



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable  
Case No: JR133/21

In the matter between:

**SASOL SOUTH AFRICA (PTY) LTD  
SASOL OPERATIONS**

**Applicant**

and

**THE NATIONAL BARGAINING COUNCIL  
FOR THE CHEMICAL INDUSTRY**

**First Respondent**

**HASINA DOCKRAT**

**Second Respondent**

**SOLIDARITY OBO LOUIS CONROY**

**Third Respondent**

**Heard: 17 October 2024**

**Delivered: 30 May 2025**

**(This judgment was handed down electronically by emailing a copy to the parties. The 30 May 2025 is deemed to be the date of delivery of this judgment).**

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**JUDGMENT**

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**MAHALELO, AJ****Introduction**

[1] This is an application brought in terms of section 145 of the Labour Relations Act<sup>1</sup> (LRA) to review and set aside the arbitration award (the award) of the second respondent acting under the auspices of the first respondent under case number CHEM33-19/20, dated 10 December 2020 in which the commissioner found the dismissal of Mr Louis Conroy (Conroy) to be procedurally fair but substantively unfair and ordered his reinstatement.

[2] At arbitration level the nub of the dispute that had to be determined by the commissioner was whether the dismissal sanction endured by Conroy occasioned by him assaulting a co-worker at the workplace was justifiable.

[3] Solidarity on behalf of Conroy opposed the application.

**Background facts**

[4] The applicant conducts business in the production of cyanide. Conroy was employed with the applicant in a maintenance function since 5 August 1985. At the time of his dismissal he was employed as a Special Artisan, Mechanical Fitter with a basic salary of R38 960.62 plus benefits.

[5] In the applicant's Disciplinary Code, a conviction of assault is regulated by indicating that dismissal is appropriate even for a first offence. The applicant regards assault as one of the "Cardinal Sins" for which it has adopted a zero tolerance approach. Even though the applicant's Disciplinary Code indicates that mitigating and aggravating factors could determine that a deviation in the discretion of the

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<sup>1</sup> Act 66 of 1995, as amended.

chairperson could occur, it also states that serious offences warrant dismissal on the first occurrence irrespective of the general precedent.

[6] On 27 November at approximately 18h30, people working at the plant at the applicant's place called the workshop to inform that there was a leakage at the plant. Procedurally, every team member should go to check the leakage. All of the team members went except Conroy who remained talking on the phone. After about 30 minutes Mr Phoolo (Phoolo) the co-worker in the same team with Conroy returned to the workshop and found Conroy on the phone. He asked him why he remained to which Conroy responded that he was busy on the phone. Conroy says that because Phoolo was screaming at him he grabbed Phoolo by the throat in front of other team members.

[7] Whilst at home in the evening of the same day Conroy sent a message to Phoolo apologising for what happened between them. The following day the foreman approached Phoolo about the incident. The incident had been reported to him by Conroy. Phoolo informed him about what had happened and further informed him that he had forgiven Conroy, he did not want to press charges against him.

[8] The matter was reported to the manager. Conroy was ultimately charged and subjected to a disciplinary hearing four months after the occurrence. In the four months, he continued to work with Phoolo. The following charge was preferred against him:

"Code 65 Abusive Behaviour Assault/Attempt to Assault, in that on 27/11/2018 at approximately 19h00 at the Cyanide workshop, you allegedly grabbed George Phoolo by the throat aggressively suffocating him"

[9] Conroy pleaded guilty to the charge. On 20 May 2019, the chairperson of the disciplinary proceedings imposed the sanction of dismissal. Conroy appealed the sanction on 6 June 2019. On 13 June 2019, the sanction of dismissal was replaced with a final written warning coupled with two weeks' suspension without pay. On 15 August 2019, the applicant submitted a management appeal and the second appeal was heard. The dismissal of Conroy was upheld. His employment was terminated on 12 September 2019.

