REPUBLIC OF NAMIBIA

LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

CASE NO: HC-MD-LAB-APP-AAA-2019/00062

In the matter between:

MARTIN AMOOMO **1ST APPELLANT**

NAFTALI OWOSEB **2ND APPELLANT**

and

NAMPOST LIMITED **RESPONDENT**

Neutral Citation: *Amoomo v Nampost Limited* (HC-MD-LAB-APP-AAA-2019/00062) [2021] NALCMD 40 (3 September 2021)

CORAM: MASUKU J

Heard: **16 October 2020**

Delivered: **3 September 2021**

Flynote: *Labour Law* – Arbitral award – Appeals - Such only permissible on questions of law – Finding by the arbitrator that the respondent had a valid reason for dismissing the appellants cannot be sustained – *dismissal* – Substantive and valid reason must exist for dismissal.

Summary: The appellants in this matter appealed, in terms of s 89 of the Labour Act 11 of 2007 (the Act) against an award issued by the arbitrator on 26 September 2019. The Appellants were employed by the respondent as driver and assistant driver, respectively. They were dismissed on the 4 September 2017 on one charge of mail violation and one charge of bringing the respondent's name into disrepute.

At the disciplinary hearing, the appellants faced one charge of mail violation that allegedly occurred on or around October 2016 until January 2017, one charge of mail violation that allegedly occurred on or around 27 January 2017 and one charge of bringing the respondent's name into disrepute that allegedly occurred on or around 27 January 2017. At the commencement of the disciplinary hearing the appellants pleaded not guilty. The chairperson of the disciplinary hearing returned a verdict of guilty on the second and third charges against the appellants and the appellants were subsequently dismissed. The appellants duly lodged an internal appeal, which appeal was dismissed and the sanction recommended by the Disciplinary Committee was confirmed.

Aggrieved by the outcome of their appeal, the appellants, on 24 October 2017, referred a complaint of unfair dismissal to the office of the Labour Commissioner on the basis that their dismissal was substantively unfair. After conciliation failed, the dispute was set down for a formal arbitration hearing. On 26 September 2019, the arbitrator made an award in favour of the respondent, where she dismissed the appellants' referral. It is against this award that the appellants are appealing.

Held: that an employer must have a valid and fair reason for dismissing an employee.

Held that: an employer must, on a balance of probabilities, prove that the employees were actually guilty of misconduct and must prove all elements of the charges levelled against the employees.

Held further that: the respondent did not endeavour prove all the elements contained in the charges against the appellants and therefore appellants' dismissal was substantively unfair.

The appellants' appeal succeeded and the arbitration award was set aside.

ORDER

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1. The Appellants' appeal succeeds.
2. The award of the Arbitrator, dated 26 September 2019, is set hereby set aside.
3. The Respondent is ordered to reinstate the Appellants.
4. The Respondent is directed to back pay the Appellants from the date of dismissal to the date of reinstatement, including all the benefits and increments that would have accrued to them.
5. There is no order as to costs.
6. The matter is removed from the roll and is regarded as finalised.

JUDGMENT

MASUKU J:

Introduction

[1] The question for determination is whether the arbitrator was correct in finding that the respondent had a valid and fair reason to dismiss the appellants.

Background

[2] The first appellant was employed as a courier driver, and the second appellant was employed an assistant courier driver.

[3] After an internal disciplinary hearing, the appellants were found guilty of unlawfully, wilfully getting access to mail items, removing mail items contents, violating the mail items and throwing same out of the conveyancing truck as well as extremely exposing/tarnishing company's image heavily on social media, local newspapers and communication to other Postal Operators, which actions allegedly took place on or around 27 January 2017.

[4] The appellants were subsequently dismissed on 4 September 2017. The appellants did not accept the dismissal and they thereafter appealed against their

dismissal. Their appeal was, however, dismissed. The appellants subsequently approached the Office of the Labour Commissioner, where they lodged a dispute of unfair dismissal. The matter was referred to an arbitrator, Ms. Memory Sinfwa, by the Labour Commissioner to arbitrate the proceedings among the parties.

[5] After hearing the parties, the arbitrator, in her wisdom, found that substantively the appellants had been fairly dismissed. She accordingly issued an award dated 26 September 2019, in terms of which she found and held that the respondent's dismissal was substantively fair and dismissed the appellants' referral.

[6] Dissatisfied with this award, the appellants' approached this court seeking an order setting aside the award, contending in the main that the arbitrator erred in reaching the decision that she did, particularly that the dismissal was substantively fair.

