

**REPUBLIC OF SOUTH AFRICA****IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN**

Case no: D303-11

Reportable

In the matter between:

RAINBOW FARMS (PTY) LIMITED**Applicant**

and

ANANTHAN SANJIVI DORASAMY N.O.**First Respondent****COMMISSION FOR CONCILIATION, MEDIATION****AND ARBITRATION****Second Respondent****JENESHI DAYANAND****Third Respondent**

Heard: 29 October 2013

Delivered: 25 February 2014

Summary: Review of award – incorrect representation in a curriculum vitae - It is not a defence to an allegation of fraud that the person to whom the representation was being made, could have by the exercise of reasonable care, discovered the truth of the misrepresentation and ought never to have been duped by it – award reviewable for lack of reasonableness.

JUDGMENT

CELE J

Introduction

- [1] The applicant seeks an order reviewing and correcting or setting aside the arbitration award issued by the first respondent on 3 April 2011, in terms of which, the third respondent's dismissal was found to have been substantively unfair and the applicant was directed to reinstate the third respondent to either the post of Vaccine Manager, or that of a similar post with the same terms and conditions, or to the post of Quality Manager, effective 14 April 2011. The third respondent had not challenged the procedural fairness of her dismissal. The applicant seeks an order substituting the award with an order that the dismissal of the third respondent was both procedurally and substantively fair. In the alternative, the applicant seeks an order reviewing and setting aside the award and remitting the matter to the second respondent for a hearing *de novo* before a Commissioner other than the first respondent. The third respondent opposed the review application.

Background facts

- [2] The third respondent was in the employ of the applicant. In 1996, she was employed on temporary basis and left to return for six months in 1997. She commenced her permanent employment in November 1999 as a Vaccine Technologist, a position she held for about seven years, reporting to a Vaccine Manager. At her commencement, she had a National Diploma in Biotechnology. In 2006 she held the position of a Virologist, reporting to the Laboratory Manager, until May 2007 when she was promoted to the position of Quality Manager but still reported to the Laboratory Manager. She was then in applicant's veterinary laboratory division which, for all intents and purposes, constituted a separate operating division of the applicant. The division provided veterinary laboratory services not only to the applicant's farms but also to a variety of other major producers of poultry in the country. According to the applicant, the success of its veterinary laboratory division depended entirely upon its ability to produce reliable results and hence, the maintenance of quality. The applicant had to ensure that its operations were compliant with the South Africa National Audit Standards, the SANAS, relative to the veterinary services provided by it.

- [3] A Quality Manager was responsible, *inter alia*, for:
1. the maintenance of the applicant's accreditation systems;
 2. the maintenance of the applicant's SANAS standards, acting as the SANAS representative of the applicant;
 3. ordering, interacting with suppliers, training of staff, upkeep, implementing and maintaining the ISO17025 quality system, maintaining the quality of the laboratory's results and the trials emanating there from.
- [4] The roles and responsibilities of the Quality Manager were such that the applicant's veterinarian would have to have complete confidence in the results emanating from the laboratory. Ms Phrasikleia Ori, the applicant's Laboratory Manager, was the supervisor of the third respondent. There was an incident in which the third respondent backdated the signing off of certain reports when she came back from her maternity leave. The applicant withdrew a misconduct charge it had initiated against her and she was counselled in relation to that incident. She however did not get a salary increase which was then due to her. She lodged a grievance on that issue. According to her, relations between herself and Ms Ori were thereafter not good at all.
- [5] The applicant subsequently advertised the position of a Vaccine Manager. Third respondent applied for the position by, *inter alia*, submitting her CV and she furnished a copy to Ms Ori, who later called her in and they spoke about her Bachelors of Technology: Quality Management degree. It came to light that the third respondent had not yet completed the degree as one course was still outstanding. Ms Ori requested the third respondent to amend a portion in her Curriculum Vitae(the CV) so as to show that the Bachelors of Technology: Quality Management had not yet been finalised. She duly complied and she resubmitted her CV with the amendment. She was shortlisted and interviewed for the position. In her CV she indicated her academic qualifications essentially as:
1. Matric exemption - 1992;

2. Diploma: Biotechnology – 1998;
3. Bachelors of Technology Degree: Business Administration - 2002;
4. Bachelors of Technology: Quality Management – 2005 current.

- [6] The three panellists who took part in the job interview of the third respondent were Ms Ori, Mr Adrian Knoetze and Ms Sindy Marais, the applicant's HR practitioner. Their evidence at arbitration was that they recorded in their interview notes that the representation made to them by the third respondent was that she had completed the Business Administration degree. They said that her degree had put her above other candidates, in particular one with a BSc degree. After the job interview, the third respondent was asked to produce copies of her qualifications. It took her a few days after which she submitted her statement of results. It disclosed that she had not yet completed the Business Administration degree.
- [7] The applicant was of the view that the third respondent had been dishonest in the submissions she made in her CV. It initiated disciplinary proceedings and subjected the third respondent to an internal disciplinary hearing. According to the applicant, the third respondent was acutely aware that she had to expressly clarify in her CV any qualifications which were incomplete. She did this in respect of the Quality Management degree but left the Business Administration degree unqualified. In applicant's view, the first two qualifications represented in her CV, being the matriculation exemption and Biotechnology Diploma had as per normal, referenced the year in which those qualifications were obtained. The Quality Management degree was, according to the applicant, expressly represented as being complete. The Business Administration degree according to the applicant would have been clearly understood by the reader and recipient of the CV to be a representation that she had obtained the degree in 2002. Her explanation was that she had only been informed by Ms Ori to amend the Quality Management degree.
- [8] She was found guilty of misconduct and on 22 February 2010 she was dismissed from the employment of the applicant. She referred an unfair dismissal dispute for conciliation and thereafter for arbitration. The first

respondent found the dismissal to have been substantively unfair and he ordered the applicant to re-instate the third respondent but without retrospective effect.

Chief findings of the first respondent

[9] It is appropriate in this instance to quote the chief findings of the first respondent directly from his award as they appear from paragraph 63 to paragraph 77, where he said:

‘At the outset I must commend the parties witnesses (sic) for their honesty, candidness and frankness in answering questions put to them.

10.

64. I now deal with the respondent's witnesses (S Marais, A Knoetze and P Ori) as follows:

They confirmed that the qualifications in question were not a requirement for the post. Further Mrs Ori requested that the applicant amend a certain section of her CV which she did as requested. They recorded their annotation on the forms found on pages 32-46.

Under Technical Qualifications/ Skills the witnesses recordings are as follows:

Admin	B. Tech Quality
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S Marais (page 32) Bi	DUT, 2002 (B Tech), Current (1 subject)
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A Knoetze (page 37) Dut Dip tech/ B tech busin	B Tech (QM) current
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P Ori (page 42) Dut qualified ND Biotech 1998 yes, Btech Business	
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Admin 2002	Yes	B tech Quality	one subject	outstanding to complete
correspondence this year-				

Upon perusal of the recording sheets one can notice that Mrs Marais and Ori's sheets have much more details than that of Knoetze.

65. At this point I must record that the contentious issue is that the respondent's witnesses are of the view that the applicant presented at the

interview that she had completed certain qualification viz that of Bachelors of Technology Degree: Business Administration and indicated that she completed this degree.

66. The applicant does not share the above view but contends that she indicated that the aforesaid degree was yet to be completed. This contention is carried forwarded in the meeting following the interviews.

I am to determine whether the alleged fraudulent information recorded in the applicant's CV and her alleged submissions at the interviews are sufficient to warrant the sanction of dismissal.

11.

I am required to assess the conflicting versions and make a determination with brief reasons to substantiate my findings.

67. In respect of the allegation of the fraudulent information recorded in the CV the onus on the respondent is to present evidence that it was a deliberate intention on the applicant to mislead / misrepresent on the part of her to lead to or potentially lead to some prejudice suffered by the respondent. The applicant was not appointed to the post.

68. The applicant was already in the employ of the respondent, had been funded in her studies, had a file that contained her qualification and study progress. It is common practice for employer's granting an employee leave for study purposes to have the employee submit the courses studied, the examination time-table and the results of their attempts. This documentary evidence ought to be in the employee's (applicant) file stored/ in the possession of/ by the employer. The employer if it required to verify the applicant's academic qualifications could have accessed it from her file. It was diligent on the part of Mrs Ori to bring to the applicant's attention to record her qualification in respect of the Quality Management Degree 2005 – current. It would have been prudent that Ms Marais as HR practitioner to have accessed the applicant's academic profile and brought to her attention the need to amend her recordings in respect of the Business Administration degree.

69. At this point I must point out that the witnesses had confirmed that the contentious recordings were not a requirement for the job. If it had been then

it had to be interrogated differently. It may be presumed that had the applicant not recorded the two degrees in her CV then it would not have affected her status at the interviews and positioning after the interview for the following reasons:

Firstly she was selected to attend the interviews because she satisfied the minimum requirement for the post, that of Diploma in Biotechnology.

12.

Secondly her responses to the questions would have allocated her certain scores that would have led the panelists to arrive at a decision to make certain recommendations. It is accepted that all panelist were impressed with the applicant's responses at the interview and regarded her as the preferred candidate for the post.

70. The applicant has the onus to discharge in the form of an acceptable explanation about the submission at the interview although it may be regarded as not an absolute necessity in respect of the Business Administration qualification. She contends that she was misunderstood or misheard. In order to ascertain this I attempted to go to the recording sheets to make a finding. The three panelist's record is as follows:

S Marais (page 32) 2002 (B Tech)

A Knoetze (page 37) B tech busin

P Ori (page 42) Btech Business Admin 2002

Yes

It is clear that only Mrs Ori recorded that the applicant stated that she believed that the applicant had completed the degree in 2002. The other panelists were not in agreement therefore they just recorded the degree without committing themselves. Therefore the applicant's version that she commenced the degree in 2002 shows she must have been aware that it was not completed and that her submission that the year 2002 must be regarded as the year she started her studies towards the degrees.

The panelist could have probed this aspect at the interview if they were uncertain about her qualifications. The fact that they elected not to pursue it must lean in favour of the applicant's explanation.

71. Other aspects that must be explored is that after coming to the conclusion

that the applicant was the preferred candidate the employer in the form of

the interview panel requested the applicant to provide it with her qualifications.

13.

This she duly did after returning from her leave. She produced copies of her qualifications and statement of results in respect of her recordings in her CV. This shows her good faith in disclosing to her employer her qualifications. If she had anything to hide then she would have adopted a dilatory approach to the employer's request.

72. Dishonesty is based on deceit which is defined as "the action or practice of deceiving; concealment of the truth in order to mislead; deception, fraud, cheating (CWIU & Another v Total SA (Pty) Ltd 1994).

As a consequence of the above and in discharging my obligation to consider

the conflicting versions I am of the view that the conduct of the applicant

was not one that constituted an attempt to be dishonest or to deceive the

panelists to obtain the post by unfair means. At best the applicant may be

regarded as not competent as a fate that befalls many applicants for vacant/ advertised posts in that she/they do not know how to compile their CV.

73. Therefore I determine that the dismissal of the applicant was not for a fair reason. I now turn to the question of an appropriate remedy.

74. In arriving at my determination I have taken into account that the applicant was dismissed on the 22 February 2010 and that for various reasons the matter had been protracted and this delay was not of her doing. Further she was in the hands of her representative and at times the delay was occasioned by the acts of commission or omission of the representatives and

the CCMA. In a nutshell the delays were such that it would be unfair to saddle the respondent with payment in respect of the order prayed by the applicant that of retrospective re-instatement from the date of dismissal.

