



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

Not Reportable
Case no: C 70/2024

In the matter between:

DRAKENSTEIN LOCAL MUNICIPALITY

Applicant

and

BRADLEY FRANKO MATJAN

First Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL (SALGBC)**

Second Respondent

COMMISSIONER ANNE ERWIN N.O.

Third Respondent

Heard: 27 June 2025

Delivered: 22 July 2025

JUDGMENT

VENTER AJ

Introduction

- [1] In this unopposed review application, the Applicant seeks to review and set aside an arbitration award dated 28 December 2023, issued by the Third Respondent under the auspices of the Second Respondent.
- [2] The Third Respondent determined that the First Respondent was dismissed under section 186(1)(e) of the Labour Relations Act, 66 of 1995 (the LRA), and ordered the Applicant to pay the First Respondent the equivalent of six months' salary.
- [3] The Applicant's case is, essentially, that the Third Respondent misapplied the onus in a constructive dismissal case and failed to properly assess the material evidence.

Background

- [4] The First Respondent was employed as an Electrical Apprentice in 2009 and was promoted to Superintendent in 2016. He was responsible for managing electrical maintenance, supervising staff, and participating in a rotational standby roster for after-hours faults.
- [5] The First Respondent was subjected to a disciplinary hearing and issued a final written warning on 29 January 2021. The warning was given after he failed to respond to a call-out during the weekend of 7 to 8 December 2019.
- [6] The Head of Electrical Services, Mr Geldenhuys, subsequently removed the First Respondent from further stand-by duties. The First Respondent was also

instructed not to undermine certain arrangements that were introduced to curb a backlog in service delivery.

- [7] The First Respondent filed a grievance in September 2021, accusing Mr. Geldenhuys of victimisation. Mr. Geldenhuys retired during the same period, and the grievance hearing was concluded by his replacement. It was decided that the Third Respondent would be reinstated to his full duties, and he accepted the proposal.
- [8] The First Respondent nevertheless referred a dispute in lieu of outstanding standby monies. The application was subsequently dismissed due to lateness (condonation refused)
- [9] During June 2023, Mr Geldenhuys was appointed on a contractual basis, albeit that he was not the manager of the First Respondent. The First Respondent fell ill and was treated for depression during the same period.
- [10] There was also evidence regarding an injury on duty during May 2021, and the Applicant's Health and Safety Committee found that the First Respondent was at fault. The First Respondent felt demoralized and doubted his own abilities.
- [11] The First Respondent's duties were reinstated from 1 March 2022 and by then, there was a significant backlog of complaints requiring his attention. He was responsible for liaising with members of the public and felt he received no support from his seniors regarding the vehicle shortage.
- [12] During April 2022, the First Respondent was overlooked for possible promotion, and he felt aggrieved. He had no faith in the grievance procedure and decided not to refer a dispute relating to the failure to promote him.

- [13] On 12 June 2023, a meeting was held to address various complaints about malfunctioning streetlights. During the meeting, he was verbally attacked by Mr. Geldenhuys. He resigned the following day.
- [14] He did not file a grievance regarding Mr. Geldenhuys's verbal attack because he believed it would be used against him. After resigning, he served his notice period but took some sick leave during that time. Management did not approach him, nor did anyone attempt to resolve the issue. He was still willing to work for the applicant if the working environment was improved.
- [15] The Applicant was of the opinion that the First Respondent was entitled to lodge a grievance if he was dissatisfied with certain alleged remarks, but he did not do so.

Findings by the Third Respondent

- [16] The Third Respondent firstly presented some details regarding decided cases that relate to constructive dismissal.
- [17] The Third Respondent referred to the final written warning issued against the First Respondent, but mentioned that the matter was never referred for conciliation or arbitration.
- [18] The Applicant was, in essence, blamed for removing standby duties from the First Respondent and for the removal of some daily duties for the period September 2020 to March 2022.
- [19] The injury on duty and the failure to promote the First Respondent also influenced the decision of the Third Respondent, but the final straw was the meeting of 12 June 2023, and his tolerance was at a breaking point by then.

[20] It was the Third Respondent's finding that the meeting on 12 June 2023 clearly indicated that the employment relationship had become intolerable and that the Applicant failed to provide any reasons for their conduct.

Grounds for review

[21] The Applicant contends that the legal test and burden for constructive dismissal were not properly addressed and considered by the Third Respondent.

[22] It is also argued that relevant evidence was disregarded and that irrelevant facts were neglected.

[23] The Applicant also claims that the employment relationship was not intolerable in June 2023 and that the above led to an unreasonable finding.

Legal position regarding constructive dismissal

[24] Section 186(1)(e) of the LRA defines constructive dismissal as occurring when an employee terminates their contract of employment, with or without notice, because the employer has made continued employment unbearable. If an employee alleges constructive dismissal, it is their responsibility to demonstrate that the resignation was not voluntary and that they did not intend to end the employment relationship.¹

¹ See section 192 of the LRA

[25] The test to be applied in matters where the existence of dismissal is disputed is one of correctness.²

[26] This court therefore needs to decide whether the Third Respondent was correct in determining that a dismissal occurred within the ambit of the LRA.

[27] It is trite that an employee who claims that a dismissal occurred as described in section 186(1)(e) of the LRA must prove that he or she resigned, that continued employment was intolerable and that the employer caused the intolerable employment.³ The employer's conduct towards the employee, and the overall effect of that conduct, had to be such that, when viewed objectively, the employee could not reasonably be expected to cope with it.

[28] The Labour Appeal Court held in *Pretoria Society for the Care of the Retarded v Loots*⁴ when an employee resigns due to constructive dismissal, the employee essentially indicates that the situation has become so intolerable that they can no longer continue working. The employee is actually indicating that they would have continued working if it were not for the employer. Moreover, the Constitutional Court held in *Strategic Liquor Services v Mvumbi N O and others*⁵ that the test for constructive dismissal does not require that the employee have no choice but to resign, but only that the employer should have made continued employment intolerable.

