



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

Of interest to other judges/not reportable

**Case no: JR 1558/2022**

In the matter between:

**GIBELA RAIL TRANSPORT CONSORTIUM RF  
PTY (LTD)**

**Applicant**

and

**NUMSA obo WILLIAM DUBE**

**First Respondent**

**COMMISSIONER MAPALA TSATSIMPE**

**Second Respondent**

**METAL AND ENGINEERING INDUSTRIES  
BARGAINING COUNCIL**

**Third Respondent**

**Heard:** 25 October 2024

**Delivered:** 28 July 2025

**Summary:** (Review –Dismissal – unauthorised use of transport and providing false or misleading information - Applicant pleading grounds of review only in relation to one charge and sanction – Even if review of findings on second charge could be considered, award not one that no reasonable arbitrator could arrive at, save for failure to impose a final written warning – award upheld but amended to include final written warning)

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## JUDGMENT

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### LAGRANGE, J

#### Nature of the application

- [1] This is an application to review an arbitration award in which the arbitrator found that the dismissal of the first respondent, Mr W Dube ('Dube'), by the applicant, Gibela Rail Transport Consortium ('Gibela') was substantively unfair and reinstated him with retrospective effect to the date of his dismissal.

#### Brief synopsis

- [2] Dube had been dismissed for misconduct after admitting guilt to a charge of unauthorized use of a company vehicle [charge 1] and being found guilty of falsifying or providing misleading information about the time of a hijacking incident during which the company vehicle was stolen. Both charges stemmed from the same incident. The arbitrator held that Dube should have been issued with a final written warning for the charge of unauthorized use of a vehicle and found him not guilty of the charge of providing false or misleading information. However, for reasons mentioned later in the judgment he decided not to impose a final written warning for this misconduct when he reinstated Dube.
- [3] Gibela was a warehouse supervisor who had been employed by Gibela since 2017. He had been given permission to use a company vehicle to attend training on 25 May 2021 at Riverside Lake near Nigel, but he had not asked for permission to take it home.
- [4] When he arrived at his home in Soshanguve, he was accosted by two armed men at his front gate who ordered him out of the vehicle and to hand over his car keys and cell phone. They then instructed him to lie face down on the ground, where after they drove off with the vehicle.

- [5] He walked to Soshanguve police station from his house and reported the incident. The vehicle had a tracking device and was recovered the following day.
- [6] The second charge, which he disputed, was that he had given false or misleading information about the time when the incident took place. This is dealt with in greater detail below.

#### The arbitrator's award

- [7] The arbitrator decided that Dube's dismissal was substantively unfair because he was not guilty of the second charge and the first charge which he admitted on the warranted a final written warning according to the employer's disciplinary code.
- [8] The second charge read: *"false or misleading statement, report of evidence: In that you reported that you were hijacked at 19H20 at your house in Soshanguve while parked outside waiting for the gates to open. In your statement to the police you reported that you were approached by two African males at about 20H43 who pointed you with guns and took the car keys and your cell phone. Furthermore in your statement to the company security you reported that you were hijacked at 18:00 when two suspects with firearms approached you and instructed you to hand the keys to the company vehicle"* (sic). The thrust of the charge was that he had been dishonest and there was a suggestion made during his cross-examination that he had been involved in the hijacking, but he was never accused of this, and there was no evidence led to explain why such a belief might have been held.
- [9] Mr. K Letsie ('Letsie'), the site manager, testified that the vehicle tracking report showed that the vehicle was stationary for about two minutes in the street where Dube lived at around 20H00. By contrast, a security incident report compiled by a third party (Alstom) stated that the incident took place at approximately 18H00 and that he had reported the case at the police station at 20H00. In his sworn statement to the police, it was stated that he was approached by the hijackers at about 20H43.

