THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JR1429/20

In the matter between:

TRITON EXPRESS (PTY) LIMITED **Applicant**

and

NTM **First Respondent**

CLIFF BALOYI **Second Respondent**

COMMISSIONER NOMUSA MBHELE **Third Respondent**

NATIONAL BARGAINING COUNCIL FOR THE

ROAD FREIGHT AND LOGISTICS INDUSTRY **Fourth Respondent**

Heard: **8 July 2021**

Delivered: **16 August 2021 (In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 16 August 2021.)**

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JUDGMENT

REDDING, AJ

[1] Mr Baloyi was employed by the applicant, Triton Express (Pty) Ltd (Triton) as a general worker. Triton dismissed him for misconduct on the basis that he was present at the company's premises under the influence of alcohol. Mr Baloyi challenged the fairness of the dismissal.

[2] An arbitration into the fairness of the dismissal was held by the third respondent at the bargaining council for the Road Freight and Logistics Industry. The third respondent (the commissioner) delivered an award finding that the dismissal was substantively unfair and ordered the respondent to reinstate Mr Baloyi and pay him arrear wages in the amount of R28 110.00. Triton seeks to review the decision. Despite notice of the proceedings and hearing on the first and second respondent there was no appearance to defend.

Principles

[3] The standard for review is the reasonableness of the commissioner's decision. A decision will be considered unreasonable if it is one that a reasonable arbitrator could not reach on all the material presented to him or her.[1]

[4] The material presented to the commissioner during the arbitration included the following material facts:

4.1. On 28 January 2019 two of Triton's managers, Mr Motlhabane, the collection and delivery manager and Ms Bianca van Staden, the human resources manager smelled alcohol on Mr Baloyi's breath at the workplace.

[1] See: *SA Rugby Union v Watson and Others* (2019) 40 ILJ 1057 (LAC) at paragraph 25.

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4.2. A breathalyser test was conducted. The result confirmed the existence of alcohol in Mr Baloyi's body.

4.3. Mr Baloyi agreed in the presence of Mr Motlhabane that he was under the influence of alcohol. He was released from training and sent home.

4.4. On 5 February 2019 Mr Baloyi attended a disciplinary hearing conducted by Triton. He was charged with being under the influence of alcohol while on duty. He pleaded guilty to the charge. He was found guilty of the charge and dismissed.

4.5. In his evidence before the Commissioner Mr Baloyi denied being under the influence of alcohol as alleged by the Triton employees. He conceded that he had pleaded guilty to the charge and said that he had done so on the basis that the breathalyser readings held by the company indicated that he was over the limit of alcohol permitted in the bloodstream.

[5] In my view the commissioner could not reasonably have concluded that the employer failed to establish that Mr Baloyi was guilty of misconduct in being at work under the influence of alcohol. The employer's evidence was uncontested that he was at work and smelled of alcohol. He was breathalysed and this established that he had alcohol in his bloodstream. He admitted to being under the influence of alcohol at the time. At the disciplinary enquiry, conducted several days later, he pleaded guilty to the charge of being under the influence of alcohol.

[6] Mr Baloyi explained his guilty plea on the basis that he understood that the breathalyser reading indicated that he was over the limit. He conceded that he was not influenced or compelled to plead guilty. It is improbable that Mr Baloyi would have pleaded guilty to being under the influence of alcohol when this was not the case. His explanation as to why he pleaded guilty does not provide a sound basis to ignore that piece of evidence.

[7] His admission that he was under the influence of alcohol stands as a powerful fact in support of the employer's charge against him. To be added to his guilty plea (which is an admission) is his earlier admission at the time that he was

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under the influence of alcohol, as well as the facts that he smelled of alcohol and he had alcohol in his bloodstream. In the absence of any credible denial on Mr Baloyi's part, it was clearly established he was at work under the influence of alcohol.

[8] To come to a conclusion on the above facts that the employer had failed to establish Mr Baloyi's guilt in respect of the charge is a finding so unreasonable that no reasonable arbitrator could have come to it. In the circumstances, the application for review must be upheld.

[9] In the premises the following order is made:

Order

1. The award issued by the third respondent under case number GPRFBC54493 handed down on 19 June 2019 is reviewed and set aside.
2. The decision of the third respondent is substituted with the following decision:
   "The dismissal of the applicant (Mr Baloyi) is substantively and procedurally fair and his application is dismissed."
3. There is no order as to costs

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A Redding

Acting Judge of the Labour Court of South Africa

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Appearances:

On behalf of the Applicant:
Instructed by:

On behalf Respondent:
Instructed by:

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