14.

75. Therefore I determine that the remedy of re-instatement either to the post previously held by the applicant that of Quality Manager as she was not appointed as Vaccine Manager and since the dispute, the position of Vaccine Manager has been restructured according to the respondent and if it has been filled then the respondent must have been advised by its legal representative of the risks of filling the post whilst a dispute was pending. Should the post in dispute still feature in the company's organogram then respondent must either appoint her to the position or accommodate her in a similar position with the same terms and conditions that accompany the post of Vaccine Manager.

76. As a consequence of the above I determine that the respondent must re-instate the applicant to either the post of Vaccine Manager, alternatively that of a similar post with the same terms and conditions or to the post of Quality Manager. There is no award of arrear salary from the date of dismissal to the date of re-instatement. The applicant must report for duty at her previous place of employment on or before the 14 April 2011.

77. Further I have considered the issue of cost and conclude that it was such that neither party should be laboured with a cost order against it."

Grounds for review

[10] The applicant outlined a number of grounds for review, among which are the submissions that:

- The first respondent's finding at paragraph 70 of the arbitration award that the third respondent's version that 2002 must be regarded as the year that she started studying towards her degree has no basis in the evidence before him. It represents a failure by the first respondent to apply his mind to the evidence tendered before him.

- Further, the obvious aspect in which the first respondent failed to have regard to material evidence before him was the way in which he recorded the evidence and cross-examination of the third respondent. The first respondent simply stated concerning the third respondent's cross examination that certain propositions were put to her and that the third respondent answered them. He did not state what they were or how she answered them. He then named five common cause facts which were wholly irrelevant to the determination of any of the issues in dispute between the applicant and third respondent and which he termed as "relevant aspects pertinent to the dispute". This showed the first respondent failed to apply his mind to a large portion of the material evidence before him, namely the cross-examination of the third respondent.
- The first respondent failed to state or appreciate that the "*certain propositions*" comprised of a host of propositions relating to the requirement of honesty to be reasonably expected of an employee in general, the importance of trust inherent in the position of Quality Manager in which the third respondent was employed at the time of her dismissal, the third respondent's propensity for dishonesty in the workplace, as well as the third respondent's perceptions of what constituted dishonest conduct and her testimony concerning what she perceived to be an acceptable level of dishonesty in the workplace. From an operational point of view, continued employment based on this approach by the third respondent was untenable.
- The cross-examination of the third respondent thus not only elicited material concessions but proof of the contradictory and improbable nature of her versions which she tendered at the arbitration justifying the various instances of dishonesty. It was unfathomable on what basis the first respondent could deal with her evidence in the cursory manner in which he did and thereafter proceeded to justify the findings he did based thereon.

- The third respondent conceded that all three panellists had in fact indicated at the disciplinary enquiry and in the arbitration that the third respondent had represented to them in the interview process that her degree had been completed.
- For the first respondent to record that the panellists were not *ad idem* as to what had been represented to them by the third respondent was completely unreasonable and constitutes a gross irregularity in the conduct of the proceedings, alternatively misconduct on the part of the first respondent in his capacity as arbitrator.
- The third respondent agreed with Ms Ori's evidence that the applicant had the right to expect the Quality Manager to be one of the persons it could trust and that there should be no doubt in the trust of that person because that person is responsible for the maintenance of the applicant's accreditation system. The fact that the applicant would ultimately have perhaps discovered the truth of the matter when she could not produce her certificates to verify the degrees did not exonerate her from being dishonest in the first place.
- The third respondent's attitude was that being dishonest with the employer in what she believed to be irrelevant aspects had no detrimental effect on the employment relationship. By implication, the fact that she believed that the Business Administration degree would not assist her in the application for the position as Vaccine Manager, meant that she could lie about her qualification with impunity. This is despite the panellists' unchallenged evidence that the completion of a Business Administration degree, given the amount of administration associated with the position of Vaccine Manager, gave the third respondent a distinct advantage above other applicants for the post.
- The first respondent's finding that the witnesses for both parties were honest, candid and frank was a grossly unreasonable finding in the circumstances of the contradictory and inherently improbable version of the third respondent. She essentially admitted her dishonesty and