- [10] The security incident reports, which was completed after the vehicle was recovered was not signed by Dube and Letsie could not prove that the information about the time of the incident or reporting it to the police station had been given to the security firm by Dube. Dube denied that he had ever spoken to the security firm about the incident. During his cross-examination it was also pointed out to Letsie that the stamp of the policeman who took the statement from Dube that evening indicates that the statement was completed at 21H00, which was at odds with the recorded time of the incident, namely 20H43, because it would have meant he walked to the police station, waited to be attended to and yet had completed his statement in slightly more than quarter of an hour., which was recorded in his statement. He admitted that he read the statement by the police before he signed it, but at the time he did not pick up the time issue because he was still in a state of shock. He said that it took about 20 minutes to walk to the police station from his house and that after arriving he had to wait his turn to be served before making the statement. At the time his phone had been stolen, and he did not have a watch with him.
- [11] The next day, at the request of his line manager, he filled in what appears to have been an incident report. He reported that the time of the incident was 19H15 to 19h40. Dube recalled that he had heard the 7 o'clock news on the radio before he got home that evening, so it was sometime after that when he got home. In a brief written statement he made to the company on 17 June 2021, some three weeks after the incident, he stated that he had been hijacked at about 19H20. This was the alleged false representation referred to in the charge.
- [12] He had left his personal vehicle at the workplace in Wolmerton, situated north of Pretoria. He testified that on previous occasions asked if he could take the vehicle home, but on this occasion have not done so because he thought the training would end early, sot he would have returned it to the depot and driven home in his own vehicle. He testified that he had left the training venue in Nigel at around 17H00. Although he should have returned the company vehicle to the workplace, but he decided to drive



vehicle home instead because it was late and he was exhausted. He readily conceded that he was wrong and was not seeking to excuse his non-compliance with the rule.

- [13] The arbitrator considered the documentary evidence, namely the vehicle tracking reports, Dube's statements to the police and to the employer and the Alstom security report, which all indicated discrepancies about the time the event occurred. He analysed Dube's explanation for the discrepancies. He noted that Dube had never spoken to the authors of the Alstom report and had no idea how they got the information about the times of the incident recorded in the report and that he was in a traumatised state when he read and signed the affidavit at the police station. In his evidence he maintained that the incident had happened sometime around 19h00.
- [14] The arbitrator noted Dube's account of what transpired and turned his attention to the documentary evidence relied on by the employer. In relation to the time of the incident stated in its affidavit to the police, namely 20H43, the arbitrator accepted that even though she should have read it and picked up the mistake, his state of mind at the time meant he was not thinking right. He accepted Dube's evidence that anyone who had been in a similar situation would understand how traumatized one can be. In the absence of confirmation from the policeman took the statement, the truth about what Dube said could not be known.
- [15] In relation to the statement he made on 17 June, in which he states it that the incident took place around 19h20 (the arbitrator mistakenly wrote that the time recorded was 19h00), the arbitrator accepted that Dube could not give a specific time when it took place because he did not check the time and he explained why he thought it happened around 19H00.
- [16] In relation to the information from the tracking record, the arbitrator focused on the first part of the evidence led which traversed his movement earlier in the day when he had left for the training. He did not deal with the other evidence led by the employer of the checker record around 20h00.

- [17] The arbitrator also accepted the reason given by Dube why he did not report the incident to the employer the same evening namely, that all the contact details were on his phone which had been stolen
- [18] The arbitrator concluded that under the employer's own policy Dube or to have been issued with a final written warning for unauthorized use of the vehicle but found that it would serve no purpose issuing it "*retrospectively*" when he had been unfairly dismissed.

#### Grounds of review

- [19] Gibela set out its grounds of review in the founding affidavit and did not supplement these.
- [20] Firstly, it contends that the arbitrator misconstrued the disciplinary procedure in concluding that the sanction recommended unauthorized use of a vehicle was a final written warning when in fact it was a dismissal.
- [21] Secondly, given that Dube was a manager, which required a good trust relationship between him and Gibela and that his actions had impacted on the morale of staff destroying the trust relationship and the working relationship irretrievably.
- [22] It argued that the arbitrator's conclusion, bearing in mind the evidence about the company's policy and procedure, meant that there was no rational connection between the arbitrator's conclusion and the relief which she granted.

#### Evaluation

##### *Introduction*

- [23] In essence, the only grounds of review pleaded by Gibela relates to the arbitrator's finding about whether the sanction of a final written warning was appropriate for the first charge, and whether the arbitrator ignored evidence indicating that the employment relationship was irreparable. However, when it came to heads of argument submitted by Gibela, it attempted to add an additional ground of review by attacking the arbitrator's finding on the second charge.

