



**IN THE METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL**

**HELD AT CDR JOHANNESBURG...**

In the arbitration between

Mashape Sidney Sekgota

**APPLICANT**

**AND**

Metraclark

**RESPONDENT**

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**ARBITRATION AWARD**

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CASE NUMBER:

MEGA 52017

DATE RULING SUBMITTED:

12 May 2018

NAME OF PANELLIST:

MAHAMED RAJAH

**Centre for Dispute Resolution**

Gauteng and North West	(011) 834 4660
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## **Details of hearing and representation**

1. This matter was referred for arbitration to the MEIBC in terms of section 191 of the Labour Relations Act 66 of 1995 (~~the LRA~~) and was heard at the offices of the MEIBC on 23 April 2018.
2. It was agreed that the parties would submit closing arguments in writing.
3. The closing arguments were sent to the case management office. It was then emailed to me.
4. The Applicant represented himself.
5. The Respondent was represented by Marco Entres, official of SAUEO the employersq organisation.

## **Issue to be decided**

6. I am required to determine *whether the dismissal of the Applicants by the Respondent was procedurally and substantively fair.*

## **Background**

7. The Applicants, Mashape Sidney Sekgota, was dismissed on 19 December 2017 for misconduct. The Applicant was dismissed for gross negligence; for not checking stock taken out of the premises for delivery to a customer.
8. The Applicant was challenging the procedural and substantive fairness of the dismissal.

## **Survey of evidence**

### *Respondent's case*

9. The Respondent's evidence consisted of a bundle of documents and the testimony of two witnesses including CCTV footage.
10. Gideon Gous, the branch manager Johannesburg branch, testified that on the day of the incident they had a picker packer who picks stock that was ordered. The sales person prepares the invoice. The picker packer ensures that it is correct and packs it for delivery. It is signed off by the first picker packer. The second checker has to ensure that the first picker packer did not make a mistake. He need stock ensure that the first picker packer did not make a mistake.

11. The Applicant in his capacity as the second checker did not check as was required, resulting in stock loss and a break in trust. The security checked stamp on the invoice shows that it was checked by him as the second checker.
12. The invoice for the order shows that Quabe received the invoice and packed the stock. Quabe was therefore also dismissed.
13. The CCTV footage shows that the Applicant was present and stamping the invoice. The CCTV footage shows that there is extra stock on the forklift compared to the invoice.
14. The CCTV footage shows the Applicant helping with the loading of the stock for the customer.
15. The Applicant knows what the quantity on the forklift. He was there he helped load and should have seen that there was extra bottles on the forklift.
16. Previous invoices show that the Applicant stamped that it was checked by him. He therefore knew what he had to do as second checker.
17. They client confirmed that they did not receive extra stock. This results in stock loss and damaged relationship with the customer.
18. Everyone in the branch, including the sales people, knows of the second checker.
19. Only the second checker has the stamp, therefore the invoice is not stamped by the picker packer.
20. The Applicant did not show remorse. He was aggressive and said that Gous should do what he wanted to.
21. It was always agreed that everybody cannot take a lunch break at the same time.
22. The second witness Johan David Griessel, a Store supervisor for the branch testified that there was an invoice that was incorrectly pulled. Twenty extra gas bottles were supplied. Griesel picked this up on his perpetual count.
23. Griesel counted and double checked and saw on the camera footage that it was incorrectly pulled. He then reported it to Gous.

#### *Applicant's case*

24. The Applicant, Mashape Sidney Sekgota, testified that he is not guilty. He thinks it is a mistake that his colleague did.
25. The Applicant loaded the gas into the van to help a customer. It does not mean he wanted to steal. He was trying to help a customer to maintain a good name for the Respondent because of an argument one of the employees had with the customer. The customer said he wanted to report it to the boss.

26. At a meeting he told Gideon that they were short of staff. Some go for lunch then there are two of them left. They can then not double check the stuff.
27. He agrees that the CCTV footage shows ten extra bottles on the forklift.
28. He was not a second checker. He did not see the contents of the invoice. He signed the invoice before he got the stock.
29. He signs some of the invoices to check if it is correct.
30. He does not have any witnesses at the arbitration because and therefore cannot prove what he is saying. His colleagues were scared to come give evidence.
31. He agrees that the loss could have been avoided if he had checked.
32. The Applicant states that his representative told them at the disciplinary hearing that the customer received the extra stock. It is not in the written record of the hearing that he signed as being accurate.

### **Analysis of evidence and argument**

#### *Substantive fairness*

33. It is clear from the evidence that the Applicant was a second checker.
34. The Respondent's evidence proves that the Applicant signed the invoice indicating the number of gas bottles in spite of the extra stock that was dispatched.
35. The Respondent's evidence shows that the Applicant failed in his duty, as the second checker, to ensure that extra stock was not dispatched.
36. The Applicant showed no remorse. Rather he, unconvincingly, continued to deny that he was a second checker and that he deliberately did not check that extra stock was not dispatched. He in fact helped load the extra stock onto the bakkie.
37. The Respondent showed that the Applicant was guilty of the misconduct charge of not checking the outgoing stock which resulted in a loss to the Respondent.
38. It is a serious offence which the Applicant still does not acknowledge.
39. In the circumstances I accordingly find the Applicant's dismissal substantively fair.

#### *Procedural fairness*

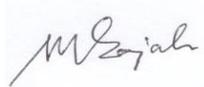
40. There was nothing in the Applicant's testimony that convinced me that it was procedurally unfair.

### **Award**

41. The dismissal of the Applicant, Mashape Sidney Sekgota, was procedurally fair and substantively fair.
42. The dismissal is upheld.

SIGNED AT Johannesburg. ON THIS 14<sup>th</sup> DAY OF MAY 2018.

Signature

A handwritten signature in black ink, appearing to read 'M Rajah', is written over a light blue rectangular background.

Mahamed Rajah