



THE LABOUR APPEAL COURT OF SOUTH AFRICA, DURBAN

Not Reportable

Case no: DA 9/2023

In the matter between:

A J CHARNAUD & COMPANY

Appellant

and

SACTWU obo MEMBERS AND 90 OTHERS

First Respondent

**NATIONAL BARGAINING COUNCIL FOR THE
CLOTHING AND MANUFACTURING INDUSTRY
(KZN)**

Second Respondent

COMMISSIONER BHEKI KHUMALO N.O.

Third Respondent

Heard: 23 May 2024

Delivered: 17 July 2024

Coram: Van Niekerk, Nkutha-Nkontwana JJA et Govindjee AJA

JUDGMENT

VAN NIEKERK, JA

Introduction

- [1] On 18 June 2020, the 90 individual respondents (employees) were dismissed by the appellant on a charge of threatening the well-being and safety of two directors of the appellant, the late Mr Charnaud and his wife Mrs Fiona Charnaud (Charnauds), by taking them and other employees hostage. The charge arose out of an incident on 26 March 2020 in which the Charnauds were forced to remain in their vehicle and denied exit from the appellant's Ladysmith factory premises for some four hours, in circumstances where the gates had been locked and barricaded, and rocks placed between the vehicle and the factory gate.
- [2] The union, acting on behalf of the employees, disputed the fairness of their dismissal, a matter that was referred ultimately to an arbitration hearing before the third respondent (arbitrator). In an award issued on 2 April 2020, the arbitrator found that the dismissal of the employees was substantively and procedurally fair.
- [3] The union sought to review the arbitrator's award. In a judgment delivered on 25 January 2023, for reasons discussed more fully below, the Labour Court reviewed and set aside the award and remitted the matter to the second respondent (bargaining council) for a hearing *de novo*.
- [4] This is an appeal, with the leave of this Court, against the judgment and order of the Labour Court.

Factual background

- [5] The dispute between the parties has its roots in the events that took place at the appellant's premises in Ladysmith on 26 March 2020, soon after the announcement on 23 March 2020 of the country-wide lockdown occasioned by the Covid-19 pandemic. The announcement caused some uncertainty as to the payment of remuneration during the lockdown. What transpired at the appellant's factory on 25 and 26 March 2020 is a matter of common cause. Monthly-paid employees were advised that they would be paid on the 25th, as per normal practice. On 25 March 2020, the appellant's manager, Richard

Kinvig, addressed a letter headed 'To whom it may concern' for the benefit of the 'monthly-paid' employees. The letter advised that a policy of 'no work, no pay' would be applied for the period of the lockdown. Kinvig testified that the monthly-paid employees had sought a letter in these terms, on the advice of their banks, to enable them to make arrangements with their creditors for a payment holiday. The employees engaged in the present dispute are all weekly-paid employees. Unbeknown to the appellant, at the time that the letter regarding the 'no work, no pay' letter was prepared for the benefit of the monthly-paid employees, the letter intended only for monthly-paid employees was forwarded to the union's office. The union wrote a letter to the appellant, advising the appellant of an agreement concluded between employer and union representatives at the bargaining council regarding payment during the lockdown. The letter was addressed to and received by Kinvig, who was not present at the factory at the time. On 25 March 2020, Mrs Charnaud became aware of the letter written by Kinvig when she met with the monthly-paid employees. She advised the monthly-paid employees that they had been paid, in terms of the appellant's usual practice, on the 25th of March, and that she anticipated that the lockdown would end before the next payday. She was not well and left the factory for home.

- [6] On 26 March 2020, the appellant's operations manager, Mr Bertus Watkins, met with union shop stewards who wanted to know whether the appellant would be paying staff three weeks' salary in advance, as had occurred at Durban Overall (Pty) Ltd, another company in the area. Watkins replied that payslips were being printed as Thursday was the normal payday, but that he did not know about any advance payments. Watkins was then asked about the monthly-paid employees and the letter that they had received. Watkins replied that the letter applied only to monthly-paid employees and did not relate to weekly staff. The shop stewards then advised Watkins that they would not continue work until they were paid three weeks' wages in advance. The shop stewards were told to wait for his feedback and to return to work. Mrs Charnaud testified that on 26 March 2020, she arrived at the factory and attended to the payments of creditors. She was advised that the staff had

'downed tools'. Mr and Mrs Charnaud met with the monthly staff and advised them to ignore Kinvig's letter, that matters remained as they were after the meeting the previous day, and that UIF forms were being completed for each employee. Charnaud stated that she was still feeling unwell and left in her car to go to her doctor.

