**IN THE LABOUR COURT OF SOUTH AFRICA**

**HELD AT DURBAN**

**Reportable**

**Case No: D1151/12**

In the matter between:

**KIMAR SUPPLIES CC** **Applicant**

and

**ZWELONKE RICHARD DLAMINI** **First Respondent**

**KEGAN MANICKUM MODLEY N.O** **Second Respondent**

**CCMA** **Third Respondent**

Heard: 17 February 2015

Delivered: 29 May 2015

Summary: Review - evaluation of evidence - corroboration - putting a version to a witness – the commissioner's duty to ask questions not dealt with by lay representatives

JUDGMENT

WHITCHER J

Introduction

[1] This is an application to review and set aside the award handed down by the second respondent (the commissioner) in which award he concluded that the

dismissal by the applicant of the first respondent (Dlamini) was unfair and ordered that the applicant reinstates Dlamini retrospectively and in addition ordered that the employee be paid back pay amounting to R7 500.00.

Factual Background

[2] Dlamini was dismissed by the applicant after being found guilty of the following charge: "Despite numerous instructions not to do so, you again stopped work at least 45 minutes prior to work ending. When confronted by Mr Grant, you became aggressive and threatening towards him".

[3] The applicant conducts business as a floor sanding service and employed Dlamini as a general operator since October 2011. The employees report directly to site for work each day.

[4] The sole member of the applicant, Rob Grant, testified that on 15 August 2012, Dlamini and another employee, Ngcobo, arrived at the applicant's offices asking for dust masks and transport money, which Grant, the previous day, indicated to them that he would deliver to site. He angrily asked them: "What the f…are you doing here".

[5] He then attended the site at 15h45, only to find Dlamini and Ngcobo in the kitchen, fully changed and ready to leave work. Their usual closing time is 16h30. He told them that they would be paid to 15h30, which is when he estimated they had finished work.

[6] In its heads of argument, the applicant states that Grant also told Dlamini he would not be paid for the days he had previously missed in the week. There is no trace of evidence from Grant to this effect in the record.

[7] Grant testified that as he walked out of the kitchen and into the warehouse, Dlamini followed him, demanding his full pay. Ngcobo had remained in the kitchen. Dlamini pointed a finger at his face, in close proximity, and said: *"You will pay me or else you will see"*. Grant asked him if he was threatening him, and Dlamini again pointed his finger at Grant, saying: *"You will see, you will see"*.

Grant said he felt extremely threatened by the conduct of Dlamini, and suspended him from employment pending a disciplinary enquiry. The clear impression created in Grant's version is that he suspended Dlamini the moment after the threat was uttered when they were still alone in the warehouse.

[8] Grant said he did not trust Dlamini any longer. Dlamini had phoned him twice to ask for his job back but the threat he suffered made a continued employment relationship impossible with Dlamini. It was put to Grant in cross-examination that Dlamini denied threatening him.

[9] In his testimony Dlamini confirmed that he and Ngcobo were already dressed to go home when, shortly before 16h00, Grant attended the site. He further confirmed that Grant expressed his unhappiness about them being ready to go. Grant then took him to inspect the site. After the site inspection, Grant was on the phone. When the call ended, Grant became upset and said "he doesn't want us on the site again". He left the site as instructed. The day after the incident, while he was on his way to work he received a call from Ngcobo to advise him that if he came to the site the police would be called. He turned back. Later he received a suspension letter via his wife. Dlamini's narrative of events did not mention the threat, nor was he cross-questioned on it.

[10] Ngcobo testified on behalf of Dlamini. He said he did not see or hear any altercation between Dlamini and Grant. He conceded that Dlamini and Grant had, for a time, been alone together in the warehouse. The impression Ngcobo gave in his evidence was that the period when Dlamini and Grant were out of his earshot was before Grant expressed his unhappiness about them finishing work early. Grant first asked Dlamini to show him how much work was done. Under cross-examination Ngcobo seemed to claim that Grant berated and suspended Dlamini in his presence and that Grant and Dlamini were not alone thereafter. Grant told them both he did not want to see them on site again. However Grant later approached Ngcobo and told him that he was exempt from this instruction. On arriving at work on the day after the incident, he was told by the site manager that if Dlamini came to work, the police would be called. He telephoned Dlamini,

who he understood was on his way to work, to tell him this. Dlamini did not arrive for work.