- [24] It is well established that an applicant in review proceedings must set out its grounds of review in the founding papers, namely the founding and supplementary affidavits. Not only must the grounds of review be pleaded with sufficient particularity in the founding papers, but it is not permissible to simply advance additional grounds when the matter comes to be argued<sup>1</sup>.
- [25] Contrary to these well-established principles, Gibela improperly sought to introduce a completely fresh ground of review in argument, which was not pleaded in the founding papers. As such, the ground of review relating to the second charge was not part of the pleaded case, and does not warrant consideration by the court. Nonetheless, I am of the view that even if it had been pleaded it would not warrant setting aside the award, as discussed later.

*Pleaded ground of review*

- [26] When it comes to attempting to review an arbitration award based whether the arbitrator reached a conclusion no reasonable arbitrator could reach, the steps the court must follow may be summarised as follows. Firstly one must ask if the error is a material one. An error is material if .
- [27] The arbitrator plainly erred in finding that the disciplinary code recommended a final written warning for using a vehicle without authorisation. In the code, the misconduct of unauthorised use, possession or removal of property and is included in the category of dishonest misconduct. Clearly, the arbitrator's misconception of the code's recommended sanction had a decisive impact on her decision that

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<sup>1</sup> See the Constitutional Court in *Commercial Workers Union of SA v Tao Ying Metal Industries and Others* (2008) 29 ILJ 2461 (CC) at para 67; *Comtech (Pty) Ltd v Molony NO and Others* (DA12/05) [2007] ZALAC 40 (21 December 2007) at paragraph 4; *Moraka v National Bargaining Council for the Chemical Industry and others* (2011) 32 ILJ 667 (LC) at paras 21 – 23; *Northam Platinum Ltd v Fganyago NO and others* (2010) 31 ILJ 713 (LC) at para 27, and *Bafokeng Rasimone Platinum Mine (Pty) Ltd v CCMA and Others* (2015) 36 ILJ 3045 (LC) at paragraph 5;

dismissal was not an appropriate sanction. However, that is not the end of the enquiry. In *Head of Department of Education v Mofokeng & Others*<sup>2</sup>(2015) 36 ILJ 2802 (LAC), the Labour Appeal Court stated:

*“[32] ... Mere errors of fact or law may not be enough to vitiate the award. Something more is required. To repeat: 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. Lapses in lawfulness, latent or patent irregularities and instances of dialectical unreasonableness should be of such an order (singularly or cumulatively) as to result in a misconceived enquiry or a decision which no reasonable decision maker could reach on all the material A that was before him or her.*

*[33] Irregularities or errors in relation to the facts or issues, therefore, may or may not produce an unreasonable outcome or provide a compelling indication that the arbitrator misconceived the enquiry. In the final analysis, it will depend on the materiality of the error or irregularity and its relation to the result. Whether the irregularity or error is material must be assessed and determined with reference to the distorting effect it may or may not have had upon the arbitrator's conception of the enquiry, the delimitation of the issues to be determined and the ultimate outcome. If but for an error or irregularity a different outcome would have resulted, it will ex hypothesi be material to the determination of the dispute.*

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<sup>2</sup> (2015) 36 ILJ 2802 (LAC)



*A material error of this order would point to at least a prima facie unreasonable result.*

(emphasis added, footnotes omitted)

[28] Thus, a court must still enquire if the result the arbitrator arrived at based on faulty reasoning, can still be plausibly sustained, if the error was not made. Applying the test to this case, the question is, if the arbitrator had realised that the code actually recommended dismissal as a sanction for unauthorised use of the vehicle, would she have been compelled to conclude that the dismissal was fair?

[29] In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*<sup>3</sup> the Constitutional Court made it clear that it is the task of the arbitrator to determine if an employer's decision to dismiss an employee was fair and in doing so, there are a number of factors an arbitrator should take account of, namely:

*"[78] ... 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.*

*[79] To sum up. In terms of the LRA, a commissioner has to determine whether a dismissal is fair or not. A commissioner is not given the power to consider afresh what he or she would do, but simply to decide whether*

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<sup>3</sup> [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC) ; (2007) 28 ILJ 2405 (CC)

*what the employer did was fair. In arriving at a decision a commissioner is not required to defer to the decision of the employer. What is required is that he or she must consider all relevant circumstances.”*

In *Duncanmec (Pty) Limited v Gaylard NO and Others*<sup>4</sup> the same court made it clear that not even the specific factors mentioned above, will always be relevant.