- [7] At that stage, at about 10:00, certain of the appellant's employees rushed out of the factory, locked the gates and surrounded the vehicle. Rocks were placed in the road, the gate was locked, and the vehicle was prevented from leaving. Mrs Charnaud telephoned Watkins and asked him to call the SAPS and the appellant's labour consultant, Vorster. Mrs Charnaud's evidence, not seriously disputed under cross-examination, was that she and her husband were trapped in their vehicle for four hours, in the sun, with no ventilation, surrounded by employees who were aggressive, violent, rocking the car, chanting, pointing fingers and singing. It was not possible to leave the vehicle. Specifically, she stated;

'Well we were very afraid because they were extremely violent and aggressive and they had these rocks and they were chanting, pointing fingers and they were rocking the car. They were picking it up, trying to turn it over and you know, there were so many people around there. It was very nerve racking, we were very nervous and concerned for our lives.'

- [8] Mrs Charnaud stated further that Mr Themba from the union had phoned her to say that he was completely shocked and dismayed at the illegal behaviour of his members and that her labour consultant was dealing with the police. She asked Themba to liaise with Vorster and Mabaso, the local union official. Eventually, at about 14:00, the employees left and the Charnauds were able to leave.

- [9] Mr Ernest Arndt, the appellant's cost accountant and raw material store manager, gave evidence regarding a statement that he had made on the day of the incident. In the statement, Arndt records that on 26 March 2020, he was inside the factory when he heard a "*big commotion and noise*". He saw people running out of the factory screaming and shouting, while some employees

remained at their workstations. He followed the group outside and saw a large group of people gathered at the gate, preventing Mr and Mrs Charnaud's car from leaving the premises. One of the employees told him that he would be "*sleeping here tonight*". As he approached the gate, he was subjected to verbal and physical abuse, and felt physically threatened. Arndt states further that he took photos and a video, and was "*shouted at*" to delete them immediately. He observed employees going in and out of the gate – they had control of the gate. Arndt testified that the experience had been traumatic and that it had impacted his personal relationships with employees. Arndt's evidence was the basis on which the employees were identified as having participated in the misconduct. He stated that the employees were "*positively identified and who positively took part in the hostage taking*". Arndt testified further that a list of weekly-paid employees who had been identified in photographs and videos taken during the incident on 26 March was compiled. The list identifies the employees by photograph number, employee number, employee first name, and employee surname. Arndt testified that different persons took different photographs and that he was part of a team comprising the factory managers and the production manager, persons who work with the appellant's employees on a daily basis, who identified individual employees in the photographs. Under cross-examination, Arndt stated that: "*You can say for the first time in my working career, I was actually fearing for my life*". Arndt further testified that he regarded himself as having been taken hostage since he had been prevented from leaving the premises by employees who had the keys to the gate and were not allowing any member of management or the monthly-paid staff to leave the premises.

Arbitration award

[10] The pre-arbitration minute concluded by the parties' records that it was a matter of common cause that the employees were dismissed on 19 June 2020. The minute further records agreement on that fact that "*some employees converged at the gate which was closed*" and that the "*respondent's directors were left in the car inside the factory behind locked gate*". Further, the parties acknowledged that the employees were charged

with threatening the employer and other employees by taking them hostage and the outcome of the disciplinary hearing was the dismissal of the employees.

[11] The arbitrator concluded that the dismissals were procedurally fair, primarily because the union had been notified of the collective hearings, and because its officials and shop stewards attended and represented the employees at the hearings. The list of all employees who were disciplined served before the hearing and no procedural issues had been raised during the course of the hearings. The arbitrator concluded that in these circumstances, there was no procedural impropriety and that the appellant had substantially complied with the requirements of fair procedure.

[12] Among the issues the arbitrator was required, in terms of the pre-arbitration minute, to determine were the following:

‘11. The applicants are challenging the substantive fairness of their dismissal for the following reasons: some of the Applicant (sic) did not commit any misconduct. None of the Applicants committed the misconduct described in the charge sheet. The allegations for which the Applicants were dismissed are disputed.’