thereafter denied it. She was unapologetic about her misconduct and persisted in her contention that the three panellists who were her superiors, had been impliedly dishonest in stating that she had represented to them in the interview process that she had obtained the Business Administration degree.

- The finding by the first respondent that the applicant's personnel department had a file that contained the third respondent's qualifications and study progress was not in accordance with the evidence. The evidence was that the third respondent's personal files were often not up to date.
- The applicant's finding that it would have been prudent for Ms Marais, the applicant's HR practitioner, to have accessed the third respondent's academic profile and drawn to her attention that her representation as to the possession of a Business Administration degree was false, was grossly irrational and unreasonable. The applicant as employer was entitled to rely on the third respondent's representation in this regard. The finding by the first respondent that the applicant ought not to have been misled by the third respondent's misrepresentation as it had the means of discovering the truth, was not only an unreasonable and illogical finding, but was based upon an incorrect legal principle. It was no defence to an allegation of fraud that the person to whom the representation was being made, could have by the exercise of reasonable care, discovered the truth of the misrepresentation and ought never to have been duped thereby.
- The first respondent's findings that the applicant would have sooner or later found out about the third respondent's misrepresentation alternatively ought to have found out about it and brought it to her attention by looking at her personnel file was completely unreasonable and based upon an incorrect premise. The first respondent failed to apply his mind to the applicable legal principles relevant to the enquiry.

- The first respondent's finding that the inclusion of the two (2) degrees in her CV would not have affected her rating for the position due to the fact that she satisfied the minimum requirements for the post applied for and her scores rendered her the preferred candidate was grossly unreasonable when one has regard to the evidence of Ms Ori, Marais and Knoetze, namely that her degree had put her above other candidates, in particular one with a BSC. The finding by the first respondent that the panellists had been inconsistent with regards to what the third respondent had represented has already been dealt with hereinbefore. This erroneous finding also formed the foundation of a finding by the first respondent that the third respondent's explanation as to what happened at the interview should be accepted as they were uncertain about what she had said.
- The first respondent's finding in paragraph 71 of the arbitration award that the third respondent had not displayed a dilatory approach to providing her qualifications was again unreasonable in relation to the evidence. The evidence was indeed that the third respondent had been dilatory in providing the certificates.
- The first respondent's finding that the third respondent was at best incompetent to compile CVs was a gross misdirection on the part of the first respondent and a grossly unreasonable finding. It was premised on his failure to apply his mind to the evidence before him that the third respondent had expressly represented that she had completed her degree to the panellists, demonstrating that she intentionally misrepresented the degree as opposed to erroneously doing so.
- The evidence of the applicant's witnesses was that it could not trust the third respondent, having being involved in dishonesty of the nature alleged as well as in light of her prior history of dishonesty where she had back dated reports.
- In the premises, the first respondent's finding that the third respondent's dismissal was not substantively fair was not a decision

which a reasonable decision-maker could have made on the basis of the evidence before him.