[11] The applicant takes particular issue with the commissioner's consideration of Dlamini's version as having been corroborated by Ngcobo. Even if there was corroboration, the applicant argues, it was weak and ought not to have been used to the exclusion of other factors that a reasonable adjudicator should have had regard to in deciding this dispute of fact. This issue and the other challenges to the award are dealt with below under separate headings.

[12] In *Gold Fields Mining SA Ltd (Kloof Gold Mine) v CCMA and Others*[1] the LAC stated:

> 'Where the arbitrator fails to have regard to the material facts it is likely that he or she will fail to arrive at a reasonable decision. Where the arbitrator fails to follow proper process he or she may produce an unreasonable outcome (see *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* 2006 (2) SA 311 (CC)). But again, this is considered on the totality of the evidence not on a fragmented, piecemeal analysis. As soon as it is done in a piecemeal fashion, the evaluation of the decision arrived at by the arbitrator assumes the form of an appeal. A fragmented analysis rather than a broad-based evaluation of the totality of the evidence defeats review as a process.'

[13] When deciding a dispute of fact between two mutually destructive versions, an adjudicator must consider the credibility of the various witnesses, the reliability of their observations and the inherent probabilities of their versions.[2]

[14] One factor that gives weight to the veracity of a witness' version, and which an adjudicator may rightly take into account in deciding a dispute, is whether a claim is independently corroborated by another witness or by documentary evidence. Where other elements of believability are absent, corroboration may be the only and thus decisive evidence used to decide where the overall probabilities lie. The decisiveness of a particular piece of evidence is a feature, it is safe to say,

[1] (2014) 35 ILJ 943 (LAC).
[2] See *Stellenbosch Farmers Winery v Martell et cie 2003 (1) SA 11 (SCA) at 5*).

that comes into play more often in cases, such as the present one, that are decided on a balance of probability.

[15] In this matter, the commissioner was not provided with much in the way of inconsistent or contradictory evidence discrediting either version. Despite efforts to cast Ngcobo as an evasive witness, demeanour similarly provided no basis upon which, one way or the other, a credibility finding could be made.

[16] In a case with few common cause factual landmarks, the decisive issue for the commissioner then becomes, whether a specific part of the conversation between a displeased Grant and the already dressed Dlamini, shortly before 16h00, occurred in the presence of Ngcobo or not. The commissioner understood Ngcobo to testify that he was present when Grant berated Dlamini and then proceeded to suspend him. During this time, Ngcobo heard no threat at all. Ngcobo's evidence therefore functioned to corroborate Dlamini's version and timeline of events.

[17] In the absence of other factors upon which to base an assessment of the relative weight of the opposing versions, this piece of corroboration tipped the scales for the commissioner. It is not the only ground of review, but the main one is whether a reasonable decision-maker would have relied solely on the corroboration of Ngcobo to decide this matter and, in fact, whether it was corroboration at all.

The commissioner's 'criticism of Grant not calling corroborating witnesses

[18] The applicant faults the commissioner for criticising Grant for not indicating whether the incident was witnessed by anyone, and if so, by whom, and that he did not call any witnesses to confirm or substantiate the veracity of the incident. This ground of review is based on a misreading of the award and is consequently dismissed.

[19] A proper reading of the award shows that the commissioner did not criticize. He merely noted that there was no corroboration for Grant's version. This is part of

the process of evaluating and weighing different versions. The commissioner contrasted Grant's lack of corroboration with Dlamini's version which, he believed, enjoyed corroboration from Ngcobo. The brute fact is that, all else being equal, a corroborated version enjoys greater weight than that of an uncorroborated one.

[20] The commissioner did give a reason for accepting one version above another. He did not delve as deeply into the issues as he could have, but the reason is clear and accurate enough. In deciding the dispute of fact between Grant and Dlamini, he preferred the corroborated version.

The commissioner should not have treated Ngcobo as a corroborating witness

[21] In argument, the applicant presented Ngcobo's evidence as a series of concessions that Dlamini could well have threatened Grant when they were in the middle of the warehouse in the absence of Ngcobo. This construction of the evidence seems selective.