[13] In regard to substantive fairness, the arbitrator concluded:

‘[46] In this case, the material facts are common cause. Briefly, that on 26 March 2020 some employee stopped working and rushed to and converged at the gate which was locked and stood in front of the directors car as it was proceeding to exist (sic) the workplace. The Respondent’s directors’ car was stopped inside the factory behind locked gate. The employees prevented the directors from exiting that gate and placed stones and bricks. They sang, danced and uttered various statements to the directors and some management personnel who tried to intervene. The foregoing being common cause, the Applicants did not deny it and in fact confirmed the behaviour. But they advanced explanations and reasons by which they sought to justify and mitigate the implications of their conducts. Specifically, in

the contention of the Applicants, their dismissal is unfair firstly on the grounds that the respondent acted inconsistently as it did not dismiss for similar conduct which it occurred in 2017 and 2019 (sic).

[47] The fact of the two previous similar incidents relied on by the Applicants is common cause. However, no further evidence was led by the Applicants as to the similarities of the previous incidents to this case. The Respondent averred that specifically because of the previous incidents, it fears for the lives of its managers and that the same misconduct will be resorted to each time the Applicants have an issue.'

[14] To the extent that the union had contended that the employees had been provoked by the letter written by Kinvig, the arbitrator found that it was common cause that the letter had been issued to monthly-paid employees, who had in fact requested the letter. The employees, being weekly-paid employees, were covered by the collective agreement concluded in the bargaining council regarding payment during the lockdown period. The employees knew about the agreement and in fact, had been told about it on 23 March 2020. In the meeting with monthly-paid employees on 26 March 2020, Mrs Charnaud had advised the employees to ignore the letter and that it was not supposed to have been issued. The arbitrator concluded: *"Consideration of these valid facts, it baffles one's mind as to why the Applicants "demanded answers" from the Respondent and not their union regarding the lockdown payment"*. The arbitrator continued:

'[50] Why did the applicant involve themselves in debating a letter not directed to them and which they had obtained wrongly or indirectly in the first place. Even if one gives them a benefit of doubt or of confusion, still for the Applicants to escalate their anxiety or anger regarding the letter to the violent protest of the nature described in the evidence was unreasonable, mischievous and grossly unfair.'

[15] The third element of the arbitrator's decision on substantive fairness, the primary issue pursued during the course of the appeal, related to the

identification of those employees who had participated in the misconduct. The arbitrator came to the following conclusion:

[52] Thirdly, according to the Applicants, the Respondent failed to distinguish the offenders and thereby unfairly dismissed the Applicants. I accept the version of the Respondent regarding the identification of the culprits and find that it reasonably identified the offenders in a mass collective misconduct of a violent nature. I find that the Respondent successfully proved that the Applicants either primarily or derivatively committed a gross misconduct which in my view is dismissible. In the *National Union of Metalworkers of South Africa obo Khanyile Nganezi and Others v Dunlop Mixing and Technical Services (Pty) Ltd and Others* [2019] ZACC 25, the Con-Court analyzed the applicability of the derivative misconduct within the context of misconducts committed during a protected strike. It found that the dismissal of all employees present at the scene of violence in the absence of individual identification would not be justified. As stated above, this case involves an unprotected strike action, the Respondent reasonably identified the offenders and their misconduct was uncalled for in my finding. These grounds lend credence to my finding that the Applicants were either primarily or derivatively guilty.'

[16] For all of these reasons, the arbitrator found that the employees' dismissals were substantively and procedurally fair and dismissed the union's claim of unfair dismissal, with no order as to costs.

Proceedings in the Labour Court

[17] The primary ground for review raised by the union is that the arbitrator failed to properly apply his mind and assess the evidence that served before him, and that he reached a decision that no reasonable decision-maker could have reached. In particular, the union raised 13 instances in which it contended that the arbitrator had failed to properly apply his mind. For present purposes, what is relevant is the union's contention that the arbitrator had failed to take into account that the appellant had failed to demonstrate the identity of the employees, their degree of participation in the events that

occurred on 26 March 2020 and the “*consideration of the Constitutional Court’s jurisprudence*”, more particularly in the matter of *National Union of Metalworkers of SA on behalf of Dlodhlu and others v Marley Pipe Systems SA (Pty) Ltd*¹ (*Marley Pipes*).

