DETAILS OF HEARING AND REPRESENTATION

1. I satisfied myself that the DRC had jurisdiction to entertain this matter.
2. The arbitration hearings were held on the following dates: 2013: 26 June, 28 August, 28 October; 2014: 3 & 4 February, 17 March, 2 June (postponed due to applicant’s illness), 4 August (postponed due to applicant’s illness); 2015: 5 May (postponed due to unavailability of applicant’s witnesses), 2 June, 22 July, 9 September, 11 November.
3. The hearings were held at the old and new ………….boardrooms in Congella and Pinetown respectively; and twice at the premises of the respondent. The applicant was represented by Mr ………..a ………..official. Except for the first day (when it was represented by Mr ………….), the respondent was represented by Mr ……….., both officials of employers’ organisations.
4. The interpreters were Ms S Nkabinde and Mr T Kawula. Even though one of the interpreters was in attendance throughout all the hearings, interpretation was provided, at the applicant’s request, only during the presentation of his case. The applicant was regularly observed to be reading documents that were prepared in English.
5. The respondent handed in 2 bundles of documents comprising 71 pages (bundle A) and 108 pages (bundle B). Copies thereof had been handed to the applicant on 17 May 2013 (the day of the conciliation). On 26 June 2013 the applicant was asked whether he had perused the bundle and whether he admitted the documents as regards their authenticity and the correctness of their contents. He indicated that he had perused the bundles and that he admitted the authenticity of the documents and the correctness of their contents. The parties agreed that the applicant had not completed or signed the documents at pages 21 and 38 of bundle A.
6. On 4 February 2014 a further bundle comprising 8 pages was handed in by the respondent at the request of the applicant. None of the documents therein were disputed.
7. A pre-arb was conducted on 26 June 2013. A minute thereof was distributed to both parties on 28 August 2013 and they were asked to peruse it. Once it was approved as correct, it was read into the record. The parties were advised that they should keep the pre-arb minute handy and refer to it regularly. They were asked to lead evidence on the disputed issues.
8. An inspection-in-loco was conducted with the consent of both parties on 3 February 2014. A printed minute thereof was prepared and distributed to both parties on 4 February 2014 for their perusal. After a minor amendment was effected thereto, it was read into the record.
9. On 9 September 2015 the cross-examination Mr Mseleku (one of the applicant’s witnesses) was suspended pending an inspection-in-loco because there was a dispute about whether a particular photograph is on a notice-board in the respondent’s factory. A further inspection-in-loco was conducted on 11 November 2015. The proceedings were concluded on that day.

ISSUE TO BE DECIDED

1. The issue to be decided is whether the applicant was unfairly dismissed. He sought reinstatement and back pay.

BACKGROUND TO THE DISPUTE

1. The applicant is ………………., a setter / operator. He commenced employment with the respondent on 26 May 2008 and was dismissed on 28 March 2013. He earned R24 per hour for working a 5 day / 40 hour week. He has not earned any income from casual work from the date of his dismissal to the date of the arbitration. The applicant remains unemployed despite making attempts at finding alternative employment.
2. The respondent is ……………….(PTY) LTD, a manufacturer of automotive components. It employs approximately 130 persons. It has no branches.
3. The applicant was suspended with pay on 7 March 2013 and given a notice to attend a disciplinary hearing. He was charged with the following:

*Charge 1A: Gross negligence: In that you set the incorrect hold time on your machine;*

*Charge 1B: Gross negligence: Mis-location of parts (bracket and tube).*

*Charge 2: Bringing company name into disrepute: the owner of the company had to apologize in writing to another company for his mistakes;*

*Charge 3: Conduct detrimental to maintenance of good order within the workplace: in that your actions have put in motion much larger actions that have affected your co-workers, team leaders and your manager.* (The respondent indicated on 28 October 2013 while Munisamy was being cross-examined that it was not persisting with charge 3. No further reference will be made thereto.)

