

SOUTH AFRICA / JUDGMENT

Mocheke v GPSSBC and Others

(JR1916/17)

[2018] ZALCJHB 391 (29 November 2018)

[2018] ZALCJHB 391

COURT

Labour Court Johannesburg

BEFORE

GN Moshwana

CASE / FILE NUMBER

JR1916/17

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IN

THE LABOUR COURT OF SOUTH AFRICA, POLOKWANE

Not Reportable

case

no: JR

1916/17

In

the matter between:

R
P
MOCHEKE Applicant
and
THE
GPSSBC First
Respondent
MOLOKO
EPHRAIM PHOOKO
N.O. Second
Respondent

MINISTER:

DEPARTMENT OF HOME AFFAIRS Third
Respondent

Heard:

27 November 2018

Delivered:

29 November 2018

Summary: Review of an arbitration award – where an award falls within the bounds of reasonableness – the award is not reviewable in law. Held: (1) The application for review is dismissed with no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

- [1] This is an unopposed application for review. The applicant is seeking to review and set aside an award made by the second respondent in terms of which he found that his dismissal was fair.

Background

facts

- [2] The applicant an employee of the Department of Home Affairs was tasked to investigate a case at Malale. He obtained authorisation to travel there. He got wind of some illegality at a farm. He travelled there and found illegal immigrants. He did nothing as on his version he had another urgent Identity Document case to attend to. On the version of the farm owner, Mr Patel, the applicant was given cash amounting to R10 000.00. On his way back, the applicant was stopped and some cash amount was found in his possession. He was charged, found guilty and dismissed. He was aggrieved and referred an alleged unfair dismissal dispute to the first respondent. The second respondent was appointed. He issued an award dismissing the applicant's referral. Aggrieved thereby, he approached this court for relief.

The grounds for review

- [3] The applicant alleges that the decision arrived at is not one that a reasonable arbitrator can arrive at. He further alleges that the second respondent misdirected himself and demonstrated bias towards him. He failed to apply mind.

Evaluation

- [4] The decision arrived at by the second respondent is perfectly consistent with the evidence presented. There was overwhelming evidence that the applicant was indeed guilty as charged. I am unable to agree that the second respondent failed to apply mind nor misdirected himself. The submissions by Mr Letsela, appearing for the applicant are nothing but an attempt to appeal. The evidence of Mr Patel is clear and the second respondent cannot be faulted in accepting it at the expense of that of the applicant. The applicant's version was simply improbable and less convincing.

[5] Accordingly, the award is one that falls within the bounds of reasonableness and the application is bound to fail.

[6] Accordingly, I conclude that the award is not reviewable in law.

[7] In the results, I make the following order:

Order

1. The application for review is dismissed with no order as to costs.

GN Moshoana

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Attorney M Letsela of M Letsela Attorneys, Polokwane.

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