

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO JR/1368-05

IN THE MATTER BETWEEN

CWU obo MTHOMBENI

APPLICANT

AND

**COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION**

FIRST RESPONDENT

COMMISSIONER E.L.E. MYHILL

SECOND RESPONDENT

SOUTH AFRICAN POST OFFICE (PTY) LIMITED

THIRD RESPONDENT

JUDGMENT

1. This is an application to review an award of the Second Respondent dated 19 May 2005, in terms of Section 145 of the Labour Relations Act 66 of 1995 ("**the Act**") in which the Commissioner found that the Applicant had been dismissed for good reasons and that the Third Respondent had followed a fair procedure in dismissing the Applicant. The review is unopposed.
2. Following the Supreme Court of Appeal decision in *Rustenburg Platinum Mines Limited "Rustenburg Section) v CCMA and Others* (2006) SCA 115 (RSA) the test for review of CCMA Commissioner's awards can be formulated by the posing of the following question in respect of the award: Is there a rational objective basis justifying the connection the Commissioner made between the material before him, the conclusion he reached and the reasons he gave for the conclusion?
3. The Applicant had been found guilty of fraud for sending parcels by surface mail where the customers had paid for them to be sent by airmail. The Applicant was identified as the teller responsible for these transactions. The applicant had also failed to account for these transactions on the Post Office's Post Link system, and had failed to give the customers a receipt, which he was obliged to do. He was supposed to scan the stamps that the customers had purchased into the system and he had not done this, and he was also supposed to put airmail stickers on the

parcel, and if it did not have any airmail stickers, he was supposed to write "airmail" on them. This he did not do either. The Third Respondent after a disciplinary enquiry had found the applicant guilty of fraud and had dismissed him.

4. The first question to be asked in the test for review is: What was the material before the Commissioner?
5. At the time of his dismissal, the Applicant was an experienced teller and he was also a shop steward. He had received training on how to use the Post Link system, and the Applicant knew that he had to enter the transactions on the Post Net system. The Applicant knew he was supposed to issue a receipt to a customer, generated by the Post Link system, as well as the Certificate of Posting of an Insured Parcel.
6. Two customers had complained to the Third Respondent that parcels they had elected to be sent by airmail, had been sent by surface mail by the Post Office. The customer had paid for these parcels to be sent by airmail.
7. Neither of these two customers had been given receipts which are normally generated by the Post Link system when such a transaction takes place. The Applicant was the teller serving both these customers.
8. The applicant had been trained on the Post Link System and received ongoing training
9. The Applicant was an experienced teller.
10. The Applicant had been positively identified as the teller who had served the two customers.
11. The customers had to be reimbursed the difference between the airmail and surface mail costs.
12. The Post office could find no record of the two transactions because the Applicant had not entered the transaction in the Post Link system, which he was required to do.
13. The Post Office had suffered enormous harm to its good name and reputation as a result of this fraudulent act of the Applicant.
14. For some reason that could not be explained, there were more stamps on one of

the parcels than were required for surface mail.

15. The Applicant had no airmail stickers available to him on the day of the transactions, and it was the Applicant's duty to write "airmail" on the parcels if he had no stickers available.
16. The Applicant insisted that he had balanced his till, that there had been no persona gain and no theft on his behalf, and the Third Respondent had not lost anything. The Applicant insisted that he had a good service record so he did not deserve to be dismissed.
17. The main function of the Applicant who was employed as a teller, was to account for the money he received. It was essential for the Respondent to trust the Applicant in the position he held. The Respondent could no longer trust the Applicant.
18. The minutes of the Applicant's disciplinary enquiry were placed before the Second Respondent.
19. The next question to be asked in the review test is: What reasons did the Second Respondent give for his conclusions?
20. The Second Respondent found that there was no evidence to suggest that the Applicant's disciplinary hearing had been unfair.
21. The Second Respondent found that at no stage had the Applicant proved that he had complied with the Post Link system in respect of the two transactions. He could not produce a Post Link receipt for either of the transactions.
22. The Second Respondent found that the Applicant's failure to follow the correct procedure had resulted in the parcels being sent by surface mail.
23. The Second Respondent found that the Applicant had failed to prove that he had accounted for the two transactions in question. None of the transactions that had been recorded on the days in question matched the transactions that were the subject matter of the dispute before him.
24. The Second Respondent also rejected the Applicant's suggestion that the Third Respondent did not suffer actual or potential financial loss. She found that the Post Office had to reimburse the customers the difference between the cost of sending the parcels airmail and the cost of sending the parcels by surface mail.

25. The next question to be asked is: What conclusion did the Second Respondent arrive at?
26. Whilst the Second Respondent did not find that the Applicant intended to defraud the Post Office, she concluded that given that he was an experienced teller, that he had training, he knew better and that therefore his failure to follow proper procedures amounted to gross negligence on his behalf.
27. The Second Respondent also found that the Applicant was in a position of trust and through his actions he demonstrated that he was untrustworthy.
28. Accordingly, the Second Respondent found that no reasonable employer could be expected to continue the employment relationship in these circumstances and the Third Respondent had good grounds for dismissing the Applicant.
29. The final question to be asked then is: Is there a rational objective basis justifying the connection between the material before the Second Respondent, the conclusion he reached, and the reasons for his conclusion?
30. In my view, the answer to this question is: Yes, there is a rational objective basis which justifies the connection between the material before the Second Respondent, the conclusion he reached and the reasons he gave for his conclusion. The material before the Second Respondent was that the Applicant was an experienced teller, that the Applicant knew the systems at the Third Respondent, that the Applicant had received training in the Post Link system and was receiving ongoing training, that the Applicant knew the importance of recording the transactions, and that he had not recorded the transactions, and the Applicant knew that parcels should be clearly marked airmail or surface mail. The Third Respondent suffered a loss as a result of the Applicant's conduct. The Applicant's conduct, therefore, in relation to the two cases for which he was charged clearly amount to gross negligence given that the Applicant was a teller, and it was essential for tellers to account for their monetary transactions. He was in a position of trust and had demonstrated himself to be untrustworthy, and this is well reasoned in the Second Respondent's award.
31. Accordingly, I find that the Second Respondent's award is not reviewable and I make the following Order:

The application to review and set aside the Second Respondent's award is dismissed.

AJ Stein

Date of judgment: