

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR1877/21

In the matter between:

SIBANYE GOLD LIMITED

First Applicant

And

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER VORSTER MALULEKE N.O.

Second Respondent

LUCKY CLEAVE MNISI

Third Respondent

Heard: 12 January 2024

Delivered: 05 April 2024

JUDGMENT

SCHÄFER-KING, AJ

Introduction

[1] The Applicant launched an application in terms of section 45 of the Labour Relations Act¹ (LRA) to review and set aside and/or correct the Second Respondent's arbitration award under case number NWRB3020/20 dated 28 July 2021 (the award). The application was opposed by the Third Respondent and opposing papers and heads of argument were filed on behalf of the Third

¹ Act 66 of 1995, as amended.

Respondent. However, there was no appearance for the Third Respondent at the hearing of this matter on 12 January 2024 despite the notice of set down having been served.

[2] In terms of the arbitration award, the Second Respondent found that the dismissal of the Third Respondent was procedurally fair but substantively unfair and ordered the Applicant to pay the Third Respondent compensation in the amount of R2,267,574.96 (R283,446.87 x 8).

[3] The Applicant seeks an order that the award be reviewed and set aside and that the award be substituted with an order that the dismissal of the Third Respondent was substantively fair. In the alternative, the Applicant seeks an order that the matter be referred back to the First Respondent for arbitration *de novo* to be conducted before another commissioner (other than the Second Respondent).

Background

[4] Briefly, the facts of this matter are that the Third Respondent was employed as Vice President: Mining by the Applicant.

[5] In and around August 2019, as a result of complaints received regarding poor timekeeping by senior employees at the Roland Shaft, the Applicant investigated the clock-in card history of senior employees at the Roland Shaft, which included the Third Respondent.

[6] The investigation revealed that the Third Respondent had failed to clock-in for work at Roland Shaft on a number of occasions during 2019.

[7] On 28 August 2019, the Third Respondent informed his line manager, Mr van Aswegen (van Aswegen) that he had to take his wife for an operation on 28 August 2019 and accordingly would not be at work on that day. Van Aswegen granted permission.

[8] On 23 September 2019, the Third Respondent informed van Aswegen that he

was not feeling well and would not be at the workplace on that day.

[9] A meeting took place between van Aswegen and the Third Respondent on 10 October 2019 to discuss the Third Respondent's clock-in history record.

[10] On 11 October 2019, the Third Respondent sent an email to van Aswegen in which he provided an explanation for his absence on 28 August 2019 and 23 September 2019 and undertook to ensure that the required leave forms were captured for these days.

[11] It is common cause that the Third Respondent did not ensure that the leave forms were captured for 28 August 2019 and 23 September 2019.

[12] The Applicant convened a disciplinary hearing against the Third Respondent and charged him with the following:

'1. GROSS DISHONESTY / FRAUD in that you gained financially or otherwise (in terms of normal salary received and/or leave days not deducted) in respect of the days mentioned below for which the clocking system has no record of you being at work:

June 2019 : 5 June 2019 (Wednesday) and/or
8 June 2019 (Saturday) and/or
12 June 2019 (Wednesday) and/or
19 June (Wednesday) and or

July 2019 : 11 July 2019 (Thursday) and/or
20 July 2019 (Saturday) and/or
22 July 2019 (Monday) and/or
23 July 2019 (Tuesday) and/or
24 July 2019 (Wednesday) and/or
30 July 2019 (Tuesday) and/or

August 2019 : 12 August 2019 (Monday) and/or
19 August 2019 (Monday) and/or
28 August 2019 (Wednesday) and/or

September 2019 : 14 September 2019 (Saturday) and/or
16 September 2019 (Monday) and/or
23 September 2019 (Monday) and/or

October 2019 : 7 October 2019 (Monday) and/or
8 October 2019 (Tuesday).

This resulted in prejudice to the Company.

