

REPUBLIC OF NAMIBIA



IN THE LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING AND REASONS

Case no: HC-MD-LAB-APP-AAA-2019/00060

In the matter between:

STEPHANUS HENDRIK MARTIN

APPELLANT

and

NAMIBIA POST LIMITED

1ST RESPONDENT

IMMANUEL HELAO HEITA

2ND RESPONDENT

LABOUR COMMISSIONER

3RD RESPONDENT

Neutral Citation: *Martin v Namibia Post Limited* (HC-MD-LAB-APP-AAA-2019/00060) [2024] NALCMD 33 (30 August 2024)

Coram: OOSTHUIZEN J

Heard: 28 February 2024

Delivered: 30 August 2024

ORDER

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.

REASONS

OOSTHUIZEN J:

[1] The appellant was in the employment of the first respondent for 17 years from 2004 to March 2018 when he was dismissed after a disciplinary hearing and internal appeal.

[2] The appellant was employed as the Control Postmaster in a branch office of the first respondent at Okahandja.

[3] The appellant was found guilty of *inter alia* dishonesty and gross negligence.

[4] During July 2018 the appellant referred a dispute to the third respondent on the ground of unfair dismissal¹ and claimed reinstatement with all the remuneration and fringe benefits from date of dismissal to date of arbitration finding.

[5] On 18 September 2019 the arbitrator delivered the arbitration award.²

¹ Record pp 1 to 4.

² Record pp 665 to 674.

[6] A perusal of the record and the evidence tendered revealed concerns about the honesty of the appellant.³

[7] The first respondent was required to prove on a balance of probabilities that the appellant was guilty on the charges preferred against him.

[8] If certain of the charges were not proved, but only some which warrants a dismissal, and a fair procedure was in fact followed, the arbitrator cannot be faulted for making an award that the termination of the appellant's contract of employment is confirmed and dismissing the appellant's claim.⁴

[9] The arbitrator correctly found that it was common cause that an amount of N\$150 000 was dispatched from Okahandja Post Office to Otjinene Post Office on 4 July 2017, but the required registration on the letter bill was only done on 7 July 2017 on the appellant's instructions.⁵

[10] The Namibian Supreme Court in *Janse van Rensburg*⁶ held that —

'...where a decision on the facts is one that could not have been reached by a reasonable arbitrator, it will be arbitrary or perverse, and the constitutional principle of the rule of law would entail that such a decision should be considered to be a question of law subject to appellate review.'

[11] In the same case⁷ it was held that —

'...when faced with an appeal against a decision that is asserted to be perverse, an appellate court should be assiduous to avoid interfering with the decision for the reason that on the facts it would have reached a different decision on the record. That is not open to the appellate court. The test is exacting — is the decision that the arbitrator has reached one that no reasonable decision maker could have reached.'

³ Compare for instance the contents of appellant's statement under oath to the police official on 5 July 2017 (Record pp 354 to 356, Exhibit 3) with the appellant's report dated 6 July 2017 (Record p 351, against the evidence.

⁴ Record p 647.

⁵ Paragraphs 17, 18, 20, 21 to 25 of the Award and Record pp 18,32 to 61, 72 to 74 and Exhibit 2, p 349.

⁶ *Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd* 2016 (2) NR 554 (SC) at 568, para 44.

⁷ Op cit, p 568, para 45.

[12] The actions of the appellant to cause the alteration of Exhibit 2 (the Letter Bill) on 7 July 2017 three days after its creation on 4 July 2017 and to add and insert the registration of the special registered item on the original Letter Bill in order for the Letter Bill to have the appearance of regularity when created and date stamped 4 July 2017, would lead many reasonable arbitrators to conclude that it was done to conceal the truth, and dishonest.

[13] Dishonesty by a Control Postmaster is a serious breach of trust and warrants a dismissal. There is no unreasonableness by the arbitrator.

[14] The dismissal of the appellant was for a valid and fair reason. It was done following a fair procedure as was found by the arbitrator.

[15] Consequently, 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.

G H Oosthuizen
Judge

APPEARANCE

Appellant: S Nambinga
Of Palyeenime Incorporated., Windhoek

1st Respondent: C Brinkman
Of LorentzAngula Inc., Windhoek