- [30] An arbitrator is also required by s 188(2) of the Labour Relations Act, 66 of 1995 ('the LRA') to take account of relevant codes of good practice in determining if a dismissal was for a fair reason. The relevant code in this instance is Schedule 8 to the LRA<sup>5</sup>, which sets out basic principles for determining the substantive and procedural fairness of dismissals. The most pertinent provisions of the code for present purposes are items 3(4) and (5), viz:

*Dismissals for misconduct*

*(4) Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the property of the employer, wilful endangering of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements of section 188.*

*(5) When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of*

<sup>4</sup> [2018] 12 BLLR 1137 (CC); 2018 (6) SA 335 (CC); (2018) 39 ILJ 2633 (CC) at paragraph 46.

<sup>5</sup> Code of Good Practice: Dismissal

*the misconduct consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself."*

[31] In this instance there was not a great deal of evidentiary material presented on the appropriateness of the sanction. The employer appeared to have assumed that the mere fact its code recommended dismissal as a sanction for unauthorised use of a vehicle sufficed to justify its decision to dismiss Dube was fair. Gibela also argued that it could no longer trust Dube and, as a manager, he was supposed to be an example to others, which made his misconduct more serious. As a matter of record, he was not actually a manager but a warehouse supervisor. No direct evidence of a loss of trust in Dube was led. On the contrary, his own line manager, the site manager Mr K Letsie ('Letsie') could not explain why the employer had decided the employment relationship had become intolerable and testified that he regarded Dube as one of the good workers and he had no issue with him at all. Dube made no attempt to dispute the charge and admitted he was guilty and should not have driven the vehicle home. There was also no evidence that Dube had any prior disciplinary record. It is clear he did know he should have got permission to take the car home, though his uncontradicted evidence was that he had previously been allowed to when he had asked for permission. He had also explained that he had intended to return the vehicle that day because he thought the training would end early, but as it happened it only ended at 17h00 and he was tired by the time he got to Soshanguve having driven from Nigel. His personal use of the vehicle only related to the last leg of his journey.

[32] The arbitrator did not deal with these allegations because she misdirected her enquiry on the first charge on the assumption that Gibela could not justify his dismissal because she erroneously thought the sanction of dismissal was more severe than the recommended sanction for unauthorised use of a vehicle. Having reached that conclusion she



focussed on the second charge. Consequently, her own reasoning is of little help.

- [33] Nevertheless, it must still be determined if no reasonable arbitrator could have found that Dube should not have been dismissed on account of being guilty of the first charge, in light of the factors identified above. It is trite law that it is not necessary for an employer to lead evidence of a breakdown in the employment relationship if it is self-evident from the nature of the misconduct that it must have been irreparably damaged. In *Woolworths (Pty) Ltd v Mabija & others*<sup>6</sup>, the LAC held that:

*“The fact that the employer did not lead evidence as to the breakdown of the trust relationship does not necessarily mean that the conduct of the employee, regardless of its obvious gross seriousness or dishonesty, cannot be visited with a dismissal without any evidence as to the impact of the misconduct. In some cases, the more outstandingly bad conduct of an employee would warrant an inference that the trust relationship has been destroyed. It is however always better if such evidence is led by people who are in a position to testify to such breakdown. Even if the relationship of trust is breached, it would be but one of the factors that should be weighed with others in order to determine whether the sanction of dismissal was fair.”*<sup>7</sup>

In this case, it is not self-evident that Dube’s failure to obtain authorisation for taking the vehicle home was the type of misconduct warranting dismissal for a first offence. There are cases of employees dismissed for this type of offence<sup>8</sup>, but I have not been able to find any in which it was

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<sup>6</sup> (2016) 37 ILJ 1380 (LAC )

<sup>7</sup> At paragraph 21.

<sup>8</sup> Examples of dismissal for similar misconduct are: *Nemukhovhani v General Public Service Sector Bargaining Council and Others* (JR80/2021) [2023] ZALCJHB 88 (23 March 2023) in which the employee was dismissed after being found guilty of unauthorised use of a vehicle on 14 occasions over a few months, a sanction the Labour Court upheld on review; *Sanparks v Commission for Conciliation Mediation and Arbitration and Others* (C 918/11) [2013] ZALCCT 23 (24 July 2013) in which the employee disobeyed instructions not to use the employer’s



presumed that unauthorised use of a vehicle was conduct, which by its inherent nature was so serious, that it warranted dismissal in the absence of a prior warning. In all instances, the outcome turned on the specific circumstances of the misconduct in question.