2. GROSS DISHONESTY / FRAUD in that you gained financially or otherwise (in terms of full salary received for the day) in respect of the days mentioned below for which the clocking system has no reflection of you being at work for a full shift:

June 2019 : 21 June 2019 (Friday) and/or
25 June 2019 (Tuesday) and/or
26 June 2019 (Wednesday) and/or
27 June 2019 (Thursday) and/or
28 June 2019 (Friday) and/or
29 June 2019 (Saturday) and/or

July 2019 : 3 July 2019 (Wednesday) and/or
5 July 2019 (Friday) and/or
9 July 2019 (Tuesday) and/or
17 July 2019 (Wednesday) and/or
19 July 2019 (Friday) and/or
25 July 2019 (Thursday) and/or
26 July 2019 (Friday) and/or

August 2019 : 2 August 2019 (Friday) and/or
14 August 2019 (Wednesday) and/or
16 August 2019 (Friday) and/or
23 August 2019 (Friday) and/or
27 August 2019 (Tuesday) and/or
29 August 2019 (Thursday) and/or

30 August 2019 (Friday) and/or

September 2019 : 2 September 2019 (Monday) and/or
5 September 2019 (Thursday) and/or
9 September 2019 (Monday) and/or
11 September 2019 (Wednesday) and/or
18 September 2019 (Wednesday) and/or
30 September 2019 (Monday) and/or

October 2019 : 4 October 2019 (Friday) and/or
9 October 2019 (Wednesday).

This resulted in prejudice to the Company.'

[13] The chairperson found the Third Respondent guilty of charge 1 (gross dishonesty/fraud) in respect of his absences from work on 28 August 2019 and 23 September 2019.

[14] The Third Respondent was dismissed from the employ of the Applicant and after an unsuccessful internal appeal, the Third Respondent referred an unfair dismissal dispute to the First Respondent.

[15] The arbitration took place over a number of days, namely 17 May 2021 and 6 to 8 July 2021.

[16] The Second Respondent issued the award on 28 July 2021 and determined that the dismissal of the Applicant was procedurally fair but substantively unfair and ordered the Applicant to pay the Respondent compensation in the amount equal to R2,267,574.96.

Grounds for Review

[17] The Applicant sought to review and set aside the award on the following grounds:

17.1 In finding that the Third Respondent had not acted dishonestly by failing to apply for leave for 28 August 2019 and 23 September 2019 (and that his dismissal was therefore substantively unfair), the Second Respondent arrived at a conclusion which no reasonable decision maker could have reached on the evidence before him (the first ground of review);

17.2 The Second Respondent misconstrued the nature of the dispute before him (by considering whether the Third Respondent had encashed or applied for the leave for the days in question instead of considering whether the Third Respondent had acted dishonestly by failing to apply for leave for such days), and thereby committed a gross irregularity in the conduct of the arbitration proceedings.

[18] Counsel for the Applicant contended that this is a case of a commissioner having committed a gross irregularity in failing to consider materially relevant facts/factors and having misconducted himself by not determining what was a core issue for determination. This core issue (so Counsel for the Applicant argued) was the credibility or veracity of the Third Respondent's defence, namely that he forgot to submit his leave for the days in question despite an undertaking to do so contained in an email dated 11 October 2019 (the "forgot" defence).

The Applicant's Submissions

[19] The Applicant's counsel submitted that the review boils down to this:

19.1 Is the Second Respondent's finding that the Third Respondent simply forgot to apply for leave reasonable?

19.2 If this finding is unreasonable, is there a reasonable basis upon which the finding of a lack of dishonesty can nevertheless be upheld?

19.3 If the answer is "no", is there a reasonable basis upon which the Second Respondent's decision not to uphold the Third Respondent's dismissal can survive review.

[20] It was the Applicant's counsel's submission that the answer to each of the aforesaid questions is "no".

[21] The Applicant's counsel contended that:

21.1 What is destructive of the Third Respondent's "forgot" defence is that he raised a mutually destructed defence at his disciplinary enquiry i.e. that he did not have to apply for leave;

21.2 The Third Respondent effectively admitted under cross examination that if it is found that he acted deliberately, this amounts to dishonesty and that this would warrant dismissal.

[22] It was contended by the Applicant that the misconduct which culminated in the dismissal of the Third Respondent was that he had acted dishonestly by not applying for leave for 28 August 2019 and 23 August 2019, despite having undertaken to do so in his email dated 11 October 2019.

[23] As such, whether or not the Third Respondent had:

23.1 Misrepresented to the Applicant that he had applied for leave on the days in question; or

23.2 Taken or attempted to take the leave days in question, or alternatively, had encashed or attempted to encash the leave days in question, were not issues that the Second Respondent was required to determine.

