

SOUTH AFRICA / JUDGMENT

**Matisabo v Commission for Conciliation
Mediation and Arbitration and Others
(J1031/10)
[2011] ZALCJHB 237 (2 September 2011)
[2011] ZALCJHB 237**

COURT

Labour Court Johannesburg

BEFORE

Gush

CASE / FILE NUMBER

J1031/10

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

case no: j 1031/10

In the matter between:

MATISABO, JLApplicant

and

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATIONFirst Respondent

RUSSEL MOLETSANESecond Respondent

SAB (PTY) LIMITED & OTHERSThird Respondent

Heard: 2011-09-02

Delivered: 2011-09-02

judgment

GUSH J:

This is a review which dates back to 2003. The applicant was dismissed on 25 November 2001. The applicant referred a dispute

concerning his dismissal to the first respondent on date which does not appear from the papers. On 28 October 2002, the first respondent granted the applicant condonation and recorded that the 'Reason for not attending' was that the applicant 'did not receive the set down notice'. Be that as it may be, the first respondent issued a certificate of outcome on 28 November 2002, the applicant requested arbitration and the matter was arbitrated on 19 September 2003 and an award was issued by the second respondent on 29 September 2003. The second respondent, in his award, found that the dismissal of the applicant was fair.

Thereafter, the applicant filed his application for review.

The matter has dragged on interminably for reasons which, in so far as they are dealt with in the papers, are set out below.

The matter was first enrolled to be heard by this Court on 28 September 2006, when it was adjourned sine die. It was again enrolled on 23 March 2007, on which date, neither the applicant nor any person representing the applicant appeared. The matter was struck from the roll and the costs reserved and the applicant was apparently instructed to provide an explanation for his failure to appear. The explanation was that his instructed attorney had not come to court and that he had arrived late after the matter had been called and disposed of.

The matter was again enrolled for 22 December 2010, when the matter was again adjourned this time to enable the applicant to obtain legal representation. The applicant was on this occasion ordered to pay the respondent's wasted costs.

Today when the matter was called, the applicant indicated that due to the 'trickery' of his newly appointed attorney, he was again not represented. The applicant indicated quite clearly that he wished to proceed with the matter without his attorney and that he would represent himself. I took some time to explain to the applicant what was required of him and stood the matter down for him to consider whether he indeed wished to proceed without representation. The applicant insisted on the matter being heard, and confirmed that he wished the matter to be finalised today, and that he intended to represent himself.

The merits of this matter which led to the applicant's dismissal are very simple. The applicant was, according to the record of the arbitration, observed by third respondent's witnesses leaving a bar or pub on the third respondent's premises with a six-pack of Redds, which is an alcoholic drink produced by the third applicant. The applicant was not entitled to be in possession of the Redds outside the bar where the function was taking place. It was a contravention against company rules and regulations to be in possession of alcohol outside the pub without permission.

The applicant was seen in possession of the Redds leaving the pub and was chased by two security guards. Whilst running away, he threw the Redds into a garden bed, from whence the remains of the bottles were recovered by the security personnel who had seen him throwing the six-pack away after they had apprehended the applicant.

The incident led to a disciplinary enquiry whereafter the applicant was dismissed.

At the arbitration, the applicant was also unrepresented, but, as he did today, indicated that he was satisfied that he would represent himself, and proceeded with the arbitration. The third respondent led evidence surrounding the circumstances that had given rise to the applicant's dismissal, namely his possession of the alcoholic drinks, his attempt to run away, his discarding of the six-pack and the recovery thereof, his apprehension and the disciplinary inquiry that followed where he was dismissed.

In response to the charges and this evidence, the record reveals that the applicant simply denied any knowledge of the incident

whatsoever inter alia that he denied that he was in possession of the evidence viz the six-pack of Redds and that the witnesses who gave evidence regarding the incident were present. The applicant did however admit that he was aware of the rule prohibiting employees being in possession of alcohol outside the pub without permission.

The applicant's defence apart from his absolute denial of the incident appeared to be based on an averment that as he was not in possession of the Redds at the time of his apprehension he could not be guilty of any misconduct, or put another way: unless you are found in possession of the goods that you have stolen, you are not guilty of theft. The applicant evidence was that he did not know why he had been dismissed. It was for no apparent reason.

The second respondent, (who is a senior commissioner of the first respondent), found that the evidence of the third respondent's

witnesses was probable and without contradiction and in the face of the applicant's bare denial accepted the version given by the third respondent. The second respondent concluded that the dismissal of the applicant was accordingly substantively fair.

The founding affidavit filed by the applicant in this matter does not establish grounds upon which it could be found that the second respondent's award is reviewable. Where it is possible to follow the applicants submissions the applicant fails to point to any part of the record or the award justifying his submissions. The task is made even more difficult in that the applicant has filed what appears to be an incomplete record without any explanation.

The applicant did not raise any grounds of review in his argument. The essence of the applicant's argument in support of his

application for review is that the second respondent should not have found that he was guilty of the misconduct, and accordingly did not act in a justifiable manner in upholding his dismissal as having been fair.

In argument today, the applicant simply confirmed what he had said at the arbitration conducted by the second respondent viz that he denied any involvement at all in the incident and that he had advised the commissioner and that the third respondent had dismissed him without any evidence at all.

The applicant, however, in addition explained at length the circumstances surrounding the handing to him of the award, and made

certain averments regarding the second respondent's supposed lack of ability and the advice apparently given to him by the first respondent's staff.

The applicant in his address explained that he had left the first respondent's offices using instructions and directions given to him by the first respondent, and had proceeded directly to the Court, where he lodged his application for review.

Whilst these averments take the matter no further, conspicuous by its absence in the applicant's founding affidavit is any reference

to any of these issues that the applicant today raised in his address to the Court.

Suffice to say that in matters of this nature, it is incumbent upon an applicant to show that the award of the second respondent is reviewable for reasons set out in the provisions of section 145 of the Labour Relations Act. Even allowing the applicant some

considerable latitude given that he represented himself the applicant has not succeeded in doing so.

The award of the second respondent is not an award that a reasonable decision maker could not have arrived at bearing in mind the evidence before him.

In the circumstances, the applicant's application for review does not succeed and his application falls to be dismissed.

As far as costs are concerned, the applicant has already been ordered to pay the costs of the adjournment on 22 December 2010. It is in the circumstances also appropriate for the applicant to pay the costs of the adjournment on 23 March 2007.

I make the following order:

The applicant's application is dismissed:

The applicant is ordered to pay the costs of the adjournment on 23 March 2007;

There is no order as to costs for today.

GUSH J

JUDGE OF THE LABOUR COURT

APPEARANCES:

APPLICANT: In Person

THIRD RESPONDENT: Ms. Bronwyn Murray; Bowman Gilfillan Inc Attorneys

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