1. A disciplinary hearing was held on 12 and 18 March 2013. The applicant was found guilty of all charges and dismissed. The applicant thereafter filed an appeal on 18 March 2013. It was dismissed on 28 March 2013. The applicant filed an alleged unfair dismissal dispute with the DRC on 19 April 2013. It was conciliated on 17 May 2013 but remained unresolved. Hence the referral to arbitration.
2. This para 15 contains the minute of the pre-arb. During the pre-arb the issues set out below were either agreed to or disputed as the case may be:
   1. As regards charge 1A: agreed that one of the first duties of the applicant when commencing a shift is to set the hold time on the machine. The correct hold time is 15 to 20. This was also confirmed with reference to the “Production and quality process instruction” at page 28 of the bundle. What was disputed was whether the applicant had set the hold time on 21 February 2013. It was the respondent’s version that the applicant had set the hold time, while the applicant’s version was that one Sakhile Mkhize (an operator) had set it.
   2. As regards charge 1B: agreed that as part of the production process, one of the applicant’s functions is to insert a tube into the spot welder machine up against the stopper. This was confirmed with reference to the “Production and quality process instruction” at page 34 of the bundle. It stated that the “*tube must push against side of fixed stopper – tube seam must be in align with yellow mark on stopper – tube seam must face up*.” It was further agreed that if the tube is inserted incorrectly that there will be a problem and that a reject component will be produced. What was disputed was whether the applicant had indeed inserted the tube incorrectly into the machine on 9, 18 and 21 February 2013 thereby producing over 700 reject components.
   3. As regards charge 1B: agreed that the applicant is required to visually inspect the finished product to ensure that it is of the required quality. Furthermore step 6 in the “Production and quality process instruction” at page 34 states that step 6 requires a visual inspection to be made of the weld. It was agreed further that it is possible to detect problematic welds when making a visual inspection. The document at p 34 further states that “*Should weld quality not be acceptable, inform team leader and trouble shoot*.”
   4. A further issue raised in relation to charge 1B was that the applicant’s manager was not satisfied with the applicant’s rate of production. He had asked the applicant to produce 4 finished products per minute. It was agreed that the applicant’s production rate was 3 products per minute. In order to demonstrate to the applicant that a rate of 4/min was possible, the manager had operated the machine for 3 minutes and had produced 18 finished products, ie 6/min.
   5. A comprehensive list of possible **procedural issues** was read out one by one and the applicant was asked whether he intended raising any of these issues. He raised the following procedural disputes:
      1. That he did not understand charges 2 and 3 because they were not in a language that he could reasonably understand. The charges were framed in English. The respondent disputed this contention stating that the applicant did indeed understand them because they were explained to him by his own shop steward who was present when the notice of hearing was handed to the applicant;
      2. That he had not been allowed to call witnesses to give evidence in his own defence. This was disputed by the respondent;
      3. That the chairperson was not impartial and unbiased. That he was not, so the applicant contended, appeared from the fact that he denied the applicant’s request to call witnesses; and that he failed to consider the applicant’s evidence when making his decision to dismiss the applicant. The respondent disputed that the chairperson was not impartial and unbiased;
      4. The applicant was finally asked whether he intended to raise any other procedural issue and he indicated that he did not.
   6. A comprehensive list of possible **substantive issues** was then read out one by one and the applicant asked whether he intended raising any of these issues. He raised the following substantive issues:
      1. That he did not breach any rule or procedure relating to setting the hold time on the machine, nor the rule or procedure relating to inserting the tube correctly into the machine against the stopper. This was disputed by the respondent;
      2. That he had not engaged in any wrongdoing or misconduct. He contended that the charges were fabricated against him because he had previously complained about not being paid the correct rate as stopper / operator. This was disputed by the respondent;
      3. That the respondent had applied the rule / procedure inconsistently in the past. Those found to have engaged in similar misconduct were given warnings. He declined to name such persons. The respondent disputed this contention;
      4. It was agreed that he had received the contractually binding disciplinary code on his induction;
      5. That dismissal was an inappropriate and unfair sanction. The respondent disputed this contention and stated that dismissal was the only sanction;
   7. Insofar as the factors contained in *Sidumo & Another v Rustenburg Platinum Mines Ltd* [2007] 12 BLLR 1097 (CC) the following was either agreed to or disputed:
      1. *Whether the applicant was aware that breaching the rule/standard was a dismissible offence:* The applicant disputed being aware that he would be dismissed if he engaged in such alleged misconduct. The respondent contended that the applicant was aware that either a final written warning or dismissal was prescribed by the disciplinary code for gross negligence. Dismissal was reserved for serious cases of gross negligence which it contended this was. The respondent contended further that if he was not aware, he ought to have been reasonably aware. The applicant disputed this contention;
