



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable
Case No: C 260-2022

In the matter between:

SOUTH AFRICAN POLICE SERVICES

Applicant

and

BRIGADIER BE BORMAN N.O.

First Respondent

POPCRU obo GF MADELEY

Second Respondent

Heard: 27 June 2025

Delivered: 14 July 2025

JUDGMENT

VENTER AJ

Introduction

- [1] In this unopposed application, the Applicant approached the court seeking an order to review and set aside a decision made by the First Respondent in her

capacity as chairperson of a disciplinary hearing, in terms of section 158(1)(h) of the Labour Relations Act, 66 of 1995 (the LRA).

Condonation

- [2] The outcome of a disciplinary hearing was communicated to the Applicant on 5 April 2022 and the current application was launched on 1 June 2022.
- [3] There is no specific statutory time frame prescribed for filing a review application under section 158(1)(h) of the LRA. Such an application must, however, be launched within a reasonable time.¹
- [4] The current application was launched some 8 weeks after the Applicant became aware of the outcome of the disciplinary hearing. The Applicant presented an elaborate explanation of the steps taken from 5 April 2022 and the functionaries that had to consider and recommend or approve the review application.
- [5] The court is satisfied that the delay was not unreasonable and that the Applicant provided a plausible explanation for the delay. The Respondents did not oppose the application, and no opposing arguments were brought to the court's attention. The application for condonation is therefore granted.

Background facts

- [6] The Second Respondent has been employed by the Applicant since 29 May 2022, and he holds the rank of a Warrant Officer at the Nayanga Police Station.
- [7] The Second Respondent was arrested for theft on 8 January 2022 at Woolworths Canal Walk shopping mall. His arrest followed after he walked past a pay point with a trolley loaded with bags of goods. It was also alleged that the Second Respondent entered the shop with a trolley containing empty bags and filled them with items before attempting to leave the shop.

¹ See *Member of the Executive Council for Economic Development, Environment and Tourism v Mogahlane* (2019) 40 ILJ 315 as well as *Khumalo v Member of the Executive Council for Education: KwaZulu Natal* 2014 (5) SA 579 (CC)

- [8] He was stopped by security personnel and chose to run out of the store to escape the scene.
- [9] The Applicant subsequently charged the Second Respondent with misconduct under regulation 5 (expeditious process) read with regulation 9(2)(b) of the South African Police Service Disciplinary Regulations of 2016. The Second Respondent was accused of theft and of tarnishing the Applicant's reputation, bringing its name into disrepute.
- [10] On 11 February 2022, the First Respondent was appointed as chairperson of the disciplinary hearing.
- [11] The Second Respondent admitted the charges and pleaded guilty.
- [12] In mitigation, he argued that he had 19 years' service and was a first offender. He also contended that he had financial commitments and that he suffered from bipolar disorder. Additionally, he submitted a medical report from a psychiatrist, confirming his condition and stating that it was probable he committed the offence while being absent-minded.
- [13] The Applicant presented aggravating circumstances and submitted that the offence was premeditated and that the Second Respondent had every opportunity to explain himself when he was stopped at the exit.
- [14] The First Respondent subsequently sanctioned the Second Respondent to a two months' suspension without pay.
- [15] Aggrieved by the disciplinary outcome (sanction), the Applicant approached the court, seeking to review and set aside the decision described above that was issued on 25 March 2022.

Grounds for review

[16] The Applicant contends that the First Respondent was alive to the fact that the Second Respondent committed serious misconduct that destroyed the relationship between the parties.

[17] It was also argued that the Second Respondent owed the Applicant a duty of good faith and that the employment relationship was founded on trust. Additionally, it was clear that the Second Respondent's actions were premeditated, and there was no evidence indicating he lacked criminal capacity.

[18] The Applicant argued that there was no rational link between the reasons given by the First Respondent and the actual sanction, claiming that the decision was unreasonable and that no reasonable decision-maker would have reached the same conclusion.

Test on review

[19] Section 158 (1)(h) of the LRA determines that the court may review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law.

[20] The actions of the State, acting as employer during disciplinary hearings, constitute administrative action that must be lawful, reasonable, and procedurally fair. In the event that the conduct or decision was unreasonable, that action can be reviewed and set aside ².

[21] It is trite that the State, as an employer, may approach the court in terms of section 158 (1)(h) of the LRA in instances where a disciplinary outcome is

² MEC for Finance: Kwazulu-Natal and Another v Dorkin NO and Another (2008) 6 BLLR 540 (LAC)

irregular or unreasonable.³ It is furthermore clear that an organ of state may review itself and cannot unilaterally repudiate its own decision.⁴

[22] The court has, in the past, also announced that the State as employer has the right to approach the court to review a decision that is not rational and reasonable and that the court may interfere with the sanction that was imposed.⁵

[23] The court is therefore entitled to consider the current application and needs to determine whether the decision of the First Respondent was reasonable.

