

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

LABOUR APPEAL

REASONS

Case no: HC-MD-LAB-APP-AAA-2021/00065

In the matter between:

FRANSISCO ABREU

APPELLANT

And

NAMIBIA POWER CORPORATION (PTY) LTD

RESPONDENT

Neutral citation: *Abreu v Namibia Power Corporation (Pty) Ltd* (HC-MD-LAB-APP-AAA-2021/00065) [2022] NALCMD 10 (10 March 2022)

Coram: COLEMAN J
Heard: 18 February 2022
Order Delivered: 18 February 2022
Reasons Released: 10 March 2022

Fly note: Labour appeal and cross appeal—Arbitrator’s award—both parties appealing to set aside the arbitration award on different grounds— the court found that the arbitrator did not misdirect herself at arriving to her conclusion and that the arbitration award stands—No order as to costs.

Summary: The appellant was dismissed after a disciplinary hearing and the Arbitrator held the dismissal substantively fair but procedurally unfair and awarded the appellant N\$ 65, 313.00, being three months’ salary calculated on his monthly salary.

The appeal court was not satisfied that either party in the main appeal or cross appeal made out a case to satisfy this court that the arbitrator misdirected herself in granting the labour appeal.

The court subsequently upheld the award dated 29 July 2021 and the appeal and cross appeal are consequently dismissed.

ORDER

1. The appeal and cross-appeal are dismissed; and

2. No cost order.

JUDGMENT

COLEMAN J:

Introduction

[1] This is an appeal against an arbitration award delivered by Labour Commissioner Memory Sinfwa on 29 July 2021.

[2] The appellant was dismissed after a disciplinary hearing and the arbitrator held that the dismissal was substantively fair but procedurally unfair and awarded the appellant N\$ 65, 313.00, being three months' salary calculated on his monthly salary.

[3] The appellant appeals against this award and raises 7 grounds of appeal, essentially attacking the arbitrator's dealing with the facts alleging she erred on those counts. It was argued on behalf of the appellant by Mr Mwandangi that the arbitrator's decision on the facts was largely perverse. Ms Miller on behalf of the respondent resists this and argues that the arbitrator's factual decisions are not perverse and are not legal issues. I agree with her.

[4] The arbitration award is a coherent well-reasoned decision. I could not find any absurd, irrational or perverse factual decision in it.

[5] The cross-appeal against the arbitrator's award relating to the procedural unfairness of the disciplinary hearing, is in my view equally without merit. The criticism levelled against the award by Ms Miller does not in my view merit interference. It appears that perversion is quite easily attributed to a factual decision by an arbitrator. In addition, in my mind the arbitrator's conclusion that a reinstatement is not appropriate here is supported by facts and cannot be faulted. With this Ms Miller agrees.

[6] In conclusion, the arbitration award is in my view is fair and in conformity with the law.

[7] In the premises, the appeal and cross-appeal are dismissed and i make no order as to costs.

G Coleman
Judge

APPEARANCES:

Appellant: M Mwandingi
Of Mwandingi Attorneys, Windhoek

Respondent: S Miller
Of Shikongo Law Chambers, Windhoek