[24] It was further submitted that what is fatal to the Third Respondent's "forgot" defence is that he raised a mutually destructive defence at his disciplinary enquiry i.e. that he did not have to apply for leave.

[25] It was contended that:

25.1 Apparent from the arbitration award is that the Second Respondent incorrectly applied his mind to these very issues;

25.2 The Third Respondent was dismissed because he had acted dishonestly by not completing leave forms for the days in question after undertaking to do so in his email to van Aswegen on 11 October 2019;

25.3 The dishonesty and potential prejudice arose when the Third Respondent failed to complete the said leave forms;

25.4 The Second Respondent had taken irrelevant factors into account and had failed to take into account material and relevant evidence (i.e. the Third

Respondent's failure to raise the "forgot" defence during his disciplinary enquiry);

25.5 The Second Respondent had erroneously concluded that the Applicant had not been dishonest because he had not misrepresented that he applied for leave for the days in question and he had not taken or encashed the days in question, alternatively attempted to take or encash the days in question.

[26] The Second Respondent's failure to appreciate the true nature of the enquiry before him therefore resulted in the Second Respondent arriving at an unreasonable conclusion.

The Third Respondent's Submissions

[27] In his opposing papers and heads of argument, the Third Respondent submitted that the charges against him at the disciplinary enquiry did not revolve around the undertaking that he had made on 11 October 2019 but rather concerned the period prior to that which consisted of approximately 17 other dates.

[28] It was contended that:

28.1 The Applicant's counsel clarified the Applicant's case during the arbitration hearing as being about the Third Respondent having made a commitment on 11 October 2019 and failing to abide by that commitment;

28.2 The Third Respondent's defence that he "forgot" to apply for leave on the days in question and the fact that this had not been raised at his disciplinary enquiry, was irrelevant in that the Third Respondent was not charged with having undertaken on 11 October 2019 to submit the leave forms and having failed to do so;

28.3 The Third Respondent's defence is relevant in respect of the period after the Third Respondent sent the email to van Aswegen on 11 October 2019;

28.4 During the disciplinary hearing, the defence of the Third Respondent in respect of the charges (as he understood them) was to explain his whereabouts for each of the 19 days for which he was charged with (charge

1) and to explain his whereabouts in respect of the 28 days in respect of which it was alleged that he had not worked a full shift (charge 2);

28.5 The Second Respondent correctly summed up the Applicant's case as being that the Third Respondent acted dishonestly and to the financial prejudice of the Respondent by not applying for leave for the two days in question (28 August 2019 and 23 September 2019) after undertaking in writing to van Aswegen that he would do so.

[29] The Applicant did not challenge the Second Respondent's summation of the Applicant's case.

[30] The Second Respondent's summation of the Applicant's case during the arbitration lends credence to the Third Respondent's contention that the Applicant's case has effectively changed through clarification by the Applicant's counsel.

[31] It was contended that:

31.1 The defence that the Third Respondent "forgot" to submit the leave forms was not relevant during the disciplinary hearing because the Third Respondent was not charged with failing to submit leave forms after his undertaking to do so. The undertaking on 11 October 2019 to van Aswegen by the Third Respondent was that the Third Respondent would ensure that the leave in respect of those two days was captured;

31.2 The Second Respondent also took into account the unchallenged evidence of Ms De Bruin (De Bruin) that Western Platinum Limited (the company that had employed the Third Respondent prior to his employment with the Applicant in January 2020) did not treat the failure to submit leave forms as dishonesty, gross dishonesty or fraud. It was contended that it was clear from the evidence of De Bruin that in her area of responsibility, no employees were dismissed by Western Platinum Limited for failing to submit leave forms;

31.3 There was no evidence presented by the Applicant to contradict the evidence of De Bruin in this regard.

[32] Accordingly, it was contended that the Second Respondent correctly

concluded that the Applicant conceded that there was no dishonesty or fraud at least at the time that the Third Respondent made an undertaking to van Aswegen that he would submit the forms.

[33] The Second Respondent also correctly concluded that after the Third Respondent undertook to submit the leave forms, there was no evidence that the Third Respondent ever claimed to have submitted the leave forms for the said two days.