      2. *Whether progressive or corrective discipline was appropriate in the circumstances:* The respondent contended that there was no room for progressive or corrective discipline in this case, and that dismissal was a fair and appropriate sanction. It made reference to the counselling that the applicant had been subjected to on 1 July 2010. The applicant disputed this contention stating that a fair sanction ought to have been a warning if he had engaged in the alleged misconduct;
      3. *The basis of the applicant’s defence:* The applicant’s defence was a bare denial;
      4. *Whether training would have helped the applicant:* It was agreed that the applicant had been trained to operate the machine. Reference was made to pages 29 to 33 of the bundle which contained a record of numerous sessions of training afforded to the applicant. it was disputed by the respondent that the applicant needed any further training as contended by the applicant;
      5. *The importance of the rule / standard:* It was agreed that the rule / procedure served a purpose: it was important to produce components of the correct dimension because those components work in tandem with other components;
      6. *Whether the applicant had a disciplinary record:* It was agreed that the applicant had a disciplinary record: verbal warning on 22 May 2012 for poor timekeeping; written warning on 20 January 2012 for negligence; verbal warning on 13 May 2011 for loafing; written warning on 8 April 2011 for dereliction of duty; final written warning on 1 December 2010 for 9 occasions of poor timekeeping; first written warning on 13 October 2008 for failure to contact the company on your first day of absence; first written warning on 9 June 2008 for gross insubordination;
      7. *Whether the respondent had suffered any harm, damage or prejudice:* As regards the harm or prejudice suffered by it, the respondent contended as follows: That it had suffered loss of reputation with its customers; that it ran the risk of losing a contract with Toyota and Bosch; that over 700 defective components had been produced and which had to be dumped; that those components had to be re-made; that there were further costs involved in the new production process. The applicant disputed these contentions;
      8. *Whether the employment relationship had broken down:* The respondent contended that the applicant could not be trusted to work properly and in accordance with its strict standards and operational requirements. He had produced defective components previously and had been warned. He had not learnt from his mistakes. The applicant for his part disputed that the employment relationship had broken down;
      9. *Whether it was reasonably practicable to reinstate the applicant:* The respondent stated that it was not reasonably practicable to reinstate the applicant because he had on multiple occasions produced defective components. The applicant disputed this proposition.
3. Paras 17 to 21 contain the minute of the inspection-in-loco conducted on 3 February 2014.
4. The inspection-in-loco was conducted on 3 February 2014 with consent of the parties. The inspection was conducted with reference to the charges that were brought against the applicant. The charges were as follows:
   1. Charge 1A: Gross negligence: in that you set the incorrect hold time on your machine;
   2. Charge 1B: Gross negligence: Mislocation of parts (bracket and tube)
5. In relation to charge 1B an inspection was carried out at spot welder machine (number 08). A demonstration was conducted by machine operator Linda. It was agreed that –
   1. The applicant had worked on this machine on 18 and 19 February 2013;
   2. Linda was performing the same function as that performed by the applicant on the days in question viz 18 and 19 February 2013;
   3. The steps in the process are as follows:
      1. A metal bracket is placed on the immovable location block;
      2. A metal tube is placed horizontally in the jig. The jig is grooved in order to receive the tube;
      3. The tube is then pushed against the fixed stopper. The fixed stopper is not adjustable and immovable;
      4. The operator visually ascertains whether the tube is pushed up against the stopper;
      5. The spot welding function is activated so that the bracket is welded to the tube;
   4. It is the respondent’s case that the applicant had failed to push the tube against the stopper and hence the bracket was welded out of alignment. The applicant’s case is that he had pushed the pipe against the stopper as required;
   5. A batch of defective components was produced on 18 and 19 February 2013;
   6. The applicant was on duty as a machine operator on machine 08 on 18 February 2013 between 10.56am to 4pm and had (according to the control form at p 35) produced 674 components during that period. However it was agreed that the applicant’s manager ………………..had on 18 February 2013 produced 18 components over a period of 3 minutes. These 18 components are included in the total shown above. In other words the applicant for his part produced 656 (674 – 18) components;
   7. The applicant was on duty on 19 February 2013 on machine 08 between 7.05am to 7.47am and had produced 99 components during that period;
   8. The total number of components produced on 18 and 19 February 2013 was 773;
   9. If the tube is pushed right up against the stopper then the bracket will always be in the correct position for purposes of the weld. In other words a defect free component will be produced.

