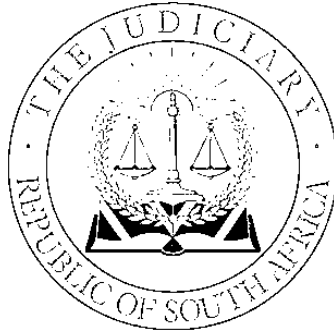




THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR 2143/15

In the matter between:

WILLEM ANDRIES HAMAN

Applicant

and

**KEMPTON MOTOR GROUP TRUST
T/A PUGEOT EDENVALE**

First Respondent

**MOTOR INDUSTRY BARGAINING COUNCIL
(DRC – RANDBURG)**

Second Respondent

COMMISSIONER T PHALANE N.O.

Third Respondent

Heard: 20 June 2025

Delivered: 30 July 2025

JUDGMENT

LENNOX, AJ

Introduction

[1] This is an opposed review application. Despite having filed a notice of intention to oppose in 2018, which caused the postponement of the matter on 28 August 2018, the First Respondent took no further steps to oppose the matter.

[2] For reasons which are not apparent, the matter was not set down for approximately seven years thereafter, a situation which the Court regrets.

[3] The matter proceeded on 20 June 2025 in the absence of any representative of the First Respondent.

The factual background

[4] The Applicant was employed by the First Respondent until his dismissal on 20 March 2015. The charges were as follows:

- '1) Gross negligence in that you failed to ensure that your staff completed Peugeot on line training for the period ending 28 February 2015.
- 2) Gross insubordination in that you refuse to comply with legitimate instruction from your supervisor Sharon Koekemoer on 27 February 2015 to have an employee from Peugeot Edenvale present at the stock take with auditors at the Randburg branch on 27/3/2015.
- 3) Gross insubordination in that you blatantly refuse to comply with instructions from the CEO Edward Cotterell and the Dealer Principal of Peugeot Edenvale, Joe Lopez on 03/03/2015 to take possession of stock bins and keys for Randburg.'

[5] Dissatisfied with his dismissal, the Applicant referred a dispute to the Second Respondent seeking reinstatement. The Third Respondent was appointed to arbitrate the dispute and found that the dismissal was substantively fair but procedurally unfair. The Applicant was awarded compensation in the amount of R27 000.00, being a single month's salary.

[6] During the arbitration proceedings, the First Respondent was represented by a Mr Bruyns. His *locus standi* to represent the First Respondent was challenged by the Applicant. He was permitted to represent the First Respondent as an employment contract was produced.

The grounds of review

[7] The Applicant relies on three grounds of review, namely:

He was denied the chance to lead evidence that Mr Bruyns was not employed by the First Respondent

[8] The record does not support this ground of review.

[9] The record shows that an objection to the participation of Mr Bruyns was raised by the Applicant. The Third Respondent observed as follows:

‘Mr Haman has objected to Mr Bruyns representing on the basis that he has no locus standi to be present at this hearing. Mr Bruyns has subsequently presented a copy of his payslip, letter of appointment and contract of employment, showing that he was employed as HR Manager as of the 1st of November 2014...’

[10] Mr Bruyn’s *locus standi* was then again challenged by the Applicant. The Commissioner then responded as follows:

‘All that matters to me at the moment is if he is currently employed.’

[11] There appears to be nothing untoward in the observation of the Third Respondent. Indeed, the record shows that the Applicant was challenging the date on which Mr Bruyns was employed, and not necessarily that he was then employed.

The Second Respondent failed to explain the arbitration process to him

[12] The record does not support this ground of review.

[13] The Third Respondent explained the process as follows:

‘We start the arbitration itself Mr Bruyns is going to lead evidence, the onus is on the respondent, they have got a respondent who start the case. So the first witness they are going to lead is Ms Loekemoer, she is going to give evidence on why you were charged and why you were found guilty, right. You will then be given the opportunity to cross-examine her. Thereafter he is going to lead the remaining two witnesses, the same procedure applies, you will cross examine them. Once the respondent has closed its case you will then give me your full evidence.’

And

‘Right, so that only happens once, because remember it is the onus on the employer to prove its case, not you.’

And

‘Alright. Thereafter Mr Bruyns will cross-examine you, at the end of it I will ask for closing arguments, which is basically in summary why I need to find in your respective favours and then you get my written to it thereafter. That is the manner in which the procedure is run, okay...’

[14] The explanation covers the basic procedure of the arbitration proceedings. At no stage did the Applicant ask questions relating to the procedure, and seemed to understand same. That aside, the right to re-examine witnesses was not explained to the parties by the Third Respondent. The specific complaint by the Applicant in the founding affidavit is that:

‘7.2.1 The Third Respondent failed to explain how the arbitration process worked.

7.2.2 This prejudiced me in that I did not (sic) I had to deal with each witness and that I would be unable to ask that witness questions again.

7.2.3 This will be apparent from the record when transcribed where the Third Respondent told me that I could not question My (sic) Bruyn again as I had my chance.’