[34] It was contended by the Third Respondent that in respect of the first ground of review by the Applicant, the Applicant relies on what the Applicant states is a “forget” defence and the Second Respondent having failed to draw, what the Applicant refers as the most reasonable inference, that the “forget” defence was an afterthought by the Second Respondent after the Third Respondent was dismissed by the Applicant.

[35] The Applicant’s contention that the Second Respondent should have concluded that the Third Respondent had deliberately not signed the leave forms for 28 August 2019 and 23 September 2019 after 11 October 2019, is not supported by the evidence before the Second Respondent. The submission of the Applicant that the Second Respondent should have rejected the defence of the Third Respondent and should have concluded that the Third Respondent had deliberately not signed the leave forms for 28 August 2019 and 23 September 2019 is not supported by facts.

[36] It was contended that:

36.1 The notion that the failure of the Third Respondent to ensure that the leave forms for these two days were captured after 11 October 2019 should be regarded as gross dishonesty or fraud is misplaced;

36.2 It was also misplaced in that the Applicant seeks to have the Second Respondent conclude that it was dishonesty because the Third Respondent did not state that he forgot to submit the leave forms after 11 October 2019;

36.3 The Applicant has failed to show which facts prove that the Third Respondent deliberately did not submit the leave forms to van Aswegen after the Third Respondent undertook to do so on 11 October 2019;

36.4 The Second Respondent correctly concluded (and this was not challenged by the Applicant) that the Applicant conceded that there was no dishonesty or fraud at least at the time when the Third Respondent made an undertaking on 11 October 2019 that he would submit the leave forms;

36.5 The decision arrived at by the Second Respondent that the Third Respondent did not act dishonestly or fraudulently by failing to submit the leave forms after undertaking to do so is one that a reasonable decision maker could arrive at based on the evidence before him.

[37] It was submitted that the Applicant did not produce evidence before the Second Respondent that showed that the Third Respondent is guilty of dishonesty.

[38] The Applicant's contention that the Second Respondent's finding that the Third Respondent forgot to submit the leave forms is a decision a reasonable decision would not have made, is not supported by facts before the Second Respondent.

[39] In regard to the second ground of review, it was contended that the Second Respondent did not misconstrue the nature of the dispute before him. One of the facts in dispute was whether or not there was an intention on the part of the Third Respondent to defraud the Applicant or to be grossly dishonest towards the Applicant.

[40] The Second Respondent did not misconstrue what the Applicant's case was at the arbitration hearing.

[41] The Second Respondent correctly recorded that at the arbitration hearing, the Applicant's case was that the Third Respondent acted dishonestly and to the financial prejudice of the Applicant by not applying for leave for 28 August 2019 and 29 September 2019 after undertaking in writing to van Aswegen that he would do so.

[42] There is no reasonable explanation provided by the Applicant in considering whether or not the Third Respondent had the intent to be dishonest or to defraud the Applicant, the Second Respondent should not have considered whether or not the

Third Respondent encashed his leave, applied for leave, misrepresented to van Aswegen that he had ensured that the leave forms were captured and why evidence was led in cross examination on these issues if indeed it was irrelevant to the consideration of whether or not the Third Respondent had the intention to defraud or be dishonest to the Applicant.

[43] The submission in argument by the Applicant that the Third Respondent was dismissed because the Third Respondent had acted dishonestly by not completing leave forms for the days in question after undertaking in the email to do so is not correct. The Third Respondent was found guilty by the chairperson of the disciplinary enquiry for what the chairperson of the disciplinary hearing described as the Applicant having proved its case on a balance of probability with respect to charge 1 for 28 August 2019 and 23 September 2019.

[44] The chairperson of the disciplinary hearing found the Third Respondent guilty of fraud, the chairperson stated that:

44.1 The email dated 11 October 2019 by the Third Respondent was a misrepresentation, when in fact Mr Benson and van Aswegen agreed that the email was not a misrepresentation;

44.2 The Third Respondent failed to submit the leave forms whilst knowing that he was supposed to do so and then brought van Aswegen under the false impression that he had done so, knowing that this would be the end of the matter.

[45] The Third Respondent contended that the submission by the Applicant that the Second Respondent erroneously concluded that the Third Respondent had not been dishonest because he had not misrepresented that he had applied for leave and had not taken or encashed leave, alternatively attempted to take or encash the leave is not supported by any evidence.