[10] Aggrieved by the dismissal, Solidarity on behalf of Conroy referred an unfair dismissal dispute to the first respondent claiming the dismissal to be both substantively and procedurally unfair. At the arbitration proceedings and in support of his case Conroy testified and did not call any witnesses. The employer called witnesses to support its own case.

#### Grounds for Review

[11] The applicant has raised the following grounds for review: the commissioner

11.1 Made a misdirection in concluding that the applicant had failed to prove its case against Conroy and by embarking upon an evaluation of probabilities in circumstances where there was no dispute about the fact that Conroy committed the offence he was charged with.

11.2 Failed to make an appropriate assessment of the evidence placed before her, particularly the evidence tendered on behalf of the applicant in regard to the treatment of so called "Cardinal Sins";

11.3 Failed to consider the applicants' Disciplinary Code for employees especially in relation to assault where the recommended sanction for assault is dismissal, even for a first offender;

11.4 Erred in failing to attach any weight alternatively, sufficient weight to consequences to the applicant, should it allow a "Cardinal Sin" such as assault to be treated inconsistently.

11.5 Erred in finding that the assault committed by Conroy was serious due to the delay in charging and disciplining him;

11.6 Failed to take into account the oral evidence presented on behalf of the applicant which explained the reason for the delay;

11.7 Erred in placing too much emphasis on the contention that there was no evidence to prove that there was a breakdown of the trust relationship between the applicant and Conroy;

11.8 Erred in finding on the facts that Conroy ought not to have been dismissed;

11.9 Erred in finding that the applicant suffered no prejudice by the actions of Conroy;

11.10 Erred in finding that the applicant behaved in a biased manner and pre-empted the outcome toward Conroy, especially as this was not raised by Conroy as a basis for unfairness;

11.11 Was grossly negligent in performing her duties as a commissioner, alternatively exceeded her powers, in that *inter alia*, she: -

11.11.1 Did not apply her mind to the relevant issues in accordance with the behest of the LRA;

11.11.2 Failed to appreciate and/or give effect to her powers and duties in terms of the LRA;

11.11.3 Adopted an approach unjustified on the facts and inconsistent with her statutory duty;

11.11.4 Reached the unreasonable conclusion that the dismissal of Conroy was substantively unfair;

11.11.5 Based her factual conclusions on grounds which do not accurately or correctly reflect the evidence tendered before her;

11.11.6 Failed to establish a reasonable correspondence between the evidential material and the award.

### Test on review

[12] The test for reviewability of the arbitration award is trite. It is that the court of review must decide whether the decision reached by an arbitrator is one that a reasonable arbitrator could not reach.<sup>2</sup>

[13] In *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v CCMA and others*<sup>3</sup>, the test in *Sidumo* was refined by introducing a two staged enquiry. In doing so the court held:

“Sidumo does not postulate a test that requires a simple evaluation of the evidence presented to the arbitrator and based on that evaluation, a determination of the reasonableness of the decision arrived at by the arbitrator. The court in *Sidumo* was at pains to state that the arbitration award made under the Labour Relations Act continue to be determined in terms of

<sup>2</sup> *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* (2007) 28 ILJ 2405 (CC).

<sup>3</sup> [2014] 1 BLLR 20 (LAC) at para 14.

section 145 of the LRA but that the constitutional standard of reasonableness is suffused in the application of s145 of the LRA. This implies that an application for review sought on the ground of misconduct, gross irregularity in the conduct of arbitration proceedings, and/or excess power will not lead automatically to a setting aside of the award if any of the above grounds are found to be present. In other words, in a case such as the present, where a gross irregularity in the proceedings is alleged, the enquiry is not confined to whether the arbitrator misconceived the nature of the proceedings, but extends to whether the result was unreasonable, or put another way, whether the decision that the arbitrator arrived at is one that falls in a band of decisions to which a reasonable decision maker could come on the available material.”

[14] In *Herholdt v Nedbank Ltd*<sup>4</sup> the court held:

“[25] ... Material errors of fact, as well as weight and relevance to be attached to particular facts are not in and of themselves sufficient for an award to be set aside but are only of any consequence if their effect is to render the outcome unreasonable.”