² See *De Millander v MEC for Department of Finance: Eastern Cape* (2013) 34 ILJ (LAC), *Ekurhuleni Metropolitan Municipality v Mabusela NO and Others* (2023) 44 ILJ 137 (LAC) as well as *Shoprite Checkers (Pty) Ltd v Nkosi & Others* (2022) 43 ILJ 1386 (LC). Also see *Solid Doors v Commissioner Theron and Others* (2004) 25 ILJ 2337 (LAC)

³ *Eagleton & others v You Asked Services (Pty) Ltd* [2008] ZALC 102; (2009) 30 ILJ 320 (LC) at para 22.

⁴ (1997) 18 ILJ 981 (LAC). Also see *Hollard Insurance Company v Phelele Kapueja-Keta and Others*, case number JR 948-21 delivered on 24 May 2023

⁵ (2009) 30 ILJ 1526 (CC).

[29] In *Gold One Ltd v Madalani and Others*⁶ the court held that intolerability entails an unendurable or agonising circumstance and that the threshold was high.

[30] The test is therefore simply whether, objectively, there was any reasonable alternative to resignation and whether, objectively, the employer was at fault.

Application of the legal principles

[31] This court is obliged to consider the above legal principles in determining whether the finding of the Third Respondent was correct.

[32] The Third Respondent blames the Applicant for failing to present a plausible cause or provide a reasonable alternative. This finding appears to conflict with the principle that the First Respondent bore the burden in this matter.

[33] The court is satisfied that the first element of the test is present as the First Respondent did tender his written resignation.

[34] Turning to the second and third requirements, the overwhelming evidence indicates that the Third Respondent was troubled by various issues. However, it is unclear from the award how the Third Respondent determined that these issues were caused by the Applicant. The opposite interpretation seems more likely.

[35] The First Respondent was involved in an injury while on duty, but it was later established that he was to blame. This incident occurred in May 2021, roughly two years before his resignation. Additionally, the matter concerning his non-promotion was never formally tested, and the First Respondent had ample

⁶ (2020) 41 ILJ 2832 (LC)

opportunity to follow proper procedures and raise a dispute. Likewise, the alleged victimisation by Mr. Geldenhuys was also never tested, despite the First Respondent being fully aware of his remedies.

[36] These issues existed long before the First Respondent's resignation, and it appears that the meeting of 12 June 2023 triggered the resignation. Therefore, one should consider whether this meeting and the discussions held could have objectively caused the First Respondent to resign and if there was no reasonable alternative remedy available to him. The Third Respondent's conclusion was that this meeting caused the relationship to become intolerable and that the First Respondent had no choice but to resign. What the Third Respondent fails to address is the fact that the First Respondent made no material effort to resolve the issues that arose during the meeting, nor did he register any grievance. He also turned down an earlier proposal to take sick leave. In *Albany Bakeries Ltd v Van Wyk and others*⁷ the Labour Appeal Court determined that an employee should, at the very least, consider alternatives prior to resigning.

[37] The Third Respondent has also overlooked the fact that the First Respondent was, in fact, accused of not answering his phone when he was called, and there is also no indication why the evidence of the last supervisor, Mr. Laing, was not duly considered. The Third Respondent also failed to deal with important evidence such as an email dated 8 September 2020 wherein mention was made of the reason why the First Respondent's duties were adjusted. If this was properly considered, it would have been clear that there was a very reasonable attempt from the Applicant to assist the First Respondent.

⁷ (2005) 26 ILJ 2142 (LAC)

- [38] It is also not clear from the award why the failure by the First Respondent to either register a grievance or to declare a dispute was not an alternative remedy. In *Kruger v Commission for Conciliation, Mediation and Arbitration and another*⁸ the court held that employees should not pre-empt the outcome of a grievance within the employer's procedure, especially when the employee is contemplating resignation along with an allegation of constructive dismissal and has never previously raised the issue with the employer.
- [39] If all the factors and evidence are considered comprehensively and objectively, it is simply not correct to conclude that continued employment was objectively unbearable. Intolerability is not proven by the employee's claim, perception, or state of mind. What matters is the employer's conduct seen from an objective perspective.
- [40] Similarly, this court is not satisfied that the circumstances that led to the First Respondent's resignation were caused by the Second Respondent. There was no evidence presented that the Applicant conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties.
- [41] There is also no indication why the Third Respondent did not consider that the Applicant was not afforded an opportunity to address the issues before the First Respondent resigned.
- [42] Objectively, the First Respondent did not establish that his employment became intolerable or unbearable to the extent that he could not be expected to endure it.

⁸ (2002) 23 ILJ 2069 (LC)

[43] The conclusions reached by the Third Respondent were not correct or supported by evidence. It is also clear that the Third Respondent overlooked certain aspects in arriving at her conclusion that a dismissal occurred.

[44] In considering the law and fairness, I find it appropriate not to make any order as to costs. The application was also unopposed.

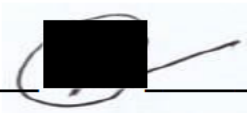
As a result, the following order is made:

Order:

1. The arbitration award of the Third Respondent, dated 28 December 2023 under case number WCP072319, is reviewed and set aside, and substituted with the following order:

“The referral to the SALGBC is dismissed on the grounds of a lack of jurisdiction as no dismissal occurred within the ambit of section 186(1)(e) of the LRA.”

2. There is no order as to costs.


Pieter Venter

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv Montzinger, instructed by QJ Williams and Associates

For the Respondents: None