[22] The first 'concession' the applicant identifies is in response to a very general question: "Is there any circumstance whereby (Dlamini) is very aggressive and pointing his boss here with his finger". To this, Ngcobo answered: "I didn't see", meaning that he did not see Dlamini being aggressive. His answer is not, without further clarification, an admission that Ngcobo might easily have missed seeing such aggression. Ngcobo is then asked to confirm that Grant and Dlamini were alone at some point. Ngcobo's answered "I don't remember" and "I do not recall that". The employer representative asked: "I'm asking after the shouting about 'Why are you dressed?' and 'Why are you going home early?' did (Dlamini) leave the room with the employer, or follow the employer out of the room?" Ngcobo answered: "We were already leaving and then we left with (Dlamini)". Ngcobo's answers are, in my opinion, more in the way of denials of the timeline put to him and a denial of the notion that an opportunity existed for the threat to be made in

his absence. I can fully understand how a commissioner would not treat these answers as either being evasive or concessions of some sort.

[23] Ngcobo's evidence must be viewed in its totality. Under cross-examination, unfortunately mired in misunderstanding and imprecision, the final timeline that Ngcobo provided was: (i) Grant arrived shortly before 16h00 and finds both workers dressed; (ii) Grant and Dlamini inspected the work in the warehouse with Ngcobo remaining behind; (iii) Dlamini returned to where Ngcobo is, saying that Grant was still on the phone; (iv) then Grant reappeared and shouted at them both.

[24] Logically, Dlamini's threat could only have come *after* Grant chastised the workers. Therefore, Ngcobo's final answer on this question essentially functions as a denial that there was an opportunity for Dlamini to have privately threatened Grant. According to Ngcobo, he and Dlamini were already leaving the site as instructed directly after being chastised.

[25] Ngcobo specifically corroborates Dlamini's evidence that he was suspended in the presence of Ngcobo. Grant, on the other hand, indicated that he suspended Dlamini directly after the threat, when they were still alone in the middle of the warehouse. Grant did not mention any contact with Dlamini after suspending him, such as suspending him again in the presence of Ngcobo. The likelihood of a second encounter between Dlamini and a recently threatened and fearful Grant is also slim.

[26] It was a reasonable finding that Ngcobo corroborated Dlamini's general, if implied, denial that he threatened Grant. Ngcobo certainly did not concede that, after Grant chastised Dlamini for finishing work early, there was a meaningful opportunity for Dlamini to threaten Grant without Ngcobo observing it.

[27] An ancillary challenge is whether the applicant was provided with a fair opportunity to discount the corroborating evidence while still presenting its case. In other words, was Ngcobo's version put to the applicant's witnesses? The requirement that a party ought to put its version to opposing witnesses is there to

prevent a party ambushing its opponent with novel testimony. It also prevents having to recall witnesses to deal with new allegations. It is a reviewable irregularity to rely on evidence not put to the opposing side's witnesses, assuming that the witnesses were in a position to comment on that version.[3]

[28] There is nothing in the record to indicate that Grant was confronted with the details of Ngcobo's specific timeline. However, crucially and distinguishably, these details only emerged in answers flowing from Ngcobo's cross-examination. One of the hazards of cross-examination is that a representative's questions may supply a platform to an opposing witness to provide detail adverse to the questioner's case. While the details of Ngcobo's version, elicited in cross-examination, were not put to the Grant, the applicant had ample warning that a corroborating witness was going to be brought. The applicant's first witness was Jackson. He was its legal representative at the CCMA and also the chair of the disciplinary hearing that dismissed Dlamini. Jackson was reminded at length under cross-examination that Ngcobo was going to be called as Dlamini's witness. It was put to Jackson that Ngcobo's evidence did not support the existence of any threat.

[29] Any party faced with the existence of a witness still to be called to corroborate the version of their opponent must consider their position carefully. Do they bring witnesses that may corroborate parts of their own version too or do they rely on their ability under cross-examination to discredit the corroborating witness? The applicant seems to have adopted the latter strategy. This is understandable given the evidentiary cards it was dealt in prosecuting an allegation which, on its own version, happened in private. Having said that, it was open to the applicant to tender evidence from the site manager that Grant indeed behaved as one who had just had his life threatened directly after speaking to Dlamini in the middle of the warehouse. If it existed, this sort of evidence, on the probabilities, may have counter-balanced the import of what Ngcobo had to say at the CCMA.

[3] See *SA Nylon Printers (Pty) Ltd v David* (1998) 2 BLLR 135 (LAC).

