



In the matter between:

Case Number: GPRFBC 17524

Panellist: Manisha Singh

Date of Award: 17 October 2011

In the **ARBITRATION** between

NAME OF EMPLOYEE

SATAWU obo Tshepo Ramahoshi

(Union/Applicant)

And

NAME OF EMPLOYER

Epscot/CIRO Beverage Solutions

(Respondent)

Union/Applicant's representative: SATAWU

Union/Applicant's address: Standard Bank Building

3 West Street

Kempton Park

1620

Telephone: 011 394 3744

Telefax: 011 394 3748

E-mail: _____

Respondent's representative: Epscot/CIRO Beverage Solutions

Respondent's address: 30 Diesel Road

Isando

1625

Telephone: 011 974 4924

Telefax: 011 392 5618

E-mail: _____

DETAILS OF HEARING AND REPRESENTATION

1. The Applicant is Tshepo Ramahoshi (employee). The Respondent is Epscot/CIRO Beverage Solutions (employer). The hearing was held at the NBCRFLI Offices, 29 De Korte Street, Braamfontein on 5 October 2011. The matter was digitally recorded and the parties handed in bundles.

ISSUE TO BE DECIDED

2. The matter is brought in terms of Section 191 (5) (a) – reason for dismissal relates to misconduct. It is therefore to be determined if the dismissal of the Applicant was fair.

BACKGROUND

3. The Applicant commenced employment on 29 September 1999. He was employed as a van assistant and earned R951-00 per week.
4. He was charged as follows:
 - a. Theft and or misappropriation of company property in that you received money from a client after making a delivery on 14/06/2011 and failed to hand over the money to the company.
 - b. Fraud in that the invoice you handed in from the client was altered in such a way that it would seem that you received the money from the client and could make personal gain by keeping the money for yourself.
5. A disciplinary enquiry was held on 19 July 2011 and the Applicant was found guilty and dismissed on 22 July 2011.

ANALYSIS OF EVIDENCE AND ARGUMENT

Respondent's Evidence

6. The first witness for the Respondent was **Manie Fourie (Fourie)**. He is the Warehouse Manager.
7. The Applicant is an assistant. He was paid cash on delivery by a client however it was never received by the cash office. The Applicant confirmed that he received the money. The invoice from the customer was signed by the Applicant and marked paid and he confirmed same. However the invoice handed in to the cash office appeared to be bleached in that the word "paid" was removed. Jolene was the cash officer on the day and she confirmed that she never received same. The Applicant was assisting Petrus, the driver who stated that it is the assistant's job to sort out the POD.
8. The Applicant was sent for a polygraph test and deception was indicated. The Applicant was suspended and a disciplinary hearing was held on 19 July 2011 wherein the Applicant was found guilty and dismissed.
9. In **cross examination** he agreed that the Applicant admitted to receiving cash from the client which would indicate that he is honest. He further stated that the Applicant explained that he cashed the money at the cash office with Jolene.
10. Jolene had not received the cash. If she had received the cash she would have stamped it in front of the assistant and in the trip sheet she would have indicated next to the invoice that it was paid.
11. He said that after he had received the complaint he contacted Labour Net that assists with all their IR issues and discussed the matter with them and sent them the relevant documentation and asked them what to do. The chair of the hearing was from Labour Net. He however does not remember exactly whom he spoke to.

12. The Applicant agreed to undergo the polygraph test. Jolene had the polygraph test done on 18 July 2011 and the Applicant's hearing was held on 19 July 2011. He received a verbal outcome to Jolene's test on 19 July 2011. After the incident Jolene went on holiday and on her return she went for the test on the first available date. He denied that Jolene only underwent the test as a cover up.
13. The second witness for the Respondent was **Jolene Kantoor (Kantoor)**. She is an admin manager. She is responsible for admin work for distribution and oversees the cash office.
14. On completion of a route the driver and assistant will go to the cash office to cash up. She checks the invoice against the load sheet. She will indicate on the load sheet if the invoices are cash or account or EFT. If it is cash she will stamp the invoice cash. If payment is made by cheque the invoice will be stamped accordingly.
15. If the cash office is closed then they will use the overnight bag which is thrown into the cash office. The bag will only be opened in the presence of the driver or the assistant which is usually done the following morning.
16. On 17 June 2011 she was working in the cash office when she received the invoice for the Polokwane trip from the Applicant. He was present whilst she cashed up. The client in relation to this particular invoice is on a 7 day EFT account and therefore she did not expect cash. On the load sheet she indicated EFT as the form of payment next to the particular invoice.
17. In **cross examination** she could not confirm the condition of the invoice when the Applicant handed it in. She denied that the Applicant had given her cash for that particular invoice as she would have stamped the invoice cash.
18. The Applicant is not shown the load/trip sheet but he is present when she completes same. She confirmed that the Applicant was not given a copy of the load sheet or the invoices. On that

