

The Importance of Procedural Fairness

Arunachellam v Woolworths (Pty) Ltd and Others (D217/20) [2024] ZAGPJHC 967 (26 September 2024)

BACKGROUND

Gladys Arunachellam (“the Applicant”) was employed by Woolworths (Pty) Ltd (“the Respondent”) for 28 years as a supervisor. On 6 May 2019, she was dismissed based on allegations of misconduct for using language with racial undertones, referring to the cashiers, who were predominantly black, as “dumb”. At the Applicant’s disciplinary hearing, the chairperson only gave the Applicant 15 minutes to prepare for the hearing and the chairperson failed to take into consideration aspects such as the Applicant’s length of service or her disciplinary record. The Applicant was subsequently found guilty and dismissed. The Applicant referred the matter to the Commission for Conciliation, Mediation and Arbitration (“CCMA”) claiming the dismissal was both substantively and procedurally unfair and seeking reinstatement.

THE CCMA

At the arbitration proceedings, the parties agreed to have their closing arguments submitted by 27 March 2020, however due to Covid-19, the Applicant’s attorneys’ offices closed and there was a delay in submitting the closing arguments. Commissioner Ian Bulose (“the Commissioner”) issued an award 9 days later without receiving the closing submissions of either party and without making any enquiry in this regard from the parties.

The Commissioner found the dismissal to be substantively fair, concluding that the term “dumb” was indeed used and justified the dismissal. However, procedural fairness was not adequately addressed which resulted in the Applicant taking the arbitration award on review.

THE LABOUR COURT (“THE COURT”)

The Court identified several procedural irregularities in the arbitration process. Notably, the arbitrator issued the award without considering the closing arguments from either party, which were delayed due to the COVID-19 lockdown. This omission was deemed a gross irregularity, as it deprived the parties of a fair opportunity to present their final arguments.

By **Juliette Vermeulen** (Candidate Attorney),
and **Pierre van der Merwe** (Partner)

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The Court also found that the arbitrator failed to adequately address the procedural fairness of the Applicant’s dismissal. Specifically, the Court noted that the Applicant was not given sufficient time to prepare for her disciplinary hearing.

While the court upheld the Commissioner’s finding of substantive fairness, it ruled that the procedural irregularities warranted compensation. The Applicant was awarded three months’ salary as compensation for the procedural unfairness she experienced.

CONCLUSION

The case reaffirms that procedural fairness is as important as substantive fairness. Employers must ensure that disciplinary processes are conducted fairly, providing employees with adequate time and opportunity to prepare and present their cases. Procedural lapses can lead to compensation, even if the dismissal itself was substantively fair.

VALUE

The case emphasises that employers must adhere to fair procedures, even when the substantive grounds for dismissal are justified.

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Pierre van der Merwe
(Partner)



Juliette Vermeulen
(Candidate Attorney)