



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

Not Reportable

Not of interest to other Judges

Case no: JR201/14

In the matter between:

**PULE ABEL WELKOM**

**Applicant**

and

**ANTONY OSLER N.O.**

**First Respondent**

**COMMISSION FOR CONCILIATION,  
MEDIATION AND ARBITRATION**

**Second Respondent**

**ESKOM HOLDINGS LTD**

**Third Respondent**

**Heard: 07 June 2016**

**Delivered: 21 June 2016**

**Summary: An unopposed application to review an award alleging failure to apply mind and issuing an award that is not reasonable. Held: (1) that the fact that a review is unopposed does not suggest that it ought to be granted as a matter of routine. The reviewing court must still satisfy itself**

**that the award is one that a reasonable commissioner cannot issue. (2) the application for review was dismissed, with no order as to costs.**

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## JUDGMENT

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MOSHOANA, AJ

### Introduction

[1] This is an unopposed application to review and set aside an award issued on 16 December 2013. The applicant appeared in person.

### Background facts

[2] The third respondent is the national electricity provider. The applicant was employed as a technical officer. After an investigation into reports from a whistle-blower regarding incidents during August 2011, the applicant and one Lokwe faced two charges of being in unauthorised possession of or remove or attempted to remove property belonging to the third respondent. In one respect, it was alleged that the applicant removed cables from the structures in the township of Rietvale, Ritchie without authorisation and did not return the removed cable. In the other respect, the removal happened in the town of Opperman. The applicant and Lokwe were found guilty and dismissed on 15 February 2013. Aggrieved by their dismissal, they through their Union NUMSA, referred the dispute to the CCMA. At arbitration, the first respondent found that the dismissal was fair substantively and was confirmed. The applicant aggrieved thereby launched the present proceedings.

[3] Strangely, despite being served with the application, the third respondent failed to oppose the application.

### Grounds of review

[4] The applicant alleges that the first respondent failed to apply his mind; he allowed himself to be misled by the third respondent. He effectively rejected their version in the circumstances where he ought not to have

rejected. There was no shred of evidence supporting the allegations that led to their dismissal.

### Evaluation

[5] The fact that a review application is unopposed does not mean that a court of review should grant it as a matter of course. It is still the duty of the reviewing court to determine whether the award is one that a reasonable commissioner cannot issue. In court, the applicant emphasised that it is indeed so that they removed cables after receiving a report of fault. After removing the said cables, they deposited them at a place known as CNC-scrapyard in accordance with procedure. At arbitration, the record reveals that the third respondent presented evidence of about seven witnesses. Of the seven, about five were residents of Rietvale and Oppermans respectively. In addition statements of witnesses were presented and admitted as hearsay in terms of section 3 of Act 45 of 1988.

[6] The issue central to the applicant's defence-that the cable was taken to CNC-scrapyard is pertinently dealt with by the first respondent at paragraph 33 of his award. After weighing the evidence before him he came the following conclusion:

'I find it probable that the cable removed from Rietvale and Oppermans by the two employees was not returned to the scrap area of the CNC.'

In relation to the two charges, the first respondent assessed the evidence before him and found that the applicant was indeed guilty as charged.

[7] The award is detailed and is supported by the evidence presented at arbitration. Perusal of the applicant's grounds gives one a clear impression that the applicant is seeking an appeal as opposed to a review. I cannot say that the conclusion reached by the first respondent is not justifiable and or one which a reasonable commissioner cannot reach.

Conclusion

[8] In summary, I am not persuaded that the award of the first respondent is reviewable in law.

Order

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

1. The review application is dismissed.
2. There is no order as to costs.

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Moshoana, AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: In Person

For the Respondents: No appearance

LABOUR COURT