particular day he had handed in other cash amounts. This had never happened before with the Applicant. However she is not in the cash office all the time.

Applicant's Evidence

19. On 14 June 2011 he was on duty. They went to Polokwane to deliver. He had received from various customers - cash, cheques and accounts. He arrived back at the office on 17 June 2011.
20. He went to the cash office and handed over all invoices and monies to Jolene including the R1 920-00. There were no shortages. The invoice that he handed to Jolene was not altered. He only found out on 28 June 2011 that it was altered.
21. Fourie had asked him about the invoice and he explained that he received the cash from the customer which he handed to Jolene at the cash office. He even agreed to undergo a polygraph test.
22. He felt pained with the sanction of dismissal as he has worked for the Respondent for a long time. He deals with large sums of money and why would he steal such a small amount.
23. He is currently unemployed and would like to be retrospectively reinstated.
24. In **cross examination** he agreed to having received the cash from the customer and had signed for same. He did not query the load/trip sheet as he did not have sight of same. He agreed that he handed other cash as well on that particular day.
25. He stands on the other side of the glass and can see Jolene write but does not know exactly what is written. She had counted the money and there were no shortages.

ANALYSIS OF EVIDENCE AND ARGUMENT

26. Section 192 of the LRA places the onus on the Respondent to establish a fair dismissal.

27. The evidence is mutually destructive. The Applicant states that he handed the money over to the cash office and this is denied by the cashier. The Respondent avers that as the relevant documentation was not completed it indicates that the money was not received. This is however in no way an indication of whether the money was received or not. It is worthy to note that from the outset the Applicant maintained that he had received the cash and had handed same to the cash office.

28. There is not further evidence to indicate that the Applicant had not handed in the said cash. The polygraph test in the circumstances amounts to circumstantial evidence and hence not much reliance can be placed on same without further supporting evidence. Thus the Respondent has failed to discharge the onus placed on it to establish a fair reason for dismissal.

29. The witnesses had relayed their evidence with certainty and were consistent.

30. The procedural challenge that came to fore was that the chair person had prior knowledge of the matter in the sense that the Employer's Organization was informed prior to the hearing as to what the dispute was about and documentation was forwarded to them and they advised the Respondent accordingly. This does create a perception of bias irrespective of whether the chair person was the person who had advised the Respondent.

31. In the circumstances the dismissal of the Applicant was substantively and procedurally unfair. The Applicant has requested to be retrospectively reinstated. There is no evidence to indicate that the working relationship was rendered intolerable herein. It is further hard to ignore the Applicant's substantial service and disciplinary record. Further due regard is had of the Applicant's personal circumstances and the circumstances of the dismissal.

AWARD

I make the following award:

- a. The dismissal of Tshepo Ramahoshi (Applicant) is substantively and procedurally unfair. .
- b. Epscot/CIRO beverage Distribution (Respondent) is to retrospectively reinstate Tshepo Ramahoshi (Applicant) to date of dismissal (22 July 2011) with no loss of benefits. The Applicant is to report for duty on 22 November 2011.
- c. Epscot/CIRO Beverage Distribution (Respondent) is to pay back pay to Tshepo Ramahoshi (Applicant) for the period from 22 July 2011, August 2011, September 2011, October 2011 to 22 November 2011 (4 months) in the amount of R16 471-32 (Sixteen Thousand Four Hundred and Seventy One Rand and Thirty Two cents) at R951-00 per week.
- d. Payment as aforesaid must be made within 14 (fourteen) days of receipt of this award.

I make no order to costs.

NBCRFI Panelist: _____

