

EMPLOYMENT

The importance of a complete record of the arbitration proceedings

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Lessons from *Minister of Police v Police and Prisons Civil Rights Union (POPCRU) Obo Senti and Others* (PA15/2021) [2023] ZALAC 19 (23 August 2023)

The importance of a full and proper record of the arbitration in review applications was brought into sharp focus in the case of *Minister Of Police v Police And Prisons Civil Rights Union (POPCRU) obo Senti and Others*.

In this case, 2 police officers, Warrant Officer Senti and Constable Folokwe, of the South African Police Service (**SAPS**) were dismissed following a disciplinary hearing. Following their dismissal the two employees referred an unfair dismissal claim to the Safety and Security Sectoral Bargaining Council (the **SSSBC**). The commissioner appointed to arbitrate the dispute found that the dismissal of the 2 employees was unfair and ordered that they be reinstated by SAPS.

Dissatisfied with the commissioner's award, SAPS brought a review application seeking to overturn the commissioner's award or, alternatively, to have the matter heard afresh before another SSSBC commissioner.

As the applicant in the review, SAPS was required to file the complete record of the arbitration proceedings however in this case a substantial portion of the record was missing. Crucially, the missing portion included the cross-examination of Employees' only witness, Mr Senti himself, and the video footage related to the misconduct which was crucial at the arbitration.

The Labour Court upheld the arbitration award however the Labour Appeal Court (the **LAC**) overturned the Labour Court's decision.

Dealing with the missing record, the LAC found that the record (before it and the Labour Court) was inadequate to arrive at a fair and reasonable determination. Further, the LAC found that –

[27] The missing evidence is necessary to determine the reasonableness of the Commissioner's decision. To argue that the onus is upon the Appellant to ensure a full and proper record is before the Court is in my view not always correct. It is the responsibility of all the parties particularly the Commission, who has the responsibility to ensure not only that it keeps a full and proper record, but to ensure in the event of a review, that a full and complete record of the proceedings is before the reviewing Court. (emphasis added)

This case clearly shows the importance of a full and proper record as without it the review court is not able to determine the reasonableness of the commissioner's decision.

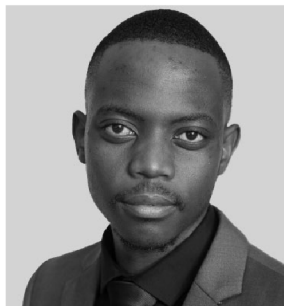
Furthermore, this case shows the complications that arise when the record, or parts thereof, go missing. It provides a good lesson for all litigants, not just the commissioner/panellists, involved in labour litigation on the importance of ensuring that a good and proper record of the arbitration hearing is kept and that ultimately a full and proper record is placed before the Labour Court in a review.



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