Facts in dispute

[7] The arbitrator was called upon to determine the following facts in dispute (i) whether the dismissal was substantively fair; (ii) whether on the 27th of January 2017 the appellants violated the mail by unlawfully, wilfully getting access to the mail items, removing mail items contents, violating the mail items and through it out of the conveyancing truck; (iii) whether the appellants on or about 27th of January extremely exposed/tarnish Company's image heavily on social media, local newspaper and communication to other Postal Operators; (iv) whether the mail allegedly found in the black plastic bags along the side of the road, is the same mail that was transported by the appellants' truck from the Airport on the 27th of January 2017; (v)whether the alleged violated mail reported on social media and other local newspapers and to other Postal Operators came from the appellants Truck on the 27th of January 2017; (vi) whether the witnesses of the respondent identified the truck driven by the appellants as the truck that throughout and violated the mail on the 27th of January 2017.

[8] The issues that the arbitrator was required to decide was (i) whether the appellants were unfairly dismissed and (ii) whether the appellants were entitled to reinstatement and loss of income. There were no issues on the procedural aspect of the

dismissal and therefore the proceedings dealt with the reason for the dismissal of the appellants only.

The arbitration proceedings

[9] In view of the fact that the issue of dismissal of the appellants was conceded and the parties agreed that the dismissal was procedurally fair, the onus was on the respondent to show that the dismissal was substantively fair and therefore the respondent presented its case first. In this regard, the respondent called four witnesses to testify on its behalf. These were Mr. Jan Classen and Mr. Wilson Shikoto, Mr. Holger Foerster and Mr. Arrie Husselmann. The appellants testified in their case and called one witness Mr. Justin De Rosch to testify in support of their case.

The evidence

[10] The evidence of Mr. Jan Claasen, ('Mr Claasen') was of a general nature as he dealt with the procedure for securing mail and the processing of such mail at both the Hosea Kutako International Airport and the NamPost Windhoek depot. His testimony on the incident in question was reliant on information relayed to him by others, as he was not present on the day in question as he was hospitalised.

[11] Mr. Classen under cross-examination conceded that all the items collected by the appellants on 27 January 2017 from the Hosea Hutako International Airport were received at the depot in Windhoek and nothing was missing.

[12] It was his evidence that the appellants could access the mail bags when they received the bags from the Air Namibia station and proceeded to Menzies.

[13] In cross-examination, it was put to Mr. Claasen that he testified that there are customers who sent items but those items were not received. He was questioned on the identity of the persons who did not receive the items and he responded that they were not received by NamPost from the countries where they were sent and therefore NamPost did not receive the mail from Air Namibia.

[14] In further cross-examination, Mr. Classen conceded the fact exhibit 1 which is an entry extracted from the security incident book, did not assist in telling what was missing and Mr. Claasen could not definitively state that the items that were removed from the black bag allegedly disposed of by the appellants contained items transported by the appellants on 27 January 2017.

[15] In cross-examination, it was put to Mr. Classen and he agreed that he could not state that exhibit 8, which was a letter issued to the chief executive officer of the respondent from the Ministry of International Relations and Cooperation, had anything to do with the appellants and that it demonstrates the fact that the complaint is not from the newspaper article but that it is from the two parcels that were never received by the complainant. He further conceded that he could not reply on that exhibit to say that the appellants had tarnished the name of the respondent as the parcels and the dates those parcels went missing had nothing to do with the appellants.

[16] On the Facebook post, which was submitted as exhibit 2, Mr. Classen conceded that there was no date on that exhibit and therefore he could not state that the post was as a result of the incident or attributable to the appellants. On exhibit 5, which was an *sms* complaint posted in the Namibian newspaper, Mr. Claasen conceded that the message related to parcels that went missing during Christmas time however he does not know the date the *sms* was sent to the newspaper as he is only aware of the date of the reply which was on 28 March 2017.

[17] Mr. Wilson Shikoto also testified on behalf of the respondent. His evidence was to the effect that he was the manager responsible for corporate communication. It was his evidence that the incident of 27 January 2017 involved the violation of mail. The mail that was found dumped alongside the road from Hosea Kutako International Airport to Windhoek. The incident was picked up from social media where pictures were posted on social media with a lot of comments and complaints and responses thereto.

[18] He further testified that immediately after they saw the post on Facebook, they contacted the person that posted on Facebook, and then went to go see for themselves. From there they collected the bags of the violated mail and then started responding to social media queries. It was his evidence that the bags they collected were green bin

bags and that he could not remember how many they were and the contents of those bags was violated mails that were picked up from the side of the road.

[19] He further testified that he was the author of the "*Feedback Nampost*" identified in exhibit 4. He testified that after the incident of 27 January 2017 there were a lot of complaints, particularly from Facebook and it was his testimony that parcels that are received internationally or mails that are received have declined a little bit and that they cannot attach it to this particular event.

[20] In cross-examination of Mr. Shikoto, he again testified that the bags which contained the mails were green bags, they were more than one and they were found by a Mr. Kai Gorn.

[21] When it was put to him that the depiction of all the bags having mail that were violated was the cumulative effect that tarnished the image of the respondent, he agreed with the contention and further stated that it was not only the images on Facebook, but also the comments. He later corrected himself and stated that the reputational harm he was referring to was caused by the whole incident, be it the black bag the appellants where convicted on or the green bags, because those were all found there throughout that time.

[22] Mr. Shikoto conceded that he did not testify to having seen the black bag as he has not seen the black bag in question.

[23] The respondent than called Mr. Holger Foerster to testify. Mr. Foester testified that he is a foreman/manager at KG Sand and Stone, also operating next to it as a machine operator and a driver.

[24] It was Mr. Foerster's evidence that at about lunch time, between 1 and 2, he was proceeding from Windhoek and on the way, about six kilometres outside of Windhoek towards the airport, he came across a NamPost truck. As he was approaching the NamPost Truck it was standing still. As he came closer it started moving and when it started moving, he saw a black bag flying on the left-hand side out of the Windhoek of

that NamPost Truck. From there he proceeded towards his work at Kapps Farm where he reported what he saw to his boss.

[25] His boss told him to return to the site where he saw the truck and the black bag flying out of the window to have a look there and on arrival he found in the grass a black bag plus-minus half full of shredded and opened packages and mail. He then took the bag back to the office and his boss phoned the senior people at NamPost to collect the rest of the whole post and mails which they collected next to the road.

[26] In cross-examination Mr. Foerster testified that from the time that he saw the bag being thrown out to the time he went to his employers, a total time of 45 minutes had elapsed. When it was put to him on how sure could he then be that the bag that was allegedly thrown out by the appellants was the same bag he collected 45 minutes later he stated that it was the only black bag he found and from what he saw it was still the same bag. He conceded that he was assuming that what was thrown out of the truck is exactly what he found.

[27] When it was put to him that he never saw the appellants accessing or shredding the mail, he testified that he did not and that he only saw the bag flying out.

[28] The respondent’s final witness was Mr. Arrie Husselmann. Mr. Husselmann testified that he is a fleet manager at the respondent and was responsible for managing the fleet and everything coming with it, like the vehicle tracking, the service of vehicles, motor vehicle accidents and claims, in short.

[29] Mr. Husselmann testified to the appellants’ movement with the truck through the illustration of the satellite tracking of the vehicle. He testified that the speed of the appellants on their way to the airport was over 110kilometers an hour and on their return from the airport the average speed was around 50 kilometres an hour.

[30] Mr. Husselmann, while illustrating on exhibit 10 testified that the appellants stopped at Hoffnung side where the mine loaded its ore on the TransNamib trains. From the turn-off to where the vehicle stopped was just around about five kilometres. Mr. Husselmann testified that the vehicle was stationary for 150 seconds but he could not

state what specific time the truck was stationed there, as the ignition was not switched off.

[31] Mr. Husselmann testified that the appellants left the airport at 12:19 and arrived in Windhoek at 13:28 as that was the time the appellants switch off for the first time when they arrived in Windhoek. He further testified that the vehicle was stationary at Sam Nujoma, at the army offices. After this, the appellant's vehicle made one more stop, which was opposite Game in Bismarck Street, before proceeding to NamPost mail centre when their trip concluded.

[32] In cross-examination, Mr. Husselmann was requested to measure the distance from where the appellant's vehicle stopped to Windhoek, and it was exactly 5.59 kilometres. He testified that the exhibit 11 could not show the vehicle exactly and therefore could not see what happened to the vehicle when it was stationary.

[33] On behalf of the appellants' case, the first appellant testified first. It was the first appellant's testimony that when they were offloading the mail from the truck, they were at all times accompanied by a customs official, and Air Namibia official, a security guard from Namibia protection Services and Mr. De Rosch.

