



MASERUMULE

Corporate Employment Law

SLEEPING ON DUTY AND THE BOUNDARIES OF REASONABLENESS

by Maserumule Corporate Employment Law

Introduction

The Labour Court earlier this year handed down a judgment in *Sibanye Gold Protection Service Ltd v. Commission for Conciliation, Mediation and Arbitration and Others*¹ that offers important guidance on how to examine factual conclusions in situations where conflicting versions of the facts are at issue and when to exhibit deference to arbitration awards. The security guard who was dismissed for allegedly sleeping on duty initially received a favourable outcome by the Commission for Conciliation, Mediation and Arbitration (CCMA). However, after reviewing the matter, the Labour Court found that the commissioner's conclusions were unsupported by evidence, and it substituted the award in favour of the employer, finding that the dismissal was substantively fair. The grounds of review, the arbitration ruling, and the Court's reasoning are all broken down in this article.

Factual Context

The case concerned a security officer employed at a mine shaft entrance known to be vulnerable to infiltration by illegal miners. On the night in question, her supervisor, claimed to have found the security officer asleep on duty in the guard house near the shaft turnstiles. According to his testimony, the security officer was slumped in a chair in darkness with her back to the door, he had to wake the security officer, and he took a photograph of the scene as evidence. The security officer denied being asleep, her version was that she was awake and had already seen the supervisor entering the security area when he came through the turnstiles before he got to the guardhouse and further claimed that the person depicted in the photograph was not her.

Analysis of the Commissioner's Findings

At arbitration, the commissioner was tasked with determining whether the employer, had discharged the onus of proving that the security officer had been sleeping on duty. The employer relied primarily on the testimony of

the supervisor, who stated that he found the security officer in the guardhouse with the lights off and had taken a photograph as evidence. While the photograph presented was of poor quality, it depicted a person seated in a chair in a relaxed position.

The commissioner, however, preferred the version of the security officer, who denied she was asleep and claimed the person in the photograph was not her. The commissioner was persuaded by two key points, firstly; the supervisor discovered the security officer only 15 minutes after she had been seen actively assisting a colleague, which, according to the commissioner, rendered it implausible that she had fallen asleep so quickly; and secondly; that the supervisor failed to prove definitively that the security officer was indeed the individual in the photograph. The commissioner also gave weight to the security officer's explanation that she was "relaxing" and that her conduct might be linked to a spiritual condition. Ultimately, the commissioner concluded that the dismissal was substantively unfair and ordered retrospective reinstatement.

The employer took the matter on review to the Labour Court contending that commissioner's decision that it had failed to prove the security officer guilty of sleeping on duty was one that no reasonable commissioner could reach on the evidence before him.

On Review

The Labour Court set aside the arbitration award, finding that the Commissioner's conclusions were disconnected from the evidence and fell outside the bounds of what a reasonable decision-maker could have reached. The Court identified several serious flaws in how the Commissioner evaluated the evidence.

Firstly, the Commissioner discounted the supervisor's testimony because the photo presented was unclear and did not definitively

¹ (JR 637/23) [2025] ZALCJHB 130

show the security officer's face. Yet, he simultaneously accepted the employee's version that she was awake and not the person in the photo without requiring any corroboration. This inconsistent standard of scrutiny undermined the fairness and logic of the decision. Although the onus of proof lies with the employer in misconduct cases, it does not entitle a commissioner to apply asymmetrical thresholds to each party's evidence.

The supervisor's account was detailed, consistent, and aligned with the physical layout of the guardhouse and the security-sensitive context. His description of the chair's placement and the slouched position of the security officer matched both the environment and the photo. No evidence was led to suggest that the supervisor had any motive to fabricate the incident.

In contrast, the commissioner failed to interrogate clear weaknesses in the security officer's version. She admitted to sitting in the chair shortly before the photo was taken and said she intended to "relax." Yet, she denied being the person in the photo without offering a credible alternative such as how someone else could have taken her place in that exact position within minutes, in a restricted area, without being seen.

The commissioner further assumed that because the employee was active 15 minutes before being found, it was implausible that she had fallen asleep in that time. The Court held that this was speculative and unsupported by evidence or common experience. People can and do fall asleep quickly, particularly when fatigued, unwell, or, as she claimed, "relaxing" in a quiet, dark space during a night shift.

Effectively, the commissioner's reasoning implied the supervisor had fabricated the incident. Yet no motive for dishonesty was suggested, and such deception would have required an elaborate and risky scheme staging a photo with a stand-in, aligning props, and falsifying testimony all without any clear benefit and at considerable personal risk.

Lastly, while the photograph was blurry, it showed a figure slouched in a position consistent with sleep, in the same chair, and in a layout matching the guardhouse. When assessed with the supervisor's narrative, the photo supported rather than contradicted the employer's version.

To accept the employee's story, one would have to believe that the security officer had just vacated the chair; someone else unseen and

unidentified took her place; the supervisor staged and fabricated the entire event; all within a 15-minute window in a restricted area with no other known persons present.

The Labour Court found this scenario inherently improbable. Accordingly, it held that the commissioner's findings were irrational and unjustifiable based on the evidence.

Conclusion

The ruling in this case by the Labour Court serves as a stark reminder that making decisions that are fair requires more than just summations. Inconsistencies must be questioned, all parties must be given fair consideration, and conclusions cannot be based on speculative or biased reasoning. Employers can use this case as a model to create and justify disciplinary actions based on reasonable, reliable, and contextually relevant facts.

Key Takeaways for HR & Management

Apply Consistent Scrutiny in Hearings

Ensure evidence from all parties is assessed against the same standard. Avoid favouring one version without justification.

Document and Corroborate Misconduct Thoroughly

Even imperfect evidence (e.g. blurry photos) can carry weight when supported by consistent, credible witness accounts and site-specific context.

Emphasise the Operational Environment

Misconduct like sleeping on duty must be assessed in light of the work environment. In this case, the security officer was stationed at a mine shaft vulnerable to illegal access, an area requiring constant vigilance. The high-security risk made alertness critical, and any lapse had serious safety and operational implications. Such contextual factors should be clearly articulated during disciplinary proceedings and reflected in policies and training.

Challenge Implausible Explanations

Uncorroborated or improbable employee defences must be tested, especially when they involve unexplained inconsistencies or rely on speculative reasoning.

Ross Simon Associate

© Maserumule Corporate Employment Law
www.masconsulting.co.za
September 2025