1. In relation to charge 1A, an inspection was conducted at machine (number 01). A demonstration was conducted by du Plooy. It was agreed that –
   1. The machine has a control panel behind a locked glass window;
   2. The applicant performed the setting function on the machine whenever he was required to do so;
   3. That others were also required to perform the setting function from time to time;
   4. Up until today the applicant did not know that Sakhile Mkhize could set machines. The respondent accordingly undertook to produce the records relating to Sakhile Mkhize’s training as a setter;
   5. That the setting is done with reference to “Production and Quality Process Instruction” (p 28). That whenever setting is done, the following must be done or checked by the setter –
      1. Pre-squeeze
      2. Squeeze
      3. Weld 1
      4. Heat 1
      5. Heat 2
      6. Hold
      7. Cool
      8. Weld 2
      9. Off
2. It was the respondent’s case that the applicant had done the settings on 21 February 2013 and had set the incorrect hold time. The applicant’s version was that it was not he who had set done the settings on that day and that it was Sakhile Mkhize.
3. It was important that the hold time was set correctly because it had an effect on the quality of the weld. In other words if the hold time was set incorrectly, a defective weld will be produced.
4. Both parties submitted written closing statements arguing in support of their respective positions.

SURVEY & ANALYSIS OF EVIDENCE AND ARGUMENT

1. The following gave evidence for the respondent: ………………(chairperson of the disciplinary hearing. He is in possession of a legal qualification and has 15 years of experience in the labour relations field); ……………(quality manager since January 2013 and having experience and qualifications in quality engineering and metrology. He was recalled on 2 June 2015); …………….(production manager from 1994 to October 2013. He possesses a production manager qualification, tool and die maker qualification and N5 (mechanical)); …………… (managing director of the respondent for 8 years. He possesses qualifications in tool and die making, and advanced machine engineering); …………. (team leader at present; previously operator; and employed by the respondent for 5 years).
2. The following gave evidence for the applicant: the applicant himself; …………. (billing clerk for 2 years; previously an operator; and employed by the respondent for 3 years); …………….. (quality department inspector for 19 years).
3. Charges 1A and B relate to alleged gross negligence. Generally speaking, gross negligence is conscious, voluntary and total disregard of reasonable care with serious or disastrous consequences.
4. The evidence, when analysed, will show that the applicant was not a credible witness for the following reasons:
   1. Having regard to the contradictory positions that he adopted at various stages during the proceedings;
   2. That he allegedly could not reasonably understand English. The charge-sheet was prepared in English. The pre-arb minute records that the applicant stated that it was not a language that he could reasonably understand. I cannot find that this was a bona fide claim because interpretation was not provided for large parts of the arbitration proceedings, at the applicant’s request. He was also regularly observed reading documents prepared in English;
   3. He raised issues during the pre-arb which were not supported by evidence; alternatively he simply failed to lead evidence on these issues.
5. The evidence will now be analysed in relation to the various charges.