[34] The first appellant further testified that when he and the second appellant loaded parcels received from Air Namibia, the customs' official was present and counted and recorded the number of bags that were loaded. Furthermore, an Air Namibia official also was present to ensure that all the bags were loaded into the truck. The first appellant further testified that Mr. De Rosch was in charge of writing down the number of bags that were loaded.

[35] The first appellant further testified that after the loading of the parcels at the Air Namibia warehouse was completed, they proceeded driving to Menzies' warehouse, which was about 40 meters from the Air Namibia warehouse and the customs official, the second appellant and Mr. De Rosch followed behind the truck by foot. The same process was repeated at Menzies, where an official from Menzies, accompanied by a security guard from Namibia Protection Services, handed them mail to load and the customs official, the official from Menzies, the security guard from Namibia Protection

Services, Mr. De Rosch, first and second appellants all verified how many bags were received to be loaded and the customs official counted the number of bags and Mr. De Rosch completed the documentation on the total number of mail bags received and loaded.

[36] The first appellant thereafter testified that he drove to the customs office. Again the customs official, the second appellant and Mr. De Rosch followed on foot. Once at the customs office, the truck was sealed by the customs official.

[37] It was the first appellant's testimony that the area where the Air Namibia warehouse is located as well as the area where Menzies' warehouse is located, are under video surveillance.

[38] When it was put to the first appellant that Mr. Classen's testimony was the appellants could have had access to the mail when they drove from Air Namibia warehouse to Menzies' warehouse, the first appellant responded by posing a question, namely, how they could have accessed the mail when they were with the customs official, Mr. Rosch and also considering that the area was under video surveillance. He stated that they did not touch any of the mail and that from the Air Namibia warehouse to Menzies' warehouse, they did not stop.

[39] The first appellant further testified that after they left the airport, the only time they stopped before entering Windhoek was when one of them needed to relieve themselves, as nature was calling. He denied having brought the respondents name into disrepute and further disputed that the exhibits relied on by the respondent had anything to do with them.

[40] The second appellant also testified. He testified to the procedure that was undertaken on 27th January 2017 in respect of offloading the mails from the NamPost Windhoek depot at the airport and the loading of the parcels and mails bags from Air Namibia and Menzies at the airport to be delivered at the NamPost depot in Windhoek.

[41] The second appellant testified on exhibit 1 stating that it was the form completed by the security guard when they were loading the parcels into the truck. When asked on

why the total numbers of parcels in exhibit 1 did not correspond with the total numbers in exhibit 14, he testified that the *“the guy did not show it here*”. When asked by his representative whether he recalls whether there was really one, the second appellant testified that he did not recall.

[42] The Second appellant further testified that he initially did not recall that they stopped but if they stopped, it was for someone to relieve himself. He further testified that he did not damage any post, violate post or throw out any mail. When the second appellant was asked for his comment on the allegation that additional to accessing the mail, he retrieved the mail item content, second appellant testified that the truck was sealed and they do not have access to it.

[43] On the charge of bringing the respondent’s name into disrepute, the second appellant testified that they did not bring the name of the respondent into disrepute and he does not know the origin of the e-mails or Facebook posts.

[44] In cross-examination, the second appellant was asked about the missing one bag. It was put to him that first appellant testified that he delivered 33 bags as received from Air Namibia at the mail centre. It was further put to him that testified that he read 34 bags however they only delivered 33 bags to mail centre, and the records reflect that 33 bags were delivered. The second appellant responded that ‘if it will reach the office, it will also be ticked off’, and asked how should the person tick off. He further testified that maybe the 33 bags which were delivered or received, maybe the person who signed off did not have a proper look or he did not count the bags properly.

[45] Mr. De Rosch testifies on behalf of the appellants. It was his testimony that after loading the mail bags at the airport and on their way back, he requested the first appellant to stop as he need to relieve himself. He testified that neither him nor the appellant threw any black bags outside the Windhoek of the truck.

[46] In cross-examination when asked on the discrepancies in exhibit 1 and exhibit 14, the respondent’s representative asked Mr. De Rosch to tell them about that one bag. Mr. De Rosch testified that he cannot actually say because the truck was sealed by

all means and he cannot actually say how or when because nobody has the authority of opening the truck amongst them.