- [18] The Labour Court was particularly alive to this ground for review. After recording a lengthy extract from that judgment, the Labour Court noted:

‘It is apparent that the parties and the third respondent did not have the benefit of the decision of NUMSA obo AUBREY DLUDLU and 147 Others vs MARLEY PIPE SYSTEMS as it was delivered more than a year after the arbitration award was issued.’

The Labour Court observed that in *Marley Pipes*, the Constitutional Court had found that the 41 employees who were the subject of the appeal were found not guilty of assault and that their cases were referred back to the Labour Court to consider the matter of sanction afresh on the charge of participation in an unprotected strike. Drawing inspiration from the terms of this order, the Labour Court distinguished ‘two apparent features’ in the form of ‘violence’ and ‘unprotected strike action’ and considered that it was “*conceivable that the ‘violence’ factor deemed to be part of the unprotected industrial action had an influence on the sanction*”. The Court went on to find that the ‘common denominator’ was that the protest by the employees on 26 March 2020 was indeed an unprotected strike. The Court continued:

[22] ... Now that there is a recent Constitutional Court judgment discussed hereinabove, prudence dictates that the matter should be remitted to the second respondent for a hearing de novo before another arbitrator for consideration of, *inter alia*, an appropriate sanction.

[23] Moreover, I have also had due regard to the trite principles pertaining to the applications such as in *casu* and I am unable to find with conviction that the third respondent committed an irregularity in adjudicating the arbitration without him and or the parties having had

¹ [2022] ZACC 30; (2022) 43 ILJ 2269 (CC).

the benefit and or consideration of the recent Constitutional Court judgment.'

- [19] On this basis, the Labour Court ordered that the award be reviewed and set aside and the dispute be remitted to the bargaining council for a *de novo* hearing.

Grounds for appeal

- [20] The appellants submit that the Labour Court failed to apply the established test for review. Specifically, the appellant submits that the Court erred by proceeding to review and set aside the award in the absence of any finding of any reviewable irregularity on the part of the arbitrator, or any finding that the award was unreasonable. Once the Labour Court accepted, as it did, that the arbitrator would not have had access to the *Marley Pipes* judgment he relied on because it was delivered more than a year after the arbitration award was issued, it was a gross misdirection to rely on that judgment to remit the matter to the bargaining council for rehearing. The appellants seek to have the Labour Court's order set aside and substituted by an order dismissing the review application.

Discussion

- [21] Counsel were agreed that the Labour Court's reasoning left much to be desired. What is remarkable about the Labour Court's judgment is the fact that the arbitrator's award was reviewed and set side on a ground that was never pleaded, and without any finding that that the arbitrator had either committed any misconduct or other reviewable irregularity in the conduct of the proceedings, or that his decision failed to meet the applicable reasonableness threshold. That aside, the Labour Court's use of the order granted by the Constitutional Court in *Marley Pipes* as a template for the present dispute was wholly misplaced. *Marley Pipes* concerned a dismissal on charges of both assault and participation in an unprotected strike. But it was only in respect of the sanction for participation in the unprotected strike that the Labour Court was ordered to consider the matter afresh, the employees having been found by the Court not guilty of the charge of assault.

In the present instance, the employees were not charged with participation in an unprotected strike, nor had they been dismissed for that reason. The charge against them related only to the threatening of the employer's well-being and safety by taking the employer and other employees hostage. The arbitrator had upheld their dismissal on that charge. Unlike *Marley Pipes*, there was thus no unresolved second charge of misconduct that might have warranted the attention of a decision-maker in any *de novo* hearing. The 'common denominator' identified by the Labour Court simply does not exist.

[22] The inescapable conclusion is that the Labour Court considered the fact that a judgment by the apex court, delivered 16 months after the award under review was issued, and setting out the basis on which the doctrine of common purpose applies in an employment context, was a sufficient basis, without more, to set aside the arbitration award. That conclusion has only to be stated to appreciate its manifest absurdity. What the Labour Court did was to neglect its primary obligation – to ascertain whether the arbitrator's award met the applicable threshold of review. This required an evaluation of the evidence on record, an assessment of the reasonableness of the arbitrator's factual findings, and a finding on the reasonableness of the outcome. Instead, the Labour Court sought to pass the proverbial buck back to the bargaining council, at great cost to the parties, and with a protracted but avoidable delay in the finalisation of the dispute.