[30] I find that because Ngcobo's detailed evidence was only elicited under cross-examination, it did not have to be put to the applicant's witnesses. Indeed, it could not be put as Dlamini's representative would not have known this evidence would be elicited by his opponent.

[31] Having found that Ngcobo's evidence constituted admissible corroboration, the next question is whether the commissioner committed a reviewable irregularity in not discounting the value of the corroboration on the basis that it came from a biased source. The weight given to corroborating evidence is inextricably linked to the independence or otherwise of the corroborating witness. Grant's founding affidavit takes issue with Ngcobo's potential bias towards Dlamini. He states Dlamini and Ngcobo were clearly friends, if not accomplices, and both had the same complaint about not being paid. A reasonable decision-maker would have dealt with the evidence of Ngcobo with extreme caution – something the commissioner failed to do.

[32] There is no evidentiary basis for this attack on the credibility of Ngcobo. At most, it was only put to Ngcobo that he was a "colleague" of Dlamini and nothing more. I am not sure what other affinity Ngcobo and Dlamini share that the commissioner was meant to understand was apt to breed perjury on Ngcobo's part and thus cause his evidence to be approached with "extreme caution". Given that Ngcobo is still in the employ of the applicant, any collegial loyalty he may be said to have towards Dlamini may just as easily be counter-balanced by an economic dependence on an employer whose disfavour it is sensible to avoid. The insinuation that Ngcobo may even have been an accomplice in the events underlying the charge against Dlamini is not well founded at all.

[33] In dealing with Ngcobo's evidence as viable corroboration, the commissioner dealt with the evidence in a reasonable manner. This ground of review is dismissed.

The commissioner criticised the applicant for not putting its version to Dlamini

[34] In the award the commissioner states: "[Dlamini] on the other hand when leading evidence, made no mention whatsoever of the [applicant's] allegation of him pointing his finger in close proximity to Grant's face and of threatening him. He neither confirmed nor denied the allegations. Under cross-examination, the [applicant] did not put these allegations to [Dlamini] for a response". This paragraph did not, in my opinion, constitute a portion of the commissioner's reasoning that was at all significant in making the decision he did. The commissioner did not, for instance, rule out the applicant's accusations on the technicality that its version was not put to Dlamini. It is clear from his award, read holistically, that the commissioner regarded the applicant's allegations against Dlamini as perfectly admissible.

[35] The commissioner's actual point seems to be that evidence in support of - or against - the charges in this case was fairly weak. The phrase "on the other hand" links the complained-about portion of the award to a preceding paragraph in which the commissioner mentioned that Grant's version lacked corroboration. The commissioner goes on to say that "on the other hand" Dlamini's denial that he threatened Grant was also rather oblique. The commissioner immediately qualifies this implicit criticism of Dlamini's evidence with the remark that the threat was also not pointedly canvassed with him under cross-examination. The applicant's submission that it was incumbent on Dlamini, having heard Grant's evidence, to expressly deny the allegation that he made a threat is, in my view, incorrect. The obvious implication of Dlamini's evidence-in-chief was that he did not threaten Grant. It was also put to the applicant's witness that there was no threat.

[36] The commissioner perhaps used the phrase "did not put these allegations to" a bit loosely, thus, if read in isolation, invoking a breach of a rule rather than a missed opportunity in litigation. If the applicant had pressed Dlamini on making the threat in cross-examination, perhaps inconsistencies, contradictions or improbabilities may have arisen which could have discredited him and benefitted

the applicant's case. Read in context, rather than criticising the applicant, the commissioner was drawing attention to the paucity of evidentiary material upon which he was required to base his decision. In the end, the quality of the evidence was such that he could only dispose of the dispute, on the probabilities, by finding for the party which had some corroboration for its version. He made a decision based on the only meaningful indicator of weight available to him.

The commissioner failed to ask questions not dealt with by the lay representative

[37] I agree that a commissioner must advise and assist unrepresented litigants at each of the major cross-roads in a case, but not how to take every curve along the way. To hold otherwise would impose an impossible analytic burden upon commissioners. Not only would they need to ensure procedural fairness and take down evidence, they would have to notice the import of an absent question and inform the relevant party of the risks this posed to their case in a way that still preserved the appearance of impartiality. Furthermore, 'holes' in a case may only become apparent to a trier of fact when he or she weighs the evidence up at the end of proceedings.