[15] The record reflects the following exchange between the Applicant and Third Respondent at the end of the cross-examination of Mr Bruyns:

MR HAMAN: Well I am just saying that it has been done. Yes, okay. Okay yes. Yes. Yes, that is it for me.

COMMISSIONER: No other questions?

MR HAMAN: No other questions.'

[16] The record does not support the suggestion that the Applicant was prejudiced. He was advised of the procedure and confirmed that he had no further questions to ask.

[17] There is no basis to intervene in the arbitration proceedings.

The Second Respondent failed to take into account facts which resulted in an incorrect conclusion being arrived at

[18] Having considered this ground of review, and the aspects raised in the supplementary affidavit, the Court is of the view that there is nothing which indicates that the Third Respondent did not consider the facts before her or that she arrived at a conclusion in terms of the merits of the charges which warrants the interference of the Court.

[19] The test for a review has been set in *Sidumo and another v Rustenburg Platinum Mines Ltd and others*¹, the test for review was stated as follows:

'To summarise, *Carephone* held that section 145 of the LRA was suffused by the then constitutional standard that the outcome of an administrative decision should be justifiable in relation to the reasons given for it. The better approach is that s 145 is now suffused by the constitutional standard of reasonableness. That standard is the one explained in *Bato Star*: Is the decision reached by the commissioner one that a reasonable decision-maker could not reach? Applying it will give effect not only to the constitutional right to fair labour practices, but also to the right to administrative action which is lawful, reasonable and procedurally fair.'

¹ (2007) 28 ILJ 2405 (CC) at para 110.

[20] In *Herholdt v Nedbank Ltd (Congress of South African Trade Unions (amicus curiae))*², the test for a review was defined as follows for a review falling within one of the grounds in section 145(2)(a) of the LRA:

‘For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by section 145(2)(a)(ii), the arbitrator must have misconceived the nature of the enquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable.’⁴

[21] The only issue which concerned the Court was the issue of the consistent application of discipline. The Applicant was able to show on a *prima facie* basis that there was an inconsistent approach to discipline by the First Respondent in respect of the first two charges of which he was found guilty. The Third Respondent dealt with the issue of a dismissal as follows:

‘The Applicant was defiant in refusing to accept a lawful instruction from his superior relating to his job function and it is clear that his actions had the effect of delaying the finalisation of the year-end stock count. This behavior cannot be condoned as it threatens the heart of the employment relationship. I am therefore satisfied that the Applicant’s actions have damaged the trust relationship beyond repair. Dismissal is the appropriate sanction for charge three.’

[22] Having reasoned the appropriateness of the sanction as she did, the finding of the Third Respondent is unassailable.

Mr Bruyns indicated to witnesses how they should answer questions

[23] The Court found the following exchange in the record at the commencement of the evidence in chief of Mr Lopez:

² (2013) 34 ILJ 2795 (LAC).

MR HAMAN: Okay, can I just ask something else, I see every time he is asking me a question he is showing like this or this, Mr Dries Bruyns is showing me.

COMMISSIONER: Mr Bruyns, just to remind you, you are not allowed to influence the witness in any way.'

[24] There is other evidence which can be gleaned from the Record to support this ground of review.

[25] A review court is wholly reliant on the record in order to determine such a ground of review. The record will have to demonstrate either entirely leading questions or objections to nonverbal communications as reflected in the record.

[26] The present record does neither, and there is no basis to consider a review on this ground.

He was denied representation by a trade union

[27] There is no request in the record to show that an application was made to be represented by a trade union representative in the arbitration proceedings.

[28] A trade union representative in any event has an automatic right of audience before the Second Respondent.

[29] This issue seems to pertain to the disciplinary proceedings. As procedural fairness was decided in favour of the Applicant by the Third Respondent, there is no point in dealing with this further. It certainly had no bearing on the manner in which the proceedings were conducted by the Third Respondent.

He was denied legal representation

[30] There is no request in the record to show that an application was made to be represented by a legal practitioner in the arbitration proceedings.

[31] This issue also seems to pertain to the disciplinary proceedings. Again, as procedural fairness was decided in favour of the Applicant by the Third Respondent, there is no point in dealing with this further. It certainly had no bearing on the manner in which the proceedings were conducted by the Third Respondent.

The applicant was denied documents to prove his innocence

[32] There is no request in the record to show that an application was made for the production of documents during the arbitration proceedings.

[33] This is a further issue which seems to pertain to the disciplinary proceedings. Again, as procedural fairness was decided in favour of the Applicant by the Third Respondent, there is no point in dealing with this further. It certainly had no bearing on the manner in which the proceedings were conducted by the Third Respondent.

Conclusion

[34] The Court therefore find no grounds to interfere with the findings of the Third Respondent.

[35] In the result, this is a matter where it is prudent not to award costs.

[36] Consequently, the following order is made:

Order

1. The review application is dismissed.
2. There is no order as to costs.

M A Lennox

Acting Judge of the Labour Court of South Africa

Appearances

For the applicant: Adv E Coleman

Instructed by: Botha Coetzee Mapekula Attorneys

For the first respondent: No appearance

LABOUR COURT