[46] It was contended that:

46.1 The Second Respondent had considered the totality of the evidence before him;

46.2 The issues that the Applicant states the Second Respondent should not have considered were placed before the Second Respondent by the Applicant. If the Second Respondent should not have considered them, the Applicant does not state why these issues were placed before the Second Respondent by the Applicant;

46.3 There was no evidence placed before the Second Respondent that dishonesty arose when the Third Respondent failed to complete the leave forms;

46.4 The Second Respondent correctly found that the failure to submit leave forms does not in itself render the failure to do so to be dishonest. The unchallenged evidence of De Bruin also showed that the position of Western Platinum Limited was not to regard the failure to submit leave forms as dishonest conduct;

46.5 The Second Respondent correctly concluded that there was no evidence at all pointing to the fact that the Third Respondent intentionally failed to submit the leave form and that there was no evidence that the Third Respondent intended to cash the leave days;

46.6 The Applicant was aware that it had to prove that there was deliberate conduct on the part of the Third Respondent. This is so because it was one of the issues that was in dispute and the Second Respondent was called upon by the parties to decide whether or not the failure of the Third Respondent after undertaking to do so was deliberate.

[47] The finding of the Second Respondent was that the failure was not deliberate or intentional. It was contended that the Second Respondent's finding that the dismissal of the Third Respondent was substantively unfair, did not overreach his powers enshrined in the LRA.

[48] The Third Respondent submitted that any other decision maker would have arrived at the same conclusion as the Second Respondent considering the facts before him, as the Applicant did not prove that the Third Respondent was dishonest or fraudulent.

[49] In addition, the Second Respondent found that the sanction of dismissal was

harsh in the circumstances and also took into account the unchallenged evidence of Ms de Bruin in respect of how Western Platinum Limited dealt with failure to submit leave forms.

Analysis

[50] I do not deem it necessary to extensively address the relevant tests to be applied in proceedings such as this. The test laid down in the Constitutional Court in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*² (*Sidumo*) is namely as follows:

‘... an arbitration award will be reviewable if it is one that a reasonable decision maker could not reach.’

[51] The Labour Appeal Court (LAC) confirmed in *Fidelity Cash Management Services v Commission for Conciliation, Mediation and Arbitration and Others*³ that there can be no doubt under *Sidumo* that:

‘[102] ... the reasonableness or otherwise of a commissioner’s decision does not depend – at least not solely – upon the reasons that the commissioner gives for the decision. In many cases the reasons which the commissioner gives for his decision, finding or award will play a role in the subsequent assessment of whether or not such decision or finding is one that a reasonable decision-maker could or could not reach. However, other reasons upon which the commissioner did not rely to support his or her decision or finding but which can render the decision reasonable or unreasonable can be taken into account. This would clearly be the case where the commissioner gives reasons A, B and C in his or her award but, when one looks at the evidence and other material that was legitimately before him or her, one finds that there were reasons D, E and F upon which he did not rely but could have relied which are enough to sustain the decision.’

[52] The LAC in *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v*

² [2007] ZACC 22; 2008 (2) BCLR 158 (CC).

³ [2007] ZALAC 12; (2008) 29 ILJ 964 (LAC) at para 102.

*Commission for Conciliation, Mediation and Arbitration and Others*⁴, stated the applicable test as follows:

‘In short: A review court must ascertain whether the arbitrator considered the principal issue before him/her; evaluated the facts presented at the hearing and came to a conclusion which was reasonable...’

[53] In *Herholdt v Nedbank Ltd*⁵ it was held that in as much as it was necessary to scrutinize the evidence presented before the commissioner for the purposes of determining whether the outcome was reasonable, courts should nevertheless guard against the setting aside of awards which do not coincide with their own opinion on the matter and that an award shall only be susceptible to be set aside in circumstances where the outcome is entirely disconnected with the evidence, or where it is not supported by any evidence, and/or involves speculation on the part of the arbitrator.

[54] In *Nyathikazi v Public Health and Social Development Sectorial Bargaining Council and Others*⁶ in assessing whether the arbitrator committed errors of fact or failed to attach weight or relevance to any particular facts, it was reiterated that:

‘After the decision in *Sidumo and another v Rustenburg Platinum Mines Ltd and another*⁷ and further the explication in *Herholdt v Nedbank Limited*⁸, it is clear that our law dictates that an award delivered by an arbitrator will only be considered to be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before him or her. A material error of fact and the particular weight to be attached to a particular fact may in and of itself not be sufficient to set aside the award but will be done if the consequence thereof is to render the ultimate outcome unreasonable.’