[15] Mere errors or irregularities are not sufficient to vitiate the award. To warrant interference from a review court, the award must be disconnected from the evidence resulting in an unreasonable outcome<sup>5</sup> and/or the failings, errors, irregularities or misconduct must have resulted in the award ultimately being unreasonable.<sup>6</sup> In *Makuleni v Standard Bank of SA (Pty) Ltd and others*<sup>7</sup> the LAC cautioned this Court not to “yield to the seductive power of a lucid argument that the result could be different” because that is the luxury and privilege reserved for the court of appeal. The LAC continued that it is only if the conclusion reached by the commissioner is untenable that the review court will be justified in reviewing and setting aside the award.

<sup>4</sup> (2013) 34 ILJ 2795 (SCA) at para 25.

<sup>5</sup> *Duncanmec (Pty) Ltd v Williams Itumeleng NO and others* [2020] 7 BLLR 668 (LAC) at para 23; *Securitas Specialised Services (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others* (2021) 42 ILJ 1071 (LAC); [2021] 5 BLLR 475 (LAC) at para 19

<sup>6</sup> *Heroldt supra*, *Head of Department of Education v Mofokeng and Others* (2015) 36 ILJ 2802 (LAC); [2015] 1 BLLR 50 (LAC) at paras 31 – 3

<sup>7</sup> (2023) 44 ILJ 1005 (LAC); [2023] 4 BLLR 283 (LAC) at para 4.

[16] Ultimately, the applicant in this case is required to establish that the award was one that could not have been made by a reasonable decision-maker on the evidence presented.

### Evaluation

[17] Item 7 of the Code of Good Practice, deals specifically with the requirements to be considered in determining whether dismissal for misconduct is fair. It must be considered whether “....*dismissal was an appropriate sanction for the contravention of the rule or standard ...*”<sup>8</sup>

[18] In terms of Schedule 8 of the Code of Good Practice Dismissal: a dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even if it complies with any notice in a contract of employment or in legislation governing employment. The schedule further provides that the determination of whether or not a dismissal is for a fair reason is determined by the facts of the case, and the appropriateness of the dismissal as a penalty. The key question which an arbitrator has to ask himself or herself is simply, as was put in *Engen Petroleum Ltd v CCMA and others*<sup>9</sup> “*Is the dismissal fair*”

[19] In dealing with this issue in the case the LAC had this to say:

“The ordinary and natural meaning of the word fair suggests that commissioners must answer that question on the basis of their own sense of fairness. The question cannot possibly be answered on the basis of somebody else's notion of fairness. This was the position adopted by the court under the 1956 LRA. There is no basis for assuming that the position has changed under the current LRA.”<sup>10</sup>

[20] It has been consistently held by the courts that the responsibility for determining the appropriateness of dismissal as a penalty is a matter to be left to the

<sup>8</sup> Item 7(b)(iv) of the Code of Good Practice.

<sup>9</sup> [2007] 8 BLLR 707 (LAC).

<sup>10</sup> Ibid at para146.

discretion of the arbitrator. In this respect the Constitutional Court in *Sidumo* said the following:

“[75] It is a practical reality that, in the first place, it is the employer who hires and fires. The act of dismissal forms the jurisdictional basis for a commissioner, in the event of an unresolved dismissal dispute, to conduct an arbitration in terms of the LRA. The commissioner determines whether the dismissal is fair. There are, therefore, no competing discretions. Employer and commissioner each play a different part. The CCMA correctly submitted that the decision to dismiss belongs to the employer, but the determination of its fairness does not. Ultimately, the commissioner’s sense of fairness is what must prevail and not the employer’s view. An impartial third-party determination on whether or not a dismissal was fair is likely to promote labour peace.”