Analysis and evaluation of review grounds

[24] The Second Respondent admitted to serious misconduct. When he entered the shop, he had every intention of committing theft, and his actions were premeditated. The court was presented with a psychiatrist's report that noted that the Second Respondent suffered from bipolar disorder and suggested that he was likely simply absent-minded. The report is dated 15 February 2022, but the Second Respondent admitted guilt on 25 March 2022 and accepted that he was guilty of serious misconduct, which involved dishonesty.

[25] Moreover, the Second Respondent did not oppose the application and presented no opposing view.

[26] In *Harri supra* the court considered a matter where a police official stole darts from a retail shop. The chairperson issued a suspension and a fine, and the employer approached the court in terms of section 158 (1)(h) of the LRA. The court concluded that the employee's misconduct was serious and a breach of the

³ *Ntshangase v MEC for Finance: KZN and Another* (2009) 30 ILJ 2653 (SCA)

⁴ *SARS v CCMA and Others* (2016) 37 ILJ 655 (LAC)

⁵ *National Commissioner of Police and Another v Harri (Harri) N.O and Others* (2011) 32 ILJ 1175 (LC)

duty of every police officer to respect and uphold the law at all times. The court was subsequently satisfied that the acts of dishonesty and the employee's attempt to remove himself from the situation justified a finding that the outcome was not reasonable.

[27] In *ABB Powertech Transformers (Pty) Ltd v Centre for Dispute Resolution, Metal & Engineering Industries Bargaining Council & others*⁶ the court held that a commissioner erred by overemphasizing a long clean disciplinary record in cases of dishonesty.

[28] In the *National Commissioner of the SA Police Service and Another v Mphalele and Another*⁷ the Labour Appeal Court found that it would be appropriate to interfere with a disciplinary sanction when the employment relationship breaks down, especially if an employee in a position of trust commits an act of dishonesty. It was also held that the conduct of any police officer should reflect high standards of integrity, good faith, and honesty. Any failure to do so would result in a loss of confidence in the police service.

[29] South Africa is no stranger to serious misconduct by police officers. Allegations of theft, fraud, and corruption are widespread, which clearly undermine public confidence in our police services. There is a large public outcry against these types of misconduct and a call for clean governance.

[30] It is deemed necessary to reiterate that the Respondents did not oppose the application. The Respondents have therefore deemed it unnecessary to take the court into their trust and to present any opposing views, evidence or facts. This does obviously not mean that the application ought to succeed automatically, but

⁶ (2007) 28ILJ 1232 (LC)

⁷ (2019) 40 ILJ 806 (LAC)

the court has not been favoured with any arguments why the First Respondent's decision should stand.

[31] In her ruling, the First Respondent determined that the Second Respondent had a duty of good faith, which was an implied term of his employment contract. She also concluded that the Second Respondent's actions were premeditated and that he was aware of what he was doing, contrary to the psychiatrist's report.

[32] The only reason for not dismissing the Second Respondent that could be gathered from her written reasons was that "the employee pleaded guilty and did not waste the employer's time".

[33] The Second Respondent submitted other mitigating factors to her, such as his length of service and his clean disciplinary record. There is, however, no mention of this in the reasons provided by the First Respondent, and it is unclear whether they were considered. The court has nevertheless taken notice of the factors presented by the Second Respondent.

[34] The Second Respondent has not provided any reason why the mitigating factors outweigh the aggravating factors or whether the aggravating factors were even considered. There is also no indication of why she failed to consider the seriousness of the offence after her finding that the misconduct was, in fact, serious and premeditated.

[35] There is clearly no consideration of prevailing case law dealing with theft, specifically when theft is committed by police officials.

[36] The First Respondent failed to consider vital evidence related to the gravity of the offence and the trust relationship. Her conclusion regarding the sanction appears to contradict the facts and evidence and is unreasonable. Any

reasonable decision-maker would have concluded that suspension without pay was too lenient and that dismissal was appropriate.

[37] As mentioned, the court was not privy to any argument that the sanction that was imposed was reasonable.

[38] The court reviewed and set aside the sanction and found that it had sufficient evidence on the record to substitute the finding of the First Respondent. The sanction of suspension was not reasonable and is therefore replaced by an order that the employment of the Second Respondent could be terminated with immediate effect.

[39] This court makes the following order:

Order:

1. The application for review is granted and the First Respondent's decision dated 25 March 2022 is set aside.
2. The decision of the First Respondent is substituted with a decision that the Applicant may terminate the Second Respondent's employment with immediate effect.
3. No order as to costs is made.



VENTER AJ

ACTING JUDGE OF THE LABOUR COURT

APPEARANCES

For the Applicant: Mr Dyalivane: Office of the State Attorneys

For the Respondents: No appearance

LABOUR COURT