SUBSTANTIVE FAIRNESS

Charge 1A

1. The following was either agreed to, common cause, undisputed or conceded in cross-examination:
   1. That all those involved in the production process must ensure that components of the highest quality are produced. It was further undisputed that the respondent has over the years earned a reputation for producing quality components for the motor industry and even won a global award from the Toyota Motor Corporation;
   2. That one of the first duties of the applicant when commencing a shift was to set the hold time on the machine;
   3. That the applicant performed the setting function whenever required;
   4. That the correct hold time is between 15 to 20 whereas on 21 February 2013 it was set at 10;
   5. That the hold time is specified on the Production and Quality Process Instruction which is affixed to the machine in question;
   6. That it is important that the hold time is set correctly because it has an effect on the quality of the weld. In other words if the hold time is set incorrectly, a defective weld will be produced;
   7. That the machine in question had been operated by operator Sakhile Mkhize.
2. I make the findings on the disputed and other issues below.
3. The role played by Sakhile (referred to as such to distinguish him from the applicant whose surname is also Mkhize) requires examination. The applicant submitted in argument that Sakhile was a dishonest witness because he himself had set the machine and had wrongly blamed the applicant. I cannot accept this submission because it was not put to Sakhile in cross-examination. I find that Sakhile probably did not set the machine for the following reasons:
   1. Sakhile’s name featured prominently in relation to charge 1A. The applicant stated in the pre-arb and when giving evidence that it was Sakhile who had set the machine on 21 February 2013;
   2. It was agreed that as at 3 February 2014 (being the day when the inspection-in-loco was conducted) the applicant did not know that Sakhile could set machines;
   3. It was undisputed, with reference to his training records, that Sakhile had not been trained to set as at 21 February 2013;
   4. The applicant blamed Sakhile for setting the machine but could not show by way of any evidence that Sakhile was trained in setting or that he had any motive to blame him (ie the applicant).
4. The respondent’s submitted the following in support of its position that the applicant had set the hold time:
   1. Munisamy stated that the applicant had set the hold time with reference to the control form at p38;
   2. It was common cause that the control form at p38 was completed by Sakhile and that applicant’s name was inserted therein as the setter;
   3. Sakhile himself stated that the applicant had set the hold time.
5. At various stages during the arbitration the applicant submitted various versions either by way of evidence or putting them to the respondent’s witnesses as follows:
   1. His own evidence to the effect that Sakhile had set the machine;
   2. That he had stopped setting machines of others in 2012 because the respondent had allegedly indicated that there were no prospects of promotion;
   3. That he did not know who had set the machine;
   4. That the machine used on that day was operated first by ………….and thereafter by Sakhile. He submitted that since Kunnusamy had already set the machine it was not necessary for anyone to set the machine when Sakhile took over (it being common cause that they were both producing the same component). But Kunnusamy (being the applicant’s own witness) contradicted the applicant and stated that she and Sakhile had worked on different machines on that day;
   5. The applicant admitted the authenticity and correctness of the contents of pages 21 and 38 at the outset. It was common cause that these documents were completed by Sakhile. However during the arbitration applicant submitted that these documents had been fabricated by Sakhile. However he failed to put this to Sakhile when he was being cross-examined.
6. Having regard to the respondent’s evidence, I find that the applicant probably set the hold time on 21 February 2013. I reject the applicant’s evidence on this issue for the following reasons:
   1. The applicant offered 4 different versions of what occurred on 21 February 2013. Having regard to the finding made below it follows that none of them were offered honestly or in good faith;
   2. It is not clear to me on what basis the applicant made the submission during the pre-arb on 26 June 2013 that Sakhile had set the machine, because if he genuinely believed this, he would not have stated (seven months later in February 2014) during the inspection-in-loco that he did not know that Sakhile could set machines;
   3. I find further that the evidence of the applicant that he stopped setting the machines of others in 2012 to be false. If that had been his defence he would have stated it during the pre-arb. In any event he agreed during the inspection-in-loco that he set machines whenever required;
   4. The applicant damaged his credibility on this issue when he submitted the following in his defence during the arbitration: That the control form at p38 had been fabricated. This ought to have been put to the author of the document – Sakhile. But the applicant failed to do so;
   5. The applicant failed to show that Sakhile had any motive to implicate him falsely.
7. It was agreed that if the hold time was set incorrectly, then a defective weld will be produced. The evidence shows that hundreds of components with defective welds were produced as a result of the incorrect hold time being set. These defective components were delivered to the client Toyota Boshoku. I find accordingly that the applicant was grossly negligent insofar as he disregarded the reasonable care that was required resulting in serious consequences.
8. It follows from the above finding that the applicant was correctly found guilty of charge 1A.