The award

[47] After considering the evidence adduced by the parties at the arbitration hearing, the arbitrator held that on a balance of probabilities, the dismissal of the appellants was substantively fair. This finding was based on the 'one mail bag reflected on the security guard's records does not reflect on the Driver's record and that as per the tracking system and the eye witness testimony the point at which the appellants stopped do tarry' (*sic*).[1]

[48] The arbitrator further held that it is also evident that the time when the appellants' delivered the mail at the mail centre no suspicious incident was recorded, but this alone cannot overrule the fact that errors do occur and the fact that an incident is picked up at a later stage.

[49] The arbitrator further held that it is an employee's duty to further the interest of the employer and ensure that the mandate of such employer is fulfilled and any diversion from such would damage the image of the employer. In the present case, it is NamPost's mandate to provide courier or mail services both nationally and internationally, and therefore employee's conduct should be aligned to the said mandate ensuring that clients are satisfied with the services provided. In this instance the conduct of the applicants, who are entrusted with handling the mail fell under scrutiny, resulting in clients losing faith in NamPost, thereby tarnishing its mage.

[50] In finding that the appellants were guilty of bringing the company's name in disrepute, the arbitrator relied on the decision of *Foodcon (Pty) Ltd v* Schwartz [2], where Silungwe J stated that trust is the core of the employment relationship and dishonest conduct is a breach of that trust.

[1] Page 147 to 149 of the record.
[2] *Foodcon (Pty) Ltd v Schwartz* (LCA-1998/23) [1999] NAHC 14 (29 September 1999)

[51] The arbitrator accordingly found for the respondent for the reasons mentioned in part above.

The issue for determination and discussion thereof

[52] The issue that needs to be determined is whether the arbitrator was correct in finding that the appellants' dismissal was substantively fair.

[53] The appellants were charged with three charges and were only found guilty and dismissed on charge 2 and charge 3, namely:

'Charge 2

...on or around 27th of January 2017 unlawfully, wilfully got access to the mail items, remove mail items content, violate the mail items and through it out of the conveyancing truck."

Charge 3

"…on or about 27th of January 2017 extremely exposure/tarnish Companies image heavily on social media, local newspaper and communication to other Postal Operators."

[54] The arbitrator's justification of the appellants' dismissal by the respondent is that one mail bag on the security guards' records did not reflect on the driver's record and the conduct of the appellants who are entrusted with handling the mail came under scrutiny, resulting in clients losing faith in the respondent, thereby tarnishing the respondent's image.

[55] The arbitrator's award predominantly consisted of a summary of the arbitration proceedings and very little attention was paid to the analysis of the evidence and consequently no clear basis was provided for the findings on which the award was predicated.

[56] The respondent's witnesses, particularly Mr. Classen, testified that none of the parcels received from Hosea Kutako Airport were missing and all mails were received. Mr. Mvula testified that after he verified the bags he received from the appellants on 27th January 2017 he had no missing bags. These concessions, coupled with the undisputed

fact that the truck driven by the appellants' arrived at the NamPost depot intact, with the seal undisturbed, did not sway the arbitrator to consider that the probabilities were in the appellants' favour.

[57] The arbitrator's reliance on the testimony of the second appellant that there was a difference of one mail bag between the security's record and the driver's record raises stern eyebrows. The respondent's witnesses did not thoroughly canvass this aspect and the appellants' explanation was not disputed.

[58] The respondent did not endeavour to collect copies of the loading records from both the warehouses at the airport to contrast them against the records presented by the appellants in order to confirm whether there was indeed a missing bag or whether the was an error in the recording of the bags received in exhibit 1. Nor did the respondent call any of the customs officials at the Air Namibia warehouse or the Menzies' warehouse to testify on the actual number of bags loaded.

[59] When asked by the respondent's representative to inform the hearing of the incident on 27 January 2017 at NamPost, Mr. Shikoto testified to an incident that was "picked up" from social media were pictures were posted on social media and with lots of comments, complaints and responses. This witness testified that after they became aware of the post, they contacted the person that posted on incident on Facebook and they went to see for themselves. Mr. Shikoto testified that they collected a number of bags from this person, green bin bags and conceded under cross-examination that he did no see the black bag allegedly thrown out by the appellants when they went to collect the green bin bags that contained violated mail.

[60] The respondent's witnesses failed to prove a nexus between the black bag that was found by Mr. Foerster and the appellants. According to Mr. Foerster's own testimony, a total of 45 minutes had elapsed from when he saw a black bag flying out of a NamPost truck and the time he went back to collect the bag. Further, Mr. Foerster testified that his supervisor collected a number of bags that contained shredded mail alongside the road close to where he found the black bag. Mr. Classen's testimony was that these bags found alongside the road could not be linked to the appellants, and this was not the first time that the respondent had found damaged and opened mail.

