



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C414/2021

In the matter between:

SOUTH AFRICAN POLICE SERVICES

Applicant

And

LT COL PS MOYO

First Respondent

CST CB DE JONGH

Second Respondent

Heard: 25 JUNE 2025

Delivered: 2 JULY 2025

Summary: (Review and condonation application – An application under section 158(1)(h) requires an application to be brought in a reasonable time – whether there was an unreasonable delay in initiating the application - a review under section 158(1)(h) cannot be successful merely because the decision in question is labelled ‘irrational’ or ‘unreasonable’. The application must identify the grounds in law on which it is based and should not just differ with the factual findings of the decision maker or just label these as ‘irrational, unreasonable or irregular, more is required)

JUDGMENT

MAY, AJ

Introduction

[1] This is an unopposed application to review and set aside a decision of the first respondent (“the Chairperson”) in a disciplinary hearing only insofar as it relates to the sanction issued against the second respondent. Although not specifically mentioned in the application, the law is now settled that Section 158(1)(h) of the LRA empowers the Labour Court to review decisions of chairpersons at disciplinary hearings, at the instance of the employer, in circumstances where the State is the employer. Concomitantly, the State as employer has the standing to institute such review proceedings¹.

Condonation

[2] The sanction was handed down on 7 May 2021, was received by the Applicant on the 15th of May 2021 and the review application was brought on the 4th of August 2021. Section 158 (1)(h) requires that an application be brought within a reasonable time.

[3] It is now accepted that it is not permissible for a court to fix a certain time which it regards as a reasonable time but that the correct approach is to determine whether there was an unreasonable delay in initiating the proceedings and if so, should the delay in all the circumstances be condoned². The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case.³ The investigation into the reasonableness of the delay has nothing to do with the Court’s discretion. It is an investigation into the facts of the

¹ *Minister of Police and Another v Kgopa and Another* [2019] 1 BLLR 16 (LAC) at paragraph 12.

² *G4S Secure Solutions (SA) (Pty) Ltd v Gunqubele N.O. and Others* [2017] 12 BLLR 1181 (LAC) at paragraph 11.

³ *Setsokeane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie, en ’n ander* 1986 (2) SA 57 (A) (*Setsokeane*) at paragraph 86G.

matter in order to determine whether, in all the circumstances of that case, the delay was reasonable. Though this question does imply a value judgment it is not to be equated with the judicial discretion involved in the next question, if it arises, namely, whether a delay which has been found to be unreasonable, should be condoned⁴.

[4] The Applicant contends that post receipt of the sanction, and between 15 May 2021 to 15 July 2021 there was a slow but steady exchange of internal memoranda and recommendations made within the SAPS to take the sanction on review. There is a delay of about 2 weeks at the acting section Head, Colonel Zuma, which in the circumstances on its own does not appear to be inordinate or excessive. On 15 July 2021, the National Commissioner's decision, officially made on 1 July 2021, was referred to the state attorney's office for implementation.

[5] On 15 July 2021, the review was in the hands of the state attorney, who promptly set in motion the process of launching the application themselves and did so by 4 August 2021. This delay is also not considered unreasonable or excessive.

[6] The delay at the National Commissioner's office, of about 2 weeks is also not, in my view, inordinate or excessive. I do not think therefore that this was an unreasonable delay. But if I am wrong and there was an unreasonable delay, the applicant has explained the nature of the delay and why there was a delay. To this must be added the prospects of success which the LAC has held to be obligatory in circumstances such as these.⁵ In assessing the prospects of success, I deem it appropriate to assess the grounds of review in determining whether a proper case has been made out for the relief sought and thus whether condonation should be granted.

Prospects of success

The charges and elements of the evidence

[7] The second respondent was charged with serious misconduct in that he:

⁴ *Setsokosane* at paragraph 86E-F.

⁵ *G4S Secure supra* at paragraph 17.

7.1 contravened section 40 of the South African Police Service Act, 68 of 1995 read with regulation 5 (3)(a) of the South African Police Service Discipline Regulations, 2016, being a failure to comply with or contravening an Act, regulation or legal obligation, in that he assaulted the complainant, stole his motor vehicle and drove off with the vehicle without its owner's permission;

7.2 contravened section 40 of the South African Police Service Act, 68 of 1995 read with regulation 5 (3)(t) of the South African Police Service Discipline Regulations, 2016, being that he conducted himself in an improper, disgraceful and unacceptable manner when he assaulted the complainant, stole his motor vehicle and drove off with the vehicle without its owner's permission; and

7.3 contravened section 40 of the South African Police Service Act, 68 of 1995 read with regulation 5 (3)(u) of the South African Police Service Discipline Regulations, 2016, being that he contravened any prescribed code of conduct of the service or the public service, whichever may be applicable to him in that he assaulted the complainant, stole his motor vehicle and drove off with the vehicle without its owner's permission;

[8] The Chairperson found the second respondent guilty of all charges, added the charges together for purposes of sanction and imposed a sanction in terms of regulation 12 (1)(d) being a suspension without salary for a period of 2 months. It is this sanction that the Applicant seeks to review and set aside.

[9] Important to the consideration, in my view, is that the employee's representative called for a sanction short of dismissal and contended that the trust relationship between the parties was not broken⁶ and, more importantly, the employer's representative, Captain Malan, despite confirming that the offence is dismissible, contended that an appropriate sanction would be a suspension for 2 months without salary⁷.

Grounds of review and evaluation

⁶ Pages 48-49 of the transcript.

⁷ Page 51 of the transcript.