[23] In these circumstances, the issue before us is whether, on the basis of the record that served before it, the Labour Court's decision to review and set aside the arbitrator's award was correct. This is because appeals lie against orders, not reasons for orders.² Specifically, the question before this Court is whether the arbitrator's decision to accept the appellant's version regarding the identification of the employees in what the arbitrator described as an act of 'mass collective misconduct of a violent nature', meets the threshold of reasonableness.

² The rule that an appeal lies against an order and not the reasoning in the judgment has been described by the Supreme Court of Appeal as a "*sound principle which has been confirmed in numerous decisions, including decisions by this court over a long period...*" See: *Neotel (Pty) Ltd v Telkom SA SOC Ltd and others* [2017] ZASCA 47 (31 March 2017) at para 22.

[24] Where an arbitrator undertakes a factual enquiry into the issue of guilt on a balance of probabilities, the reasonableness threshold requires that in any assessment of fact, arbitrators must necessarily be accorded a margin for error, at least where all of the material facts have been placed in the balance and a proper assessment of the facts undertaken. 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.³ The applicable test was recently restated by this Court in *Makuleni v Standard Bank of South Africa*⁴ where Sutherland JA said the following:⁵

‘... The court asked to review a decision of commissioner must not yield to the seductive power of a lucid argument that the result could be different. The luxury of indulging in that temptation is reserved for the court of appeal. At the heart of the exercise is a fair reading of the award, in the context of the body of evidence adduced and an even-handed assessment of whether such conclusions are untenable. Only if the conclusion is untenable is a review and setting aside warranted.’

And further:

‘To meet the review test, the result of the award has to be so egregious that, as the test requires, no reasonable person could reach such a result.’⁶

[25] As I have indicated, the only issue of any substance that was debated before us relates to the identification of those employees who had participated in the misconduct.⁷ But for some nine employees identified in their heads of argument with respect to whom they concede that there is direct evidence of misconduct, the respondents contend that the appellant’s witnesses failed to discharge the burden of identifying employees to whom specific acts of misconduct were attributed. Mr Nxusani SC, who appeared for the

³ *Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)* [2013] ZASCA 97; (2013) 34 ILJ 2795 (SCA). See also: *Head of Department of Education v Mofokeng and others* [2014] ZALAC 50; (2015) 36 ILJ 2802 (LAC).

⁴ [2023] ZALAC 4; (2023) 44 ILJ 1005 (LAC).

⁵ *Ibid* at para 4.

⁶ *Ibid* at para 13.

⁷ None of the arbitrator’s conclusions concerning procedural fairness, or what was alleged to constitute inconsistency or provocation were pursued.

respondents, sought to draw a distinction between those employees who were participants to misconduct and those who were mere spectators. He submitted that on the available evidence, a large number of the employees were not identified as having performed any acts of misconduct and that they were dismissed solely on account of their presence at the scene. Specifically, and relying on *Marley Pipes*, it was submitted that the arbitrator imputed acts to employees who were merely present on the scene and who had manifested no intention to commit violence or to intimidate. On this basis, the respondents submit that the appeal ought to be dismissed and the order of the Labour Court should stand, subject to the application of an appropriate sanction in respect of the employees acknowledged as having committed misconduct.

- [26] Mr Pillemer SC, for the appellants, submitted that the arbitrator's factual finding that all of the employees on the list had participated in the misconduct was a finding to which a reasonable decision-maker could come on the available evidence. In particular, the photographs produced and referred to by Arndt were not intended to prove participation in the misconduct – they were intended for identification purposes only.
- [27] What the evidence suggests is that despite the arbitrator's reference to 'derivative misconduct', the present case is not one that concerns derivative misconduct, at least not in the sense that term was employed in *National Union of Metalworkers of SA on behalf of Nganezi and others v Dunlop Mixing and Technical Services (Pty) Ltd and others (Casual Workers Advice Office as amicus curiae)*,⁸ where employees were dismissed not for participating in the primary misconduct but for failing to disclose to the employer information regarding that misconduct.⁹ The charge brought against the employees in the

⁸ [2019] ZACC 25; (2019) 40 ILJ 1957 (CC) (*Dunlop Mixing*).