- [34] Weighing up the material available to determine if no reasonable arbitrator could have reached the decision that Dube ought to have been dismissed on account of being guilty of the first charge, there is insufficient material to establish that the employment relationship was irreparably ruptured by this misconduct and that his dismissal was fair. That said, it still does not mean that the arbitrator's reasoning in not imposing a final written warning was capable of being justified because of her confused belief that it entailed some impermissible retrospectivity. Her reasoning and failure to impose a final written warning was not a conclusion that can be justified on any basis.

#### *Unpleaded grounds*

- [35] Although it is strictly unnecessary to deal with the ground of review, which Gibela only first raised in argument, even if I am wrong in relation to whether the arbitrator's finding on the fairness of the sanction in relation to the first charge can stand, I am also not persuaded that it was untenable for her to conclude that Dube was not guilty of the charge of providing false or misleading information.
- [36] It is true that on the documentary evidence there were instances of various times recorded about when the hijacking took place. The employer interpreted these discrepancies as clear evidence of Dube's dishonesty. It is also the case that the arbitrator's account of that evidence is inaccurate in some respects. For example, as mentioned above, she inaccurately records that his statement of 17 June indicated that the hijacking took place at 19H00, whereas in fact the time recorded was 19H20. Similarly, her

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vehicles but did so on three occasions. The arbitrator's decision the dismissal was unfair was upheld on the basis that the arbitrator had considered relevant factors in arriving at his decision. See also *Maphai v South African Forestry SOC Ltd and Others* (JR 1021 / 19) [2022] ZALCJHB 293 (7 October 2022), a case in which the employee had used the employer's vehicle to travel 650 km without permission, disputed his guilt and was not contrite. The court dismissed the employee's attempt to review the award upholding his dismissal.

treatment of the tracking record evidence was incomplete. It can certainly be argued that the arbitrator's findings were not properly justified by her own reasoning.

- [37] Nevertheless, if all the evidence is considered holistically, I am not persuaded that no reasonable arbitrator could come to the same conclusion on the evidence before the arbitrator in this case. Firstly, there is no dispute that Dube left the training venue around 17H00 on 25 May 2021. There was also no dispute that he remembered listening to the news at 19H00 before he had arrived home. It is not entirely clear from his evidence how long it was after hearing the news that he arrived home. However, in both his statement on 17 June to the employer, and his reports to his line manager the following day, he referred to the incident either taking place between 19h15 and 19h40, or at 19H20, which are reasonably similar time periods.
- [38] Further, the times recorded in the security company report, for which there was no evidence he had provided those times, were plainly wrong. One of the misrepresentations he was accused of making was that it was recorded in that report that the incident took place at 18h00. However, that would have meant he had travelled from Nigel on the far East Rand, to Soshanguve, situated northeast of Pretoria, which is a very considerable distance, and done so in the space of one hour on a weekday at a time when traffic would normally have been busy. It is inconceivable that he would have made a statement that he was in Soshanguve a mere hour after he left the training in Nigel. In the absence of any independent testimony corroborating that he reported arriving at that time, it was perfectly plausible for the arbitrator not to attribute the time of 18h00 in the security firm's report to Dube as a time of the hijacking which he had reported to its staff.
- [39] The evidence that the hijacking occurred sometime after 19H00 is far more consistent with the distance he had to travel from the time he left the training in Nigel at 17H00. At around 18h00 the tracker records also showed he had only got as far as Kempton Park.

