner directed the applicant to pay the third respondent an amount of R2100. 00 which constituted part of his remuneration for the month of September 2021 the applicant failed to pay him.
- [2] The applicant's main grounds for review are that the commissioner committed gross irregularities in that he disregarded relevant evidence and reached an unreasonable decision disconnected from the evidence which was properly placed before him.
- [3] The facts before the commissioner were largely not in dispute. The third respondent was employed by the applicant as a Betting Clerk in September 2019. His services were terminated on 18 September 2021 at a time he earned a monthly salary of R4400. 00. The third respondent did not render his services for the full month of September 2021. After making the necessary deductions and the over-payment for March, May, August and September 2021, the applicant paid the third respondent a salary of R657.00.
- [4] The enquiry the commissioner had to conduct was whether the applicant acted in breach of section 73A of the Basic Conditions of Employment Act 75 of 1997[1] (the BCEA) in not paying the third respondent his full salary for September 2021. The reason proffered by the commissioner for reaching the conclusion that the third respondent's full salary for September 2021 was due to him was the applicant's delay in deducting the overpayment. It was the applicant's case that it proved that the amount it withheld from the third respondent's salary was not lawfully due to him as he had not worked for it. The commissioner did not reject its evidence and did not disclose the legal prescript which set a time frame for the deduction of the overpayment.
- [5] Section 34 (5) of the BCEA permits employers to deduct overpayment erroneously made to employees. The commissioner accepted the applicant's version that the amount deducted from the third respondent's September 2021 salary resulted from an erroneous overpayment. The evidence before him was that the amount he granted as relief was not due to the third respondent. The decision that the applicant should pay the third respondent the

amount of R2100. 00 is therefore disconnected from the evidence he accepted. I therefore accept the applicant's averments that the arbitration award is unreasonable as it is based on conjecture and not the evidence properly tendered at arbitration.

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

Order:

1. The arbitration award issued by the second respondent under case number GAEK 10233 – 21 is reviewed and set aside.
2. There is no order as to costs.

Z. Lallie

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: Mr Cora Hufkie of the Macgregor Erasmus Attorneys

[1] Act 66 of 1995 as amended.

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