Charge 1B

1. The following was agreed as regards the correct procedure for inserting the tube in the machine:
   1. That a metal bracket is placed on the immovable location block. A metal tube is placed horizontally in the jig. The jig is grooved in order to receive the tube. The tube is then pushed against the fixed stopper. The fixed stopper is not adjustable and is immovable. The operator visually ascertains whether the tube is pushed up against the stopper. The spot welding function is activated so that the bracket is welded to the tube;
   2. That if the tube is inserted incorrectly a reject component will be produced;
   3. That it was important to produce components of the correct dimension;
   4. That if the tube is pushed right up against the stopper then the bracket will always be in the correct position for purposes of the weld. In other words a defect-free component will be produced.
2. The following was either agreed to, common cause, undisputed or conceded in cross-examination:
   1. It became common cause during the arbitration that defective components were produced. The issue was whether it was the applicant that had produced these defective components;
   2. It was agreed that the applicant was on duty as a machine operator on machine 08 on 18 February 2013 between 10.56am to 4pm and had (according to the undisputed control form signed by the applicant at p35) produced 674 components during that period;
   3. It was also agreed that the applicant’s manager du Plooy had on 18 February 2013 produced 18 components over a period of 3 minutes. These 18 components are included in the total of 674 shown above. In other words the applicant himself for his part produced 656 (ie 674 – 18) components;
   4. The applicant was on duty on 19 February 2013 on machine 08 between 7.05am to 7.47am and had produced 99 components during that period (according to the undisputed control form signed by the applicant at p 36);
   5. The total number of components produced by the applicant on 18 and 19 February 2013 was 755;
   6. That the applicant could not recall the exact number of components he had produced, but conceded that he had produced the majority of the components;
   7. No one else produced the relevant component during the month of February 2013;
   8. It was not disputed that these components were delivered to Bosch (a client of the respondent).
3. Having regard to the undisputed evidence that the applicant produced a large majority of the components, I find that the applicant probably produced defective components on 18 and 19 February 2013. As such he was correctly found guilty of charge 1B.
4. It was common cause that the components produced by du Plooy over a 3 minute period, being a total of 18, were placed in the applicant’s bin. The applicant accordingly submitted that it was du Plooy that had produced the defective components. I cannot accept that submission. The evidence shows that the applicant looked on while du Plooy was undertaking the demonstration. It was also common cause that it is possible to detect defects visually. If that is the case then the applicant ought to have pointed out to du Plooy that he was producing defective components. There is no evidence that he did so.
5. In support of his claim that the charges were fabricated against him, the applicant disputed whether Bosch had in fact found these components to be rejects because there was no evidence that the rejects were returned to the respondent or shown to the applicant. I find that Bosch did in fact reject the components for the following reasons:
   1. It was not disputed that the respondent had received photographs of the defective components (at pages 40-42) from Bosch. The authenticity of these photographs was not disputed by the applicant;
   2. That Du Plooy and the quality manager had worked until 11.30pm on 28 February 2013 to manufacture replacement components for Bosch;
   3. Mseleku stated that if the consignment is sent to a customer “far away” then it is not usual for it to be returned to the respondent. He stated that only “local” customers returned the defective goods. I find accordingly that this is the probable reason why the defective components were not returned to the respondent or shown to the applicant.
6. I cannot in the circumstances find that the charges were fabricated against the applicant.
7. Whether the applicant’s rate of production was adequate or not was raised from time to time. Subject to what has already been stated above in relation to Du Plooy’s demonstration to the applicant, I do not intend dealing further with this issue for the simple reason that the applicant was not charged with poor performance.
8. It was agreed that if the tube was not pushed against the stopper, the bracket will be welded out of alignment. The evidence shows that hundreds of components were welded out of alignment. The only inference that one can draw is that the applicant failed to push the tube against the stopper. These defective components were delivered to the client Bosch. I find accordingly that the applicant was grossly negligent insofar as he disregarded the reasonable care that was required with resulting serious consequences.
9. It follows from the above that the applicant was correctly found guilty of charge 1B.