[21] The Constitutional Court went further that:

“[78] In approaching the dismissal dispute impartially, a commissioner will take into account the totality of circumstances. He or she will necessarily take into account the importance of the rule that had been breached. The commissioner must of course consider the reason the employer imposed the sanction of dismissal, as he or she must take into account the basis of the employee’s challenge to the dismissal. There are other factors that will require consideration, for example, the harm caused by the employee’s conduct, whether additional training and instruction may result in the employee not repeating the misconduct, the effect of dismissal on the employee and his or her long service record. This is not an exhaustive list.”<sup>11</sup>

[22] Following on the judgment of *Sidumo*, a number of principles were crystallised out that would require consideration in assessing whether the sanction of dismissal is fair. The further principles are the issue of the breakdown of the trust relationship between the employer and employee, the existence of dishonesty, the possibility of

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<sup>11</sup> Id fn 2 at p 78.

progressive discipline, the existence or not of remorse, the job function and the employer disciplinary code and procedure.<sup>12</sup>

[23] In his book titled *Dismissals*<sup>13</sup>, Grogan says the following:

“In the employment context, factors that should be considered before imposing a sanction on an employee even for a proven assault include the circumstances in which the assault took place, the degree of force used or the gravity of the threat, the relationship between the employee and the complainant, and the effect of assault on interpersonal relations and the business of the employer.

[24] The outcome of the arbitration award is not unreasonable. It is my view that with all the evidence that was presented before the arbitrator, he could not find anything other than that the dismissal of Conroy was substantively unfair. The arbitrator therefore made no material errors of law, committed no irregularity or misconduct because he took all the evidence in its totality in determining that the applicant had failed to prove its case on the sanction against Conroy. It was necessary for the commissioner to embark on probabilities even though there was no dispute about the fact that Conroy had committed the offence because at the end of the day, he still had to determine the fairness of the dismissal. Even if I am wrong in this conclusion, I do not think that this error is enough to vitiate the award.<sup>14</sup>

[25] In my view the commissioner made an appropriate assessment of the evidence placed before her, particularly the evidence tendered on behalf of the applicant with regard to the treatment of the so-called “Cardinal Sins”. The commissioner acknowledged the seriousness that the applicant applied to assault cases and that it was a dismissible offence according to the applicant’s Disciplinary Code of Conduct even for a first offence. It is however evident from the record that the applicant was blinded by the emphasis it placed on the seriousness of the sanction of dismissal for Cardinal Sins offences under any circumstances and failed

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<sup>12</sup> Eskom Holdings Ltd v Fipaza and Others (2013) 34 ILJ 549 (LAC).

<sup>13</sup> J. Grogan *Dismissal* (3rd Ed) (Juta & Co Ltd, Cape Town) at p 266.

<sup>14</sup> Head of the Department of Education v Mofokeng and Others [2015] 1 BLLR 50 at para 32 and 33.

to consider mitigating factors to the offence so as to establish a fair sanction for Conroy.

[26] From the reading of the award it is clear that the commissioner also considered the applicant's Disciplinary Code for employees in relation to assault where the recommended sanction for assault is dismissal even for a first offence. It is abundantly clear that she attached sufficient weight to the consequences to the applicant should it as the employer allow Cardinal Sins such as assault to be treated inconsistently.

[27] It is also clear that the commissioner considered the applicant's sanction of dismissal and from all the evidence placed before her, she considered dismissal to be unfair. She correctly and factually considered amongst others the following mitigating factors:

27.1 Conroy apologised immediately to Phoolo. He again sent a WhatsApp message to him on the evening of the incident apologising for the incident;

27.2 Phoolo accepted Conroy's apology and did not want to press any charges against him.

27.3 Phoolo and Conroy were colleagues for 28 years and this was the first time that Conroy made a transgression in his 35 years of service with the applicant.

27.4 Conroy reported the incident himself; he was aware of the wrong that he had committed thereby demonstrating remorse and he requested to attend anger management courses through ICAS in order to know how to handle himself in future instances of similar nature.

27.5 Conroy continued to work with Phoolo until the date of his final dismissal which was almost a year after the incident had occurred.

27.6 Mr Kevin Moodley, the applicant's senior manager who acted as the complainant in the disciplinary hearing of Conroy proposed an alternative to dismissal i.e suspension.