[38] In any event, I have my doubts that the applicant qualifies as being thought of as unrepresented. Its representative, Jackson, is not an attorney. However, he mentioned his fourteen years' experience in conducting fair disciplinary hearings as an employer organisation's official. On perusing the substance of his evidence, it seems reasonable that the commissioner regarded him as someone far beyond the level of a total lay-person. I am reminded of the test for allowing legal representation in dismissal disputes in the CCMA. One ground for permitting legal representation is if there is a mismatch in the "comparative *ability*" of the parties. The test is not comparative qualification. A legally unqualified representative, such as Jackson, may hold himself out to be – and indeed perform – at the same level as a qualified practitioner. I do not think the failure to coach or advise such a representative would, in fairness, constitute a valid ground of review.

[39] In any event, the commissioner did not disqualify any evidence brought by the applicant as a result its 'failure' to ask Dlamini about the threat.

Grant's instruction to call the police favours the probability that a threatening incident occurred

[40] The applicant argues that "there would have been no reason to call the police had Grant not been threatened and feared for the safety of himself and his equipment". The applicant argues further that both Dlamini and Ngcobo admitted that an instruction was issued that the police should be called if Dlamini returned to site. This is hardly an admission as I can find no place in the evidence of Grant where he himself states that he instructed the site manager to call the police should Dlamini reappear after being suspended. He does not mention this issue in his founding affidavit either. There is no other direct evidence that Grant issued any instruction to summon the police. With Grant not having made this claim himself as evidence of how scared he was, the commissioner rightly did not give it much weight in supporting the probability of the applicant's version. This argument seems to emerge only after a perusal of the transcript of the evidence of Dlamini and Ngcobo who mention what the site manager told Ngcobo the day after Dlamini's suspension.

[41] The timing of this instruction is also relevant in assessing the extent to which it may have bolstered the probability of the applicant's case. Neither Dlamini nor Ngcobo claim that Grant told the site manager, on the day in question already, that Dlamini was not to return to work on pain of the police being called. According to Dlamini, his first inclination that the police would be called if he came to work happened the next morning. He heard this from Ngcobo who phoned to advise that he had just learnt that the police were to be called from the site manager himself. The earliest evidence there thus is of any talk of calling the police is around 07h00 on the next day. The less evidence there is of spontaneity in invoking the police, the greater the chance for cynicism to creep in and, thereby, an action meant to show state of mind loses evidentiary weight. We thus have no evidence from Grant himself that he was so moved by the threat he

received from Dlamini that he immediately issued an instruction to the site manager to call the police should Dlamini reappear. This instruction, coming second hand from Ngcobo, moreover, could have been issued at any time before 07h00 the next morning. It is within the band of reasonableness for a decision-maker to have discounted the import of this evidence, especially when weighed against Ngcobo's corroborated version that, at the time Dlamini was chastised and suspended by Grant, Dlamini did not threaten Grant.

Failure to draw an adverse inference from Dlamini's conduct of his disciplinary hearing

[42] Dlamini did testify at his internal hearing and was cross-examined. The commissioner was criticised for failing to draw an adverse inference from Dlamini's election not to question Grant, make mitigating arguments or sign documents at his disciplinary hearing. This ground of review is dismissed because Dlamini's stated reasons for his action are not so frivolous as to suggest that he was hiding something. They were about his understanding of the disciplinary process, his suspicions about the absence of witness statements and having to sign documents along the way.

Not considering other charges

[43] Dlamini was charged with gross misconduct "in that you, despite numerous instructions not to do so, have again stopped work at least 45 minutes prior to work ending. When confronted by Mr Grant, you became aggressive and threatening towards him. This is totally unacceptable to your employer". This is essentially two charges wrapped into one; the threat and absenteeism.

[44] The applicant, in its heads of argument, states that Dlamini was already on a warning for previous attendance related offences. I have searched the record in vain for evidence to substantiate this claim. As far as the commissioner was aware, the employee was in fact on no valid warning for absenteeism. Review proceedings are not the place to raise evidence not led at the CCMA.

Reinstatement as Relief

[45] The applicant disputes the reasonableness of reinstatement as relief, stating, *inter alia*, that the commissioner provided no reason whatsoever for such an award. The commissioner, in my view does not have to justify reinstatement. It is the default award for a substantively unfair dismissal. The applicant ought to have made a case for a departure from reinstatement, in terms of the factors justifying exception listed in section 193 (2) of the LRA. The fact that Grant was fearful of Dlamini and had lost trust in him cannot logically serve as a basis to deny reinstatement. This is because, in arriving at the finding that the dismissal was substantively unfair, the commissioner, on a balance of probability, rejected the evidence that an incident occurred to make Grant fearful and lose trust in the employee.