[61] There is no evidence on the record that the appellants wilfully and unlawfully, gained access to the mail items, nor was there any evidence that the appellants unlawfully and wilfully removed the content of the mail items. There is no evidence that the appellants unlawfully, wilfully violated the mail items. Furthermore, there is no evidence that the appellants threw out mail items from the conveyancing truck in which they were driving.

[62] Therefore the arbitrators finding that the appellants' dismissal was fair on this score, is unsustainable.

[63] As regards charge 3, none of the respondent's witnesses could link the various exhibits, apart from exhibit 7 which was a newspaper article in the Namibian newspaper that mentions the arrest of the appellants together with four others. Mr. Shikoto's testimony was that it was the depiction of the green bags on the Facebook post coupled with the comments that tarnished the respondent's name. The appellants were not charged in respect of the green bags and therefore the Facebook posts and the follow through therefrom, could not be attributed to them.

[64] In this regard, I am of the considered opinion that the respondent's witnesses did not prove any of the elements of the charges of which the appellants were found guilty of and consequently dismissed for. I accordingly find that the respondent did not have a valid reason for dismissing the appellants in the circumstances.

[65] Ueitele J, in *Windhoek Country Club Resort and Casino v Lukubwe*[3] stated that:

'[20] Section 33 of the Labour Act, 2007 simply reinforces the well-established principle that dismissals of employees must be both substantively and procedurally fair.

[21] Substantive fairness means that a fair and valid reason for the dismissal must exist. In other words, the reasons why the employer dismisses an employee must be good and well grounded; they must not be based on some spurious or indefensible ground.[4] <u>This requirement entails that the employer must, on a balance of probabilities, prove that the employee was</u>

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[3] *Windhoek Country Club Resort and Casino v Lukubwe* (HC-MD-LAB-APP-AAA-2019/00049) [2020] NALCMD 21 (7 August 2020)

actually guilty of misconduct or that he or she contravened a rule.[5] The rule, that the employee is dismissed for breaking, must be valid and reasonable. Generally speaking, a workplace rule is regarded as valid if it falls within the employer's contractual powers and if the rule does not infringe the law or a collective agreement.' (Emphasis added).

[66] The respondent has, in my considered view failed to prove on a balance of probabilities that the appellants were actually guilty of the charges preferred against them. As such, the respondent therefore did not have a valid reason to dismiss the appellants.

[67] The appellants, in their notice of appeal and in their heads of argument, prayed for the reinstatement of the appellants, together with payment of their backpay and other benefits. The respondent steered clear of dealing with this aspect, including in its grounds of opposition to the appeal. It was vaguely submitted in the respondent's heads of argument that the offence of which the appellants were found guilty of and dismissed for went to the root of the relationship of trust between the parties.

[68] There is no opposition to the relief prayed for regarding the reinstatement of the appellants in the papers before me. It would be cruel in the circumstances to deprive the appellants of the benefits of reinstatement where the court has found on the evidence that the offences of which the appellants were dismissed where not proven by the respondent. As such, the issue of the relationship of trust between the parties does not arise.

Conclusion

[69] I am accordingly of the view that the appellants' appeal should succeed. Concomitantly, the award by the arbitrator should be set aside, for the reasons

[4] Collins Parker: *Labour Law in Namibia*, University of Namibia Press, at p 143. Also *Pep Stores (Namibia) (Pty) Ltd v Iyambo and Others* 2001 NR 211 (LC).

[5] *Namibia Beverages v Hoaës* NLLP 2002 (2) 380 NLC

traversed above. As intimated earlier, I do not find that the respondent proved its case against the appellants and therefore did not have a valid reason for dismissing the appellants.

Order

[70] Having had regard to what I have said above, I am of the considered view that the following order should be issued, namely:

1. The Appellants' appeal succeeds.
2. The award of the Arbitrator, dated 26 September 2019, is set hereby set aside.
3. The Respondent is ordered to reinstate the Appellants.
4. The Respondent is directed to back pay the Appellants from the date of dismissal to the date of reinstatement, including all the benefits and increments that would have accrued to them.
5. There is no order as to costs.
6. The matter is removed from the roll and is regarded as finalised.

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T.S. Masuku

Judge

APPEARANCES:

APPELLANTS:	N. Shilongo Of Sisa Namandje & Co Inc.
RESPONDENT:	R. Rukoro Of ENS Africa