

**REPUBLIC OF NAMIBIA**



**IN THE LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**

**RULING**

Case no: HC-MD-LAB-APP-AAA-2022/00075

In the matter between:

**BARTHO VENHONA MATUZEE**

**APPELLANT**

and

**MINISTER OF LABOUR, INDUSTRIAL RELATIONS**

**1<sup>ST</sup> RESPONDENT**

**AND EMPLOYMENT CREATION: ARBITRATOR**

**MEMORY SINFWA**

**METHEALTH NAMIBIA ADMINISTRATORS**

**2<sup>ND</sup> RESPONDENT**

**Neutral Citation:** *Matuzee v Minister Of Labour, Industrial Relations and*

*Employment Creation: Arbitrator Memory Sinfwa* (HC-MD-LAB-APP-AAA-2022/00075) [2024] NALCMD 32 (23 August 2024)

**Coram:** OOSTHUIZEN J

**Heard:** 16 February 2024

**Delivered:** 23 August 2024

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**ORDER**

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**IT IS ORDERED THAT:**

1. The appeal is dismissed.
2. No order as to costs.
3. The matter is finalised and removed from the roll.

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**RULING**

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OOSTHUIZEN J:

Background

[1] The appellant is Bartho Venhona Matuzee, an adult male employee of the second respondent, Windhoek.

[2] The second respondent is Methealth Namibia Administrators. The second respondent terminated the services of the appellant during 2014 by way of retrenchment.

[3] During April 2018 the Labour Court ordered the reinstatement of the appellant in his employment with the second respondent.

[4] Subsequent to the reinstatement the appellant complained that he was not reinstated in a comparable position as previously occupied and that his remuneration, pension and bonuses are not correctly paid.

[5] The matter was referred to arbitration and an award was made on 20 December 2022 under case number CRWR 755-20.

[6] The arbitrator found that: <sup>1</sup>

(a) The applicant failed, on a balance of probabilities to prove the shortfall claimed by him due thereto that he failed to call the witness who created a document upon which he relied.<sup>2</sup>

(b) The applicant is not entitled to be remunerated (additionally) for the one day less leave because that was already calculated in his remuneration upon reinstatement.<sup>3</sup>

(c) The applicant received his bonus for the relevant period.<sup>4</sup>

(d) The applicant failed to make out a case on a balance of probabilities that the second respondent did not contribute to his pension.<sup>5</sup>

[7] Consequently the arbitrator ordered that:

(a) The conduct of the second respondent does not amount to an unfair labour practice;

(b) The applicant is not entitled to the relief claimed; and

(c) The matter be dismissed.

[8] The applicant noted an appeal on 22 December 2020.<sup>6</sup>

[9] The notice of appeal contained no grounds of appeal (form 11).

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<sup>1</sup> Record, Vol 6, Arbitration Award, pp 547 to 554.

<sup>2</sup> Op cit, p 552.

<sup>3</sup> Op cit, p 553.

<sup>4</sup> Op cit, p 553

<sup>5</sup> Op cit, p 553.

<sup>6</sup> Record, Vol 6, pp 557 and 558.

[10] Two records of appeal were filed during 2023, one on 24 April 2023 and the other on 27 October 2023.

[11] The appellant was required to amend, add or vary his grounds of appeal within 10 days after the record was made available.<sup>7</sup>

[12] The appellant failed to do so.

[13] The appellant only filed amended grounds of appeal on 23 October 2023 without an application to condone.

[14] The appellant waited until 13 February 2024 to file a condonation application which failed to properly explain the time delay from May 2023 to February 2024 in bringing a condonation application. It is common cause that the appellant was represented by a legal practitioner during October 2023 when the amended grounds of appeal were filed.

[15] The condonation application of 13 February 2024 is declined.

[16] In the event that I might be wrong in declining the condonation application, I in any event find that the appeal instituted had no merits.

[17] The arbitrator did not conduct the arbitration and render the award in an unreasonable way. The findings and orders were made reasonably.

[18] The Labour Court may only interfere in a decision by the arbitrator if the decision was one that no reasonable decision-maker could have reached.

[19] In the premises, it is ordered that:

1. The appeal is dismissed.

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<sup>7</sup> Rule 17(15) of the Labour Court Rules.

2. No order as to costs.
3. The matter is finalised and removed from the roll.

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G H Oosthuizen  
Judge

## APPEARANCE

Appellant: B V Matuzee  
Erf 103 R. Ruzo Street, Wanaheda, Windhoek

2<sup>nd</sup> Respondents: K Haraseb  
of LorentzAngula Inc., Windhoek