⁹ The terms of both the arbitration award and the Labour Court's judgment, and the loose use of the terms 'derivative misconduct' and 'common purpose', necessitates a brief consideration of the application of the concepts of derivative misconduct and common purpose in the context of the workplace. This is so because in drawing his conclusions, the arbitrator makes reference to derivative misconduct; the Labour Court makes reference to the *Marley Pipe* judgment, a matter that dealt with common purpose. Both concepts have been applied in a context where an employee is a witness to misconduct, but not directly a perpetrator of that misconduct. But the concepts of derivative misconduct and common purpose are discreet, and each has different requirements that must be

present instance is one of direct participation in misconduct. The arbitrator's award does not apply the principle of common purpose, at least not in the sense that the term and its application were discussed by the Constitutional Court in *Marley Pipe*. Put another way, the appellant does not rely on the employees' presence at the scene and any failure to intervene or disassociate themselves with an act of misconduct to justify the employees' dismissal. The appellant relies on the direct observation by its witnesses of participation in the act of holding the Charnauds captive in their vehicle and preventing other members of management and monthly-paid employees from leaving the premises. The references to *Marley Pipe* and *Dunlop Mixing* in the Labour Court's judgment are thus red herrings.

- [28] What the evidence discloses is that on 26 March 2020, a group of employees left their workstations and congregated outside the factory. The evidence also discloses that a second group of employees elected to remain at their workplaces. It follows that it is more probable than not that those employees who elected to leave their workplaces and join the crowd outside the factory were those who had elected to participate in the events that occurred over the next four hours. The evidence also discloses the manner in which these employees were identified. Arndt's evidence was that each of the employees was observed participating in misconduct and that they were identified by reference to photographs and videos that had been taken at the scene. Specifically, Arndt's evidence was that the employees were those whom he had positively identified and who "*positively took part in the hostage taking*". Under cross-examination, he stated that the photographs taken were used for the purposes of the identification of the employees who were involved in the

established before application. The difference between derivative misconduct and common purpose is clearly explained by the authors of *'The Essential Labour Law Handbook'* (C Garbers *et al* MACE Labour Law Publications, 8 ed., 2024). The authors note, with reference to *Dunlop Mixing*, that reliance on derivative misconduct requires the employer to prove that the dismissed employee knew or must have known about the primary misconduct but elected, without justification, not to disclose to the employer what he or she knew. The application of the principle of common purpose, on the other hand, arises in the context of allegations of participation in an act of misconduct where the employer seeks to hold an employee liable not on account of actually perpetrating the primary misconduct, but rather on the basis of an active association with that misconduct. *Marley Pipes* does not reject the application of the doctrine of common purpose in workplace discipline – it sets the parameters for the application of that principle by requiring some direct or circumstantial evidence that persons present at the scene in some manner or form associated themselves with the conduct of the others.

incident. Put another way, the employees were identified as having directly and actively participated in the misconduct; the photographs were not intended to prove participation in the misconduct, they were used only to put names to the individuals identified as having participated. Under cross-examination, when Arndt was pressed on the issue, the union's representative put it to Arndt that he would call witnesses *"to prove that actually this (sic) workers were not actually involved in the taking of hostage of the employers as well as the employees that the company is claiming to say they were taken as hostage"*. That challenge never materialised - no such evidence was adduced by the union, and there was no basis on which to reject or call into question Arndt's testimony as to how employees whose names were placed on the list were all active participants in the misconduct.

[29] In short, the arbitrator's reference to the employees being *"either primarily or derivatively guilty"* is unfortunate – the evidence before him established, on a balance of probabilities, that the employees had directly participated in the misconduct for which they were dismissed. The arbitrator's reference to derivative misconduct is a misnomer, but the conclusion to which he ultimately came is not untenable, having regard to the evidence that served before him. The arbitrator's factual findings must therefore be upheld.

[30] To the extent that the review court was required to enquire into the appropriateness of dismissal as a sanction, the employees committed a serious act of misconduct. They held two directors of the appellant captive in their motor vehicle for four hours, in the sun, with no ventilation. As the arbitrator pointed out, all this in support of an issue that ought properly to have been the subject of further engagement with their employer. A resort to violent protest in the circumstances was an act of serious misconduct for which the sanction of dismissal is undoubtedly an appropriate penalty. The arbitrator's conclusion to that effect clearly falls within a band of decisions to which a reasonable decision-maker could come.

[31] The appellant does not seek an order for costs.

Order

1. The appeal is upheld with no order as to costs.
2. The order of the Labour Court is set aside and replaced by the following:
 - '1. The application is dismissed, with no order as to costs.'


A Van Niekerk JA

Nkutha-Nkontwana JA et Govindjee AJA concur.

APPEARANCES:

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