



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT CAPE TOWN**

Case no: C271/2022

Case no: C272/2022

Case no: C412/2022

In the matter between:

TRANSNET PORT TERMINALS

Applicant

And

UNTU OBO NICOLAAS NEL & ANGUS ERASMUS

First Respondent

SATAWU OBO ROSWELL RATZ

Second Respondent

COMMISSIONER BELLA GOLDMAN N.O.

Third Respondent

COMMISSIONER MELWYN NASH N.O.

Fourth Respondent

COMMISSIONER ELVISO ADAMS N.O.

Fifth Respondent

TRANSNET BARGAINING COUNCIL

Sixth Respondent

Heard: 1 July 2025

Delivered: 7 July 2025

Summary: unopposed application to consolidate – application refused – each review application to be determined on the review test of whether the decision of the commissioner is one that a reasonable decision maker could not reach – inappropriate to consolidate review applications with each review application having to be determined based on the test applicable to review applications, which requires each commissioner's decision to be analysed based on the evidence before him/her, and based on the reasons advanced for each commissioner's conclusions in the award – consolidation will result in the decisions of commissioners to be argued on generalised submissions rather than based on what evidence was presented to each commissioner based on the transcribed record, bundle of documents, and the reasons relied on by each commissioner for arriving at his/her conclusions.

JUDGMENT

DE KOCK, AJ

Introduction

- [1] This matter concerns an application by the applicant to consolidate the three review applications under case numbers C271/2022, C272/2022, and C412/22. The respondents did not oppose the application.

Details of the application

- [2] The application is made on the basis that the three matters, as dealt with under the auspices of the sixth respondent by the third, fourth and fifth respondents, arise from the same set of circumstances and essentially depend on the determination of substantially the same or similar questions of law and fact. It is also stated that there will be no prejudice to any of the respondents if the consolidation application is granted. It is further stated in the founding affidavit that the employees were all dismissed for the same charge, which flowed from one incident on 28 July 2021.

[3] The applicant states that the recurring theme in each of the arbitration awards issued was a failure by the commissioners to consider the following:

- 3.1 The appropriate sanction.
- 3.2 The impact on the victims.
- 3.3 The gravity of the misconduct.
- 3.4 The evidence of the victims and effect of the misconduct on their inherent dignity and privacy.
- 3.5 The common cause facts, the proven misconduct and the patently suitable severity of the sanction.
- 3.6 The distorting effect of the commissioners' errors of fact were material and rendered the outcomes unreasonable.

Analysis

[4] The application for consolidation was unopposed. The court must therefore accept that the respondents will not suffer any prejudice should the three matters be consolidated. However, an application for the consolidation of disputes cannot and should not be granted simply because an application for such consolidation is unopposed and no prejudice is argued on behalf of the respondents.

[5] The application for consolidation must be considered in terms of Rule 55 (1) of the new Labour Court Rules. The Rule reads as follows:

'55. Consolidation of proceedings

- (1) The court may make an order consolidating any separate proceedings pending before it if it deems the order to be expedient and just.'

[6] The decision by the court therefore must be based on whether granting a consolidation of disputes would be expedient and just. The prejudice to respondents is but one of the factors that may be considered. The decision is not to be based only whether it is expedient and just to the parties, but also whether the court deems it expedient and just to the court to grant an application for consolidation.

[7] The applicant charged and dismissed the three employees for the same charge. Following their dismissals, the employees referred individual and separate disputes to the bargaining council and each employee's dispute was arbitrated by three different commissioners. The applicant failed to seek a consolidation of the three disputes at the bargaining council. Although there may be reasons for the applicant in not having done so, such as when the respective disputes were referred and were ripe for set down, it would have made practical sense for the three disputes to be consolidated at the bargaining council. This would have certainly saved costs for both parties and the evidence of the applicant's witnesses would have been led in the same arbitration proceedings. The three employees could have cross-examined the witnesses in the same process, and they could have given their respective versions. Had this been done, one commissioner would have been tasked to arbitrate the dispute, and one arbitration award would have been issued based on the evidence before him/her.

[8] However, this was not done even though there may have been good reasons at the time. The employees' disputes were therefore arbitrated by three different commissioners, and each commissioner was presented with evidence relevant to that specific employee whose case he/she arbitrated. The three commissioners considered the evidence presented

to them, which was not the same or similar in many respects and arrived at conclusions based on the evidence placed before him/her. A mere perusal of the three arbitration awards, the grounds of review and the record in respect of each arbitration makes it clear that the evidence presented, and the ultimate conclusions arrived at by the three commissioners, are not the same.

- [9] A few examples will suffice to demonstrate the point that the evidence, the grounds of review, and the arbitration awards are not the same. The evidence regarding the employees' background is not the same, as they all had different dates of employment, positions, and earned different salaries. Although all three employees were charged with the same charge, their defences to the charge, according to the evidence, are different. The grounds of review are in some respects the same, but it also differs in other respects based on the evidence before each commissioner, and the commissioners' reasoning in the award.
- [10] The commissioners, as per their respective awards, arrived at the same conclusion that the dismissals were substantively unfair, but based their decisions on different reasons. The relief granted by the commissioners also differ, as in one case an employee was reinstated with no backpay, in another the commissioner reinstated with backpay and with a final written warning, and in another the backpay granted was less than that ordered in the other matter.
- [11] The question whether it is expedient and just to grant the application for consolidation is however best answered with reference to the relevant test applicable to review applications. In each review application, over and above other challenges on review which may go to the commissioner's conduct or the commissioner committing a serious irregularity in the conduct of the arbitration proceedings, is for the Labour Court to determine whether the commissioner's decision is one that a reasonable decision maker could not reach. This test requires that each

commissioner's decision must be analysed based on the evidence presented during the arbitration proceedings before him/her, and whether the decision reached by each commissioner, based on the reasons given for such decision, is one that a reasonable decision-maker could not reach.

- [12] It is therefore not expedient or just to consolidate three separate review applications where the pleadings in respect of all three applications were already delivered, and are ripe to be set down on the opposed motion role with each review application having to be considered on the pleadings, and more specifically the transcribed records and bundles of documents delivered in respect of each application. It will not be fair to the commissioners to have their respective decisions considered based on a consolidation of disputes and potentially on evidence that may not have served before him/her. It will also not be fair to the parties, even though no such submissions were made, to allow a generalised approach and submissions to the applications rather than having each application determined on its own merits.

- [13] In the premises, I make the following order:

Order

1. The application for consolidation is dismissed.
2. The registrar is directed to provide an expedited date of set down for the hearing of the three review applications. Insofar as it may be possible, the three review applications, each to be heard separately, are to be set down on the same day before the same presiding judge.

3. There is no order for costs.



C de Kock

Acting Judge of the Labour Court of South Africa

Representatives:

For the Applicant:

Adv. Dean Whittington

Instructed by:

Chiba Attorneys

For the Respondents:

No Appearance