- [40] There still remains an inconsistency between what was reported in the statement he made to police in which the hijacking is identified as having taken place at 20h43 and the statements mentioned above, in which he had described the hijacking as occurring sometime in an interval of approximately 20 minutes after 19h20.
- [41] Firstly, it is necessary to look at the difficulties with the affidavit signed the police station. It was not disputed that the time recorded by the policeman at the conclusion of taking down his statement, was 21H00. It was also not disputed that Dube said that it had taken him about twenty minutes to walk to the police station. He could never have completed having his statement taken by 21H00 if he was hijacked at 20H43, less than 20 minutes before that, bearing in mind his undisputed evidence of the time he took to walk to the police station after the incident took place. In addition to the time it took him to get to the police station, he also mentioned that he had to wait to be served and the act of taking his statement would have extended the time further. The time of 20h43 recorded in the statement would have plainly been wrong at the time at the time it was taken. Dube testified that he was not in a normal frame of mind at the time, which is understandable. Under the circumstances is not unreasonable to infer that he did not scrutinize the time very carefully and overlooked the obvious error. It must also be remembered he had no watch or phone at that stage. If he had in fact told the policeman that it happened at around 7.43 pm and the policeman incorrectly converted that time to 20H43 instead of 19h43, that might explain the discrepancy.
- [42] In any event, whatever the explanation might be for the time recorded, it is quite plausible that it could have taken at least an hour between the time of the hijacking and the completion of the affidavit. How long he waited before his statement was taken is not clear from the evidence. Even if the hijacking occurred around 19h00 and not 19h20, it is not inherently implausible that his statement was only completed around 21h00 as reflected on the police official's stamp. If it took place around 20h00, as Letsie implied, that would also not be inconsistent with the time when the statement was finalised.



- [43] Aside from Letsie pointing out that the vehicle was briefly stationary in the street where Dube lived at around 20h00, the tracking records were not referred to again in the employer's evidence. When Dube testified, it was put to him that he was already in Soshanguve at a time when he claimed he was still at the training, according to the security firm report. However, this proposition rested on incorrectly referring him to the tracking entry at five o'clock on the morning of 25 May, not five o'clock that afternoon. The tracking evidence referred to by Letsie does cast doubt on whether the hijacking took place between 19h20 and 19h40 because it indicates the vehicle was stationary at around 20h00, which is at odds with Dube's statements it took place by about 19h40.
- [44] Consequently, there are discrepancies in the evidence of the sequence of events that evening. The time of the incident in the police statement simply does not make sense given the time the statement was completed. It seems very improbable Dube could have given the police officer the precise time recorded there, given he had neither a watch nor phone. Moreover, it is difficult to understand how he could consciously have told the officer the hijacking happened less than 20 minutes before the statement was complete. Likewise, for the reasons mentioned above, it is very improbable he would have told the security firm that he got home by 18h00. In regard to that there was no evidence to contradict Dube that he never spoke to the security personnel himself. That leaves the other statements he made to the company which are largely consistent with each other and not incompatible with the time he gave his statement at the police station. Dube's more consistent estimate of when the incident happened, namely sometime between 19h15 and 19h40 puts it at least 20 minutes earlier than the tracking evidence suggests. The tracking evidence is not inconsistent with Dube's account of when his statement to police was concluded.
- [45] However, none of the evidence reveals a conscious attempt to deceive and is not inconsistent with his explanation that he was in a state of shock and unable to refer to his phone or watch at the time. Even if it occurred at 20h00, it is not untenable under the stressful circumstances that he



could have made a bona fide error in estimating that it occurred earlier. It was not untenable to conclude he was not consciously attempting to mislead or misrepresent the events of that evening.

[46] Considering the above, the arbitrator's conclusion that Dube was not guilty of the second charge is not one no reasonable arbitrator could have reached.

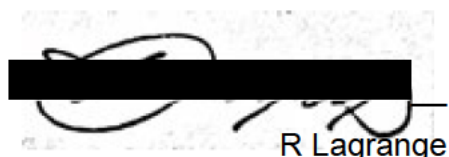
### Conclusion

[47] In light of the evaluation above, I am satisfied that the arbitrator's ultimate findings, notwithstanding her own poor reasoning, are not ones no reasonable arbitrator could have reached, bar her failure to impose a final written warning.

[48] On the question of costs, there are no reasons to depart from the normal approach of each party paying their own costs in this case.

### Order

1. The Second Respondent's arbitration award dated 29 May 2021 issued under case number MEGA 57995 is upheld, save that the arbitrator's reasons for not imposing a final written for unauthorised use of a vehicle and her failure to impose such a sanction are reviewed and set aside
2. Accordingly, the said award is amended to include paragraph 42 as follows:  
"42. On the Applicant's return to work, he must be issued with a final written warning for unauthorised use of a vehicle, valid for twelve months from the date it is issued."
3. No order is made as to costs.



R Lagrange

Judge of the Labour Court of South Africa.

**Appearances:**

For the Applicant:

M Tema from Seleka Attorneys Inc.

For the First Respondent:

X Ngako from Ngako Attorneys Inc.

LABOUR COURT