[11] In opposing this review application, the third respondent contended, *inter alia*, that:

- The first respondent has indeed, in compliance with his duties and responsibilities as an arbitrator applied his mind to all of the relevant facts which are adumbrated in his award;
- As far as the setting aside of the third respondent's dismissal is concerned and the first respondent ordering her re-instatement, the first respondent has acted consistently with the approach advocated in the *Sidumo* case¹, where the Court confirmed that when arbitrating disputes concerning dismissals, commissioners must apply their own sense of fairness and that they may interfere if disagree with the employer's decision.
- There are two stages in an arbitration process, the first being an assessment by the arbitrator of whether the employee actually committed misconduct and the second being whether the sanction of dismissal fitted the offence.
- The first respondent in his award provided an explanation as to why he considered the sanction of dismissal to be unfair and demonstrated a reasonable and logical assessment of the matter in reflecting the material facts and evidence which were placed before him. This demonstrated a reasonable and logical assessment of the matter in arriving at a reasonable conclusion.
- Contrary to what the applicant had contended in their heads of argument, the process that the first respondent has utilised in deriving his conclusion is consistent with that advocated in *Sidumo* case and other *dicta* relevant to the test for review and must with respect be left unimpaired.

¹ *Sidumo and another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097(CC).

- The first respondent has acquitted himself as a reasonable arbitrator is expected to in determining that dismissal was not warranted and this with respect is in conformity with the requirements of the Act.
- The outcome is not so unreasonable that it could not fall within a band of reasonable decisions. The first respondent acted as a reasonable decision-maker in considering all the facts and evidence placed before him.
- It is abundantly clear that the first respondent's award consists of some thirteen pages and apart from its extent it consists of a sequential and systematic analysis of the background to the issue to be decided, the evidence and argument that was placed before the first respondent as well as an analysis of that evidence and argument.
- The applicant failed to show that there was any form of intentional deceit by the third respondent. Even if they had managed to prove such deception by the third respondent, she denied that it would have been such as to destroy the working relationship between the applicant and herself as she had already been employed by the applicant for 10 years. There was no requirement to have a degree in Business Management for the advertised post and the first respondent correctly held that the conduct of the third respondent was not such as to constitute an attempt to deceive the panelists to obtain the post by unfair means.
- In summary therefore, it is clear from the award derived by the first respondent that there is a logical and rational application by the first respondent of the evidence and facts which were placed before him. In the premises, the third respondent prays that the Court should dismiss the applicant's claim with costs.

Evaluation

- [12] The applicant has accused the first respondent of failing to apply his mind to a large portion of the material evidence tendered before him and of making

grossly unreasonable findings in circumstances of the contradictory and inherently improbable version of the third respondent. This application is one in terms of section 145 of the Act suffused by the constitutional standard of reasonableness, namely whether the decision reached by the commissioner is the one that a reasonable decision maker could not reach². In *Heroldt v Nedbank Limited Ltd*,³ the court held in relation to the review test that:

[25] In summary, the position regarding the review of CCMA awards is this: A review of a CCMA award is permissible if the defect in the proceedings falls within one of the grounds in s 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)(a)(ii), the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable.'

- [13] The interpretation of the qualifications Bachelors of Technology Degree: Business Administration – 2002 appearing in the CV of the applicant is the bone of contention between the parties. It remained common cause between the parties that this degree was never conferred on the applicant as she had not yet met the requirements for such conferment. It is the applicant who decided to insert this qualification in her curriculum vitae. At the time of putting the qualification in her CV, she well knew that two courses were still outstanding for the conferment of the degree on her. She therefore was settled with a duty to ensure that the inclusion of this qualification would not mislead anyone who had a lawful reason to consider her CV.
- [14] Her evidence was that the inclusion of the year 2002 was meant to provide that clarification. The first respondent accepted that as a reasonable

² *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC).

³ [2013] 11 BLLR 1074 (SCA).

explanation, in addition to finding, *inter alia*, that the applicant was in a position to access her personal file to verify that information. I have a problem with the commissioner's assessment of the evidential material. Firstly, if the commissioner's findings were reasonable, it must follow as a logical conclusion that the description in the third respondent's CV, namely:

1. Matric exemption - 1992;
2. Diploma: Biotechnology – 1998;

must be construed as meaning that the third respondent has not passed matriculation and the diploma in biotechnology. She said the years meant the last year she studied a course, with no reference on whether she qualified for that academic qualification. The years 1992 and 1998 were understood in this case to mean the period when she satisfied the requirements for that academic qualification. In the same vein and without any indication to the contrary, the year 2002 could only be interpreted to mean that the third respondent was awarded the degree Bachelors of Technology: Business Administration in 2002. Yet we now know that the Bachelor of Technology degree was not awarded to her. The commissioner failed in this respect to apply his mind to the evidence before him with the result that he reached an unreasonable conclusion.