[10] SAPS contend that the sanction imposed is too lenient and thus not appropriate or proportional to the misconduct the employee committed.⁸

[11] They contend that the first respondent arrived at an unreasonable conclusion with regards to the sanction. They also contend that the conclusion reached by the first respondent doesn't meet the requirement of rationality and/or reasonableness.⁹

[12] It is settled now that the Labour Court has the power under section 158(1)(h) to review the decision taken by a presiding officer of a disciplinary hearing on (i) the grounds listed in PAJA, provided the decision constitutes administrative action; (ii) in terms of the common law in relation to domestic or contractual disciplinary proceedings; or (iii) in accordance with the constitutional requirements of the principle of legality, such being grounds permissible in law.¹⁰

[13] For a review on the grounds of unreasonableness to be determined, the court has to consider the often-inter-related questions of rationality, lawfulness and proportionality. The court must consider the purpose, basis, reasoning or effect of the decision against the review grounds under common law and now codified in section 6 of PAJA. These are failing to apply the mind, taking into account irrelevant considerations, ignoring relevant considerations, acting for an ulterior purpose, in bad faith, arbitrarily or capriciously etc¹¹. The court must also consider whether, apart from the flawed reasons of or any irregularity by the arbitrator, the result could be reasonably reached in light of the issues and the evidence before the arbitrator.¹² In other words, whether the arbitrator misconceived the inquiry or undertook the inquiry in a misconceived manner and thus whether there was a fair trial of the issues.¹³

⁸ *Reyling on Shoprite Checkers (Pty) Ltd v CCMA & Others [2008] 9 BLLR 838 (LAC) and De Beers Consolidated Mines Ltd v CCMA and Others [2000] BLLR 995 (LAC).*

⁹ Page 10 of the pleadings record.

¹⁰ *Hendricks v Overstrand Municipality [2014] 12 BLLR 1170 (LAC) at paragraph 29.*

¹¹ *Head of the Department of Education v Mofokeng and Others [2015] 1 BLLR 50 (LAC) at paragraph 32.*

¹² *Herholdt v Nedbank Ltd 2013 (6) SA 224 (SCA) at paragraph 12.*

¹³ *CUSA v Tao Ying Metal Industries and Others [2009] 1 BLLR 1 (CC) at paragraph 76.*

[14] Mere errors of fact or law may therefore not be enough to vitiate the award. Something more is required. Therefore flaws in the reasoning of the arbitrator, evidenced in the failure to apply the mind, reliance on irrelevant considerations or the ignoring of material factors etc. must be assessed with the purpose of establishing whether the arbitrator has undertaken the wrong enquiry, undertaken the enquiry in the wrong manner or arrived at an unreasonable result.¹⁴

[15] Whether interference is warranted, will depend on the materiality of the error or irregularity and its relation to the result. This must be assessed and determined with reference to the effect it may or may not have had upon the decision-maker conception of the inquiry, the comprehension of the issues to be determined and the ultimate outcome. If but for the complained of error or irregularity a different outcome would have resulted, it will be material to the determination of the dispute and thus possibly an unreasonable result.

[16] The reviewing judge must then have regard to the general nature of the decision in issue; the range of relevant factors informing the decision; the nature of the competing interests impacted upon by the decision; and then ask whether a reasonable equilibrium has been struck in accordance with the objects of the LRA.¹⁵ Provided, therefore that the right question was asked and answered by the decision-maker, a wrong answer will not necessarily be unreasonable. By the same token also, an irregularity or error material to the determination of the dispute may constitute a misconception of the nature of the enquiry so as to lead to no fair trial of the issues, with the result that the award may be set aside on that ground alone. The decision-maker ultimately must be shown to have deviated from the correct path in the conduct of the proceedings and as a result failed to address the question raised for determination.¹⁶

[17] The sanction imposed by the first respondent ultimately is a sanction he was empowered to impose in terms of the Regulations having considered all of the facts

¹⁴ *Herholdt supra* at paragraphs 21–25.

¹⁵ *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* [2004] ZACC 15; 2004 (4) SA 490 (CC) at paragraphs 49-54.

¹⁶ *Telcordia Technologies Inc v Telkom SA Ltd* [2006] ZASCA 112; 2007 (3) SA 266 (SCA) para 52-78, 85-88.

and circumstances. The imposition of the sanction does not have the effect that the trial between the parties was not fair. This is particularly so given that the employer's representative himself requested leniency and requested that this sanction be imposed.

[18] This Court recently in similar circumstances has held that state entities who do not agree with the findings of their disciplinary chairpersons or appeal authorities, must understand that a review under section 158(1)(h) cannot be successful merely because the decision in question is labelled 'irrational' or 'unreasonable'. The application must identify the grounds in law on which it is based and should not just differ with the factual findings of the decision maker or just label these as 'irrational, unreasonable or irregular.' A review will not be successful if it is brought just because the State entity believes the decision was incorrect¹⁷.

[19] On the basis of the discussion above, the sanction imposed by the first respondent cannot be said to be irrational or unreasonable. It follows therefore that the application for condonation does not have prospects of success.

[20] In view of the above the application for condonation and review stands to be dismissed and I make the following order.

Order

1. The application is dismissed.

C May
Acting Judge of the Labour Court of South Africa.

Appearances

For the Applicant: M Ramabulana instructed by State
Attorney, Kimberley

¹⁷ *National Commissioner of Police Service and Another v Bobie NO and Another* (2018) 39 ILJ 1140 (LC) at paragraphs 14-15.