[46] The applicant further argues that the evidence of Grant that he felt threatened, was fearful and that there was no trust any longer was not disputed by Dlamini. The suggestion is therefore that this evidence ought to have been accepted as is. I do not agree. Dlamini's representative put it to Grant that Dlamini did not threaten him, thus although indirectly, Dlamini denied threatening Grant. His timeline of events excluded any period during which he was in a heated exchange with Grant. The applicant did not explore the threat in cross-examination and obtain any concessions which would have made its occurrence more likely. It would be artificial to say that Dlamini never denied the accusation. To use an analogy: once an accused denies assaulting an accuser, he is not required to specifically also take issue with the amount of pain the accuser alleges he felt or how scared the accuser allegedly was.

[47] The amount of time that Dlamini worked at the applicant, less than a year, is entirely irrelevant to determining relief. The suggestion that it is a reasonable decision-maker would have taken this into consideration to deny reinstatement verges on being a frivolous argument.

The failure to deal with allegations of procedural unfairness

[48] Dlamini's allegations of procedural unfairness were not dealt with by the commissioner in the award. The applicant regards this as a material omission in the proceedings and further impacts upon the ultimate sanction handed down.

[49] If the commissioner had found the dismissal to be substantively fair but neglected to rule on this other claim, raised *by the dismissed employee*, this would have been a reviewable omission. This is because the omission had a material effect on the outcome for the complaining party. Put differently, the wrong party is complaining about this issue. The omission in this case had no material effect on outcome. The default relief for a substantively unfair dismissal is reinstatement. Any compensatory relief for additional procedural unfairness that might have been granted was subsumed into the amount ordered to be paid *in lieu* of retrospective wages. If, on the other hand, the commissioner had found the dismissal to be procedurally fair, no deduction was owing to the applicant in the amount of back pay ordered.

[50] The commissioner's oversight, while not ideal, is understandable in circumstances where a finding of substantive unfairness was made. In not making a finding on the allegation of procedural unfairness, the applicant has not shown that the commissioner deprived it, within reason, of a negative credibility finding against Dlamini. The issues in dispute on procedure were about Dlamini's understanding of the disciplinary process and his subjective assessment that he would not get a fair hearing. In my opinion, the fact that the commissioner did not formally dispose of this alleged ground of unfairness does not disclose any deficiency on the part of the commissioner and the way he dealt with the evidence that is transferable to other parts of the award.

Conclusion

[51] The commissioner gave a very short reason for finding that the employer had not discharged the onus of proof which lay upon it. One version was partially corroborated, the other not. A detailed review of the commissioner's findings,

read in conjunction with the record, shows that he might have raised and then discounted certain evidentiary questions arising from the facts. Most of these questions melt like mist when exposed to the glare of legal and logical analysis. It must thus be assumed that his failure to go down these blind alleys was precisely because they went nowhere and detracted from facing up to the inevitable final destination, which he arrived at along the simplest route.

[52] While the reasons for certain findings of fact made in CCMA awards is sometimes obscure and insufficient, and the task then falls to a reviewing court to opine on how the evidence should have been analysed, the opposite situation should also be discouraged. When a commissioner gives a concise and, ultimately, fair and accurate reason for his or her decision, this should not be an invitation by the losing party to seek the intervention of this court because the Commissioner did not *fully* apply his or her mind.

[53] I pause to note that it may well be that Dlamini threatened Grant. Unfortunately, if this is the case, this is one of those matters where there is insufficient evidence to sustain that allegation on a balance of probability. On the employer's version, it was an incident unseen by anyone but the two protagonists. On the other hand, the employee has a corroborating witness. The commissioner, in my opinion, acted as what a reasonable decision-maker would have in disposing of the matter on this simple basis.

Ruling

[54] The Second Respondent's finding that the dismissal was substantively unfair is confirmed. The applicant's grounds of review are dismissed.

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WHITCHER J

Labour Court of South Africa

APPEARANCES:

FOR THE APPLICANT: J Forster of Foster Attorneys

FOR THE FIRST RESPONDENT: M Jama: union official: PTAWU