[55] Ultimately, whether or not an arbitration award, decision or finding of a commissioner is reasonable must be determined objectively with due regard to all the evidence that was before the commissioner and what the issues before him or

⁴ [2013] ZALAC 28; [2014] 1 BLLR 20 (LAC) at para 16.

⁵ [2013] ZASCA 97; (2013) 34 ILJ 2795 (SCA) at para 13.

⁶ [2021] ZALAC 11; [2021] 8 BLLR 778 (LAC) at para 21.

⁷ 2008 (2) SA 24 CC.

⁸ 2013 (6) SA 224 (SCA).

her were.

[56] Applying the above principles, an examination of the evidence presented at the arbitration proceedings clearly points to the fact that the Second Respondent has properly, rationally and justifiably applied his mind to the facts and evidence presented before him and has taken all evidence presented before him into account.

[57] The crux of the matter as contended by the Applicant is in regard to the Third Respondent's alleged gross dishonesty.

[58] In the case of *DRS Dietrich, Voigt & MIA v Bennet CM N.O and Others*⁹, the LAC distinguished between conduct resulting from an error or negligence and conduct which is intentional. Intentional conduct would amount to dishonesty.

[59] In *Nedcor Bank Ltd v Frank and Others*¹⁰, the LAC held that dishonesty entails "*a lack of integrity or straightforwardness and, in particular, a willingness to steal, cheat, lie or act fraudulently*". The court also held that the term implies intention on the part of the employee; just as one cannot steal negligently, negligence, however gross, cannot give rise to a charge of dishonesty.

[60] In my view, there is no evidence that the conduct of the Second Applicant was intentional and as such he cannot be said to have been dishonest. In fact, I am of the view that the Second Respondent assessed and considered the evidence presented to him in relation to the charge that the Third Respondent had been found guilty of. A reasonable commissioner could not have found the Third Applicant guilty of dishonesty.

[61] The Third Respondent was charged with "gross dishonesty/fraud" in that you gained financially or otherwise (in terms of normal salary received and/or leave days not deducted) in respect of the days mentioned below for which the clock-in system has no record of you being at work. 28 August 2019 and 23 September 2019 were

⁹ [2019] ZALAC 2; (2019) 40 ILJ 1506 (LAC).

¹⁰ [2002] ZALAC 11; (2002) 23 ILJ 1243 (LAC) at para 15.

included in these dates.

[62] On the reasoning of the chairperson and given the charge, the Second Respondent should indeed have considered the evidence in relation to the fact that it was the Applicant's case that the Third Respondent acted dishonestly and to the financial prejudice of the Applicant by not applying for leave for 28 August 2019 and 23 September 2019, after undertaking in writing to van Aswegen that he would do so.

[63] I am not persuaded that any evidence was led at the arbitration proceedings that illustrates that the conduct of the Third Respondent in not submitting the leave forms as undertaken to van Aswegen was intentional and therefore dishonest. I am of the view that the Second Respondent's finding that the Third Respondent forgot to apply for leave is reasonable.

[64] Having considered the pleadings and the record of the arbitration proceedings which consists of the bundle of documents presented at the arbitration and the transcript of the arbitration proceedings, I am satisfied that the Second Respondent considered the principle issue before him, evaluated the facts presented at the arbitration hearing and came to a reasonable conclusion.

[65] The Applicant has not in this review application sought to review the relief and accordingly, I am not required to apply my mind to that portion of the award.

Conclusion

[66] I therefore conclude that the review application falls to be dismissed as the Applicant has failed to make out any competent grounds for review of the arbitration award and I am not persuaded that the decision reached by the Second Respondent that the dismissal of the Applicant by the Third Respondent was substantively unfair, was not one that a reasonable decision maker would arrive at.

[67] In the premises I make the following order.

Order

1. The review application is dismissed.
2. There is no order as to costs.

L Schäfer-King

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Anton Myburgh SC

Instructed by: Solomon Holmes Attorneys Inc

For the First Respondent: No appearance