27.7 Conroy appealed the first hearing's sanction of dismissal on 6 June 2019 and it was replaced with a final written warning and two weeks suspension without pay on 13 June 2019.

[28] The commissioner factually and correctly took into account the time it took for the applicant to charge Conroy with misconduct and the reasons for the delay. In my view, it is correct that the applicant did not see Conroy as a threat to his organisation that is why he allowed him to work for him for almost a year after the incident.

[29] The applicant contended that the commissioner committed an irregularity in finding that the applicant provided no evidence to prove that there was a breakdown of the relationship between the applicant and Conroy, because the nature of the misconduct deemed it unnecessary to lead evidence on the breakdown in the trust relationship.

[30] The circumstances of this case did not justify the dismissal of Conroy or implied a breakdown of the trust relationship. It is clear that no conclusion could have been made from the facts of this matter that the nature of the offence on its own had led to irreparable damage of the employment relationship between the relevant parties. Conroy continued with his employment with the applicant after his first disciplinary inquiry, there were no incidents, which was an indication that the trust relationship did not breakdown irretrievably. He continued to work for the applicant right through the appeal process which lasted for a year since the incident. Under these circumstances it was necessary for the applicant to demonstrate a breakdown in the trust relationship.

[31] The arbitrator in this case cannot be faulted for arriving at the conclusion that the dismissal was unfair because of the severity of the sanction. Conroy was remorseful for his actions. The facts of this case are different from the facts in the case of *Hulett Aluminium. (Pty) Ltd v Bargaining Council for Metal Industry and Others*<sup>15</sup>, where the court held that:

“It would, in my view, be unfair for the court to expect the applicant to take back the employee when she has persisted with her denials and has not shown any remorse. An acknowledgment of wrongdoing on the part of the employee would have gone a long way in indicating the potential and

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<sup>15</sup> (2008) 29 ILJ 1180 (LC), headnote.

possibility of rehabilitation, including an assurance that similar misconduct would not be repeated in the future.”

[32] The present case can be distinguished from the cases of the other applicant’s employees who were dismissed by the applicant for assault. In the present case it is not in dispute that Conroy performed his duties well for 35 years. He was competent and efficient in what he was employed to do. Unlike the employee in *Hulett Aluminum*, he owned up to his wrongdoing and soon apologized to Phoolo and reported himself to his supervisor. He was also willing to undergo anger management courses so as to make sure that he does not repeat the wrong in future.

[33] In conclusion, it is clear from the record of arbitration that the commissioner properly identified the issues which were before her and reached a decision that a reasonable arbitrator would have reached. There were no flaws in her reasoning, she applied her mind on the relevant considerations and took into account all of the material factors. She considered the applicant’s sanction of dismissal for Cardinal Sins even for first offenders and from the evidence placed before her, correctly considered it to be unfair to dismiss Conroy under the circumstances of the case. There were overwhelming mitigating factors on the part of Conroy which she took into account in arriving at her conclusion. There is no evidence that shows that she acted grossly negligent when she performed her duties or that she exceeded her powers in any manner. In my view, there is no basis for interfering with the decision of the commissioner.

[34] For reasons given above, the review application stands to fail.

#### Costs

[35] In terms of section 162 of the LRA, the Court has wide discretion in awarding costs. The Constitutional Court has recently reiterated in *Zungu v Premier of the Province of Kwa-Zulu Natal and Others*,<sup>16</sup> that costs orders should be made in

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<sup>16</sup> (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC) at para 24.

accordance with the requirements of law and fairness. In this matter, the requirements of law and fairness dictate that there should be no order as to costs.

[36] In the result, the following order is made:

Order

1. The application to review and set aside the arbitration award issued under case number CHEM33-19/20, dated 10 December 2020 is dismissed.
2. There is no order as to costs

M B. Mahalelo

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: D.O Pretorius

Instructed by: Fluxmans Inc

For the Respondent: H Van Der Hoven

Instructed by: Solidarity