Charge 2

1. The difficulty for the respondent is that it has in place a quality control (QC) procedure. Each of the control forms was signed off by the QC as being “good”. In other words the applicant’s work was passed as “good”. Munisamy stated that the QC process was in conformity with ISO9001 requirements and as such the respondent will not “double handle” components. Whether that is a satisfactory answer is not clear. What is undisputed is that the QC process failed because defective components were actually delivered to a client. I find that if the process was designed properly then the applicant would probably have been stopped at an early stage having regard to the fact that a QC examination is done at regular intervals during the production process.
2. The flaw in the design of the QC process means that defective components were allowed to leave the premises of the respondent after ostensibly having been quality checked. It was the receipt by the client of defective components that caused the reputation of the respondent to be damaged.
3. I find that the applicant ought not to have been found guilty of charge 2 because his defective work ought to have been detected timeously. It must be emphasised that even though the QC process was defective, that does not excuse the applicant’s gross negligence in the performance of his own work. In the perfect world, there would be no need for quality control because every operator would be assumed to be producing components of the highest quality and specifications. After all, Munisamy stated “we trust them to do their job properly”.
4. In support of his charge that the respondent has been inconsistent, the applicant submitted in argument that the QC inspector Mseleku ought to have been charged with misconduct due to his failure to perform his QC duties properly. I do not agree. It appears to me, and I find, that Mseleku was working within the constraints of the flawed quality control process. He did what the process required.
5. I find it callous and calculating for the applicant to submit in his closing argument that Mseleku – his own witness – ought to have been charged with misconduct for failing to perform his duties. If that is what the applicant genuinely believed, then he ought to have had the courage to put that to Mseleku during the arbitration.
6. As regards the remaining substantive issues I find as follows:
   1. Whether the sanction of dismissal was unfair: The applicant was correctly found guilty of 2 serious cases of gross negligence. The disciplinary code provides for dismissal for these acts of misconduct. I cannot find that the sanction is unfair;
   2. Whether the applicant was aware that he would be dismissed if he engaged in the alleged misconduct:
      1. It was agreed that the applicant had received the disciplinary code on his induction;
      2. The applicant disputed that he was aware that the code provides for dismissal for serious cases of gross negligence;
      3. If he had received the code, then one would expect the applicant would have read the code. I find accordingly that the applicant was reasonably aware, or ought to have been aware, that he would be dismissed for the alleged misconduct;
   3. Whether progressive or corrective discipline was appropriate: This issue falls away having regard to the findings made above;
   4. Whether the applicant needed any further training: It was agreed that the applicant had been trained to operate the machine. However in respect of charge 1B the applicant indicated during cross-examination he had received sub-standard training. But he had not put this to any of the respondent’s witnesses. I accordingly cannot accept the applicant’s evidence in this regard;
   5. Whether the respondent had suffered harm and prejudice / loss of reputation as a result of the applicant’s alleged negligence: There is no doubt that losses were suffered as a result of the applicant’s conduct. That is self-evident because defective components had to be replaced by the respondent. I have already found that the applicant ought not to have been found guilty on charge 2 (dealing with the loss of reputation);
   6. Whether the employment relationship had broken down irretrievably: The applicant tailored his evidence at different points in the arbitration. This shows dishonesty while under oath. He also blamed Sakhile wrongly. In his closing statement the applicant sought to portray Mseleku, his own witness, as a person who had engaged in misconduct. He blamed everyone and refused to accept any responsibility. Having regard to the serious charges on which he was found guilty and his dishonesty, I find that the employment relationship has broken down irretrievably;
   7. Whether the charges were fabricated against the applicant because he had queried the correct rate of pay as a setter / operator: This issue has already been dealt with above;
   8. Whether the respondent had applied the rules or procedures inconsistently:
      1. During the pre-arb the applicant declined to name the persons who had been treated differently;
      2. During the arbitration the applicant failed to give evidence on this issue;
      3. In his closing argument the applicant submitted that Mseleku and Du Plooy ought to have been disciplined. I have already made findings on why Mseleku’s position cannot be compared to that of the applicant. Insofar as Du Plooy is concerned, he was a manager and not an operator. There is no evidence that the 18 or so parts that he produced were defective. But even if they were defective, the probability remains that the applicant produced the vast majority of the defective parts. I find that the applicant must compare his situation to that of other setters / operators;
      4. In the circumstances I find that there was no inconsistency in the application of rules or procedures.
7. In summary therefore I find the applicant’s dismissal to be substantively fair for the 2 charges in respect of which he was found guilty.

PROCEDURAL FAIRNESS

1. Before dealing with the procedural issues, it must be noted that significant parts of the cross-examination of Erasmus (chairperson of the disciplinary hearing) dealt with issues of substance. This evidence will not be surveyed because little reliance can be placed on it because Erasmus – who is not an employee of the respondent – had little or no first-hand knowledge of the respondent’s production processes. As such his evidence on such issues constitutes hearsay. The following was not disputed as regards Erasmus’ evidence:
   1. That no procedural problems had been pointed out to him by the applicant or his representative;
   2. That he had checked whether the applicant understood the procedure;
   3. That the applicant had thanked him for being fair after the conclusion of the hearing;
   4. That he had no evidence on which to make a finding of guilty as regards charge 2.
2. I make the following findings on the procedural issues:
   1. Whether English is a language that the applicant can reasonably understand having regard to the fact that the notice of the disciplinary hearing was framed in English: This issue has already been dealt with above;
   2. Whether the charges were explained to the applicant by his shop steward: Since neither party dealt with this issue, no finding will be made on this issue;
   3. Whether the applicant was allowed to call witnesses in support of his case: The applicant failed to give evidence on this issue and hence nothing further need by said on this issue;
   4. Whether the chairperson of the disciplinary hearing was partial and biased: The applicant failed to give evidence on this issue.
3. In summary I find the applicant’s dismissal to be procedurally fair.
4. In all the circumstances I find the applicant’s dismissal to be both substantively and procedurally fair. I accordingly propose to dismiss the application.

AWARD

1. The application is dismissed.

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R J PURSHOTAM

*Arbitrator*