- [15] Secondly, the conventional practice of writing a CV is to use the year as a period when such qualifications were awarded by the relevant institution. The third respondent was alive to this convention and she followed it for the matriculation and the diploma qualifications. It was only when the shoe began to pinch that she wanted to jettison the convention.
- [16] Thirdly, the third respondent had an opportunity to correct her mistake when Ms Ori told her to correct the qualifications for the Bachelors of Technology Degree: Business Administration – 2002. As she was amending her CV, she ought to have similarly corrected the one for the Bachelor of Technology: Business Administration, as she knew then very well that she had made a similar mistake for that qualification. The commissioner's findings that the applicant would have sooner or later found out about the third respondent's

misrepresentation or ought to have found out about it and brought it to her attention by looking at her personnel file was completely unreasonable and based upon an incorrect premise. There was no need to tell the third respondent what she very well knew. She was the creature of her CV and the commissioner benefitted her with ignorance that she was never entitled to in the first place.

- [17] It is not a defence to an allegation of fraud that the person to whom the representation was being made, could have by the exercise of reasonable care, discovered the truth of the misrepresentation and ought never to have been duped by it.⁴ The first respondent's finding that the third respondent had not displayed a dilatory approach to providing her qualifications was certainly unreasonable in relation to the evidence. She was an applicant for a post. Her appointment to that post depended on the production of the certificates, failing which she would be dropped in favour of another candidate. The production of the statement of results was not a favour from her. In my view, the applicant proved that the third respondent committed an act of dishonesty.
- [18] The third respondent's attitude was that being dishonest with the employer in what she believed to be irrelevant aspects had no detrimental effect on the employment relationship. So, the fact that she believed that the Business Administration degree would not assist her in the application for the position as Vaccine Manager, meant that she could lie about her qualification with impunity. If this qualification was irrelevant she did not explain why she included it in the first place. There is the panellists' unchallenged evidence that the completion of a Business Administration degree, given the amount of administration associated with the position of Vaccine Manager, gave the third respondent a distinct advantage above other applicants for the post, including one with a B Sc degree.
- [19] The third respondent agreed with Ms Ori's evidence that the applicant had the right to expect the Quality Manager to be one of the persons it could trust and

⁴ *Wiley v African Realty Trust Limited* 1908 TH 104 at 111 to 112 and *Frankel Pollak Vinderine Inc v Stanton* 2000 (1) SA 425 (W) at 437 C.

that there should be no doubt in the trust of that person because that person is responsible for the maintenance of the applicant's accreditation system. When she was cross-examined by Mr Erasmus for the applicant, the third respondent conceded that an employee could not be partly or half honest. In my view, her dishonesty was of serious magnitude.

[20] Accordingly, I find that the applicant has shown that the first respondent's finding that the third respondent's dismissal was not substantively fair is not a decision which a reasonable decision-maker could have made on the basis of the evidence before him. This award cannot therefore stand.

[21] The following order is appropriate in the circumstances:

1. The arbitration award in this matter is reviewed and set aside.
2. In its place a finding is made that the dismissal of the third respondent by the applicant was substantively fair.
3. No costs order is made.

Cele J.

Judge of the Labour Court of South Africa.

APPEARANCES:

For the applicant: Advocate C A Nel

Instructed by Macgregor Erasmus Attorneys, Durban

For the respondent: Advocate K Allen

Instructed by Henwood Britter and Caney Attorneys,
Durban.

LABOUR COURT