

REPUBLIC OF NAMIBIA

LABOUR COURT OF  
WINDHOEK



NAMIBIA, MAIN DIVISION,

LABOUR APPEAL

REASONS

<b>Case Title:</b> LEWIS STORES NAMIBIA (PTY) LTD T/A BEST HOME & ELECTRIC  VS  CAROLLA KAVENDJII	<b>Case No:</b> HC-MD-LAB-APP-AAA-2021/00073
	<b>Division of Court:</b> LABOUR COURT (MAIN DIVISION)
<b>Heard before:</b> HONOURABLE MR JUSTICE COLEMAN	<b>Heard on :</b> 11 March 2022
	<b>Order delivered on:</b> 11 March 2022 <b>Reasons released on :</b> 16 March 2022
<b>Neutral citation:</b> <i>Lewis Stores Namibia (Pty) Ltd t/a Best Home &amp; Electric v Carolla Kavendjii</i> (HC-MD-LAB-APP-AAA-2021/00073) [2022] NALCMD 12 (16 March 2022)	
<b>IT IS ORDERED THAT:</b>  <ol style="list-style-type: none"><li>1. The appeal is granted and the arbitration award by Mr Kleofas Geingob dated 24 September 2021 is hereby set aside;</li><li>2. The matter is referred back for arbitration before a different arbitrator; and</li><li>3. No order as to costs.</li><li>4. The matter is removed from the roll: Case regarded as Finalized.</li></ol>	
<b>Following below are the reasons for the above order:</b>	
<b>Introduction</b>  [1] This is an appeal against the arbitration award delivered by arbitrator Kleofas	

Geingob on 24 September 2021 under case number CROU 49/20.

[2] The respondent was subjected to a disciplinary hearing on 28 July 2020 and dismissed. Respondent was employed as an Assistant Regional Controller by appellant and it was discovered that client refunds were processed over a period of time. These transactions were done contrary to prescribed policies and respondent authorised these transactions. According to appellant these transactions are fraudulent.

[3] The respondent referred the dispute to the office of the Labour Commissioner and the arbitrator found that the respondent was dismissed unfairly both substantively and procedurally. The arbitrator ordered respondent's reinstatement as well as a payment of N\$ 400,000, being 16 months' salary. Appellant appeals this result and raises three *points in limine* as well as twelve grounds of appeal on the merits.

[4] Having read the papers and heard the submissions by Mr Rukoro on behalf of appellant and Mr Ikanga on behalf of respondent, I am satisfied that the arbitrator erred on various counts.

[5] The question of the substantive unfairness of the dismissal should be revisited since respondent was in a responsible, trusted position and she clearly authorized client refunds that were not in terms of the appellant's policies. A strong argument can be made that it was dishonest. If established it would in my view justify dismissal.

[6] The procedural fairness of the disciplinary proceedings should also be revisited. The telephonic testimony of the witness should be addressed. It appears the respondent accepted this procedure. Nevertheless, it may not be enough for a respondent to accept a procedure to render it fair. The further aspect which is of concern is that the chair of the disciplinary proceedings was also a witness.

[7]. Finally, even if it is determined that the disciplinary proceedings were procedurally tainted it does not necessarily justify a reinstatement. The respondent was in a position of trust and if it is established that trust was breached, reinstatement does not necessarily follow.

[8] In the premises, the appeal is upheld and the matter is referred back for another arbitration before a different arbitrator.

Costs

[9] No order as to costs.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>Appellant</b>	<b>Respondent</b>
R. Rukoro <i>of</i> LorentzAngula Inc., Windhoek	M. Ikanga <i>of</i> Ikanga Legal Practitioners, Windhoek