



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR 2060/22

In the matter between:

NAMIBIA LOGISTICS

Applicant

and

MADUNA PEARL N.O.

First Respondent

**THE NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT AND LOGISTICS INDUSTRY**

Second Respondent

NCOYINI LOYISO

Third Respondent

Heard: 20 May 2025

Delivered: 19 August 2025

The judgment was handed down electronically by emailing a copy to the parties. The 19th of August 2025 is deemed to be the date of delivery of this judgment.

JUDGMENT

NAVSA, AJIntroduction

[1] The applicant (Namibia Logistics) seeks an order reviewing and setting aside an arbitration award issued on 12 August 2022 wherein the first respondent (arbitrator) found the third respondent's (Mr Ncoyini's) dismissal to be substantively unfair and ordered Namibia Logistics to compensate Mr Loyiso six months remuneration in the amount of R 80 400.00.

[2] Mr Ncoyini opposed the application.

Background

[3] Mr Ncoyini was employed by Namibia Logistics as a code 14 driver and was responsible for driving abnormal vehicles weighing approximately 34 tons.

[4] There are two cameras mounted on all of Namibia Logistics trucks. There is one inside each truck that records what happens inside the cabin of the truck, and another camera mounted outside on the front of each truck to record what transpires on the road on which each truck is travelling.

[5] Mr Ncoyini was on sick leave after an injury on duty and returned to work on 4 April 2022 with a medical certificate. The medical certificate stated that he could resume normal duties on 4 April 2022. Normal duties would have included driving a 34-ton truck.

[6] On 4 April 2022, while driving one of Namibia Logistics 34-ton trucks from Benoni to Khathu in the Northern Cape, Mr Ncoyini was involved in a collision with another truck just before 22:00.

[7] Mr Ncoyini was charged with misconduct in respect of the incident on 4 April 2022, namely for:

'1. Damage to Namibia Logistics (Pty) Ltd, Mellets Transport (Pty) Ltd, Gentex Associates (Pty) Ltd and/or Strategic Logistics Investments (Pty) Ltd property or property of other employees, which may include, but not limited to the following:

- Negligently causing damage to the property of the company or others as per point 4 of the Company Disciplinary Code of Conduct and/or
- 2. Conducting oneself in a manner that discredits the Company or brings the Company into disrepute on the company's premises and/or outside the working environment as per point 6 of the Company Disciplinary Code of Conduct and/or
- 3. Gross/Carelessness or negligence in conducting day to day work to the extent of causing damage to Namibia Logistics (Pty) Ltd, Mellets Transport (Pty) Ltd, Gentex Associates (Pty) Ltd and/or Strategic Logistics (Pty) Ltd as per point 8 of the Company Disciplinary Code of Conduct and/or
- 4. Acts in contravention of the law of the land as per point 17 of the Companies Disciplinary Code of Conduct and/or
- 5. Non-compliance with company and/or departmental standards and procedure which could lead to potential harm to the company as per point 25 of the Company Disciplinary Code of Conduct and/or
- 6. Breach of Trust in that his behaviour places the company and its stakeholders at risk and that your actions irreparably damaged the relationship between the company and yourself'

[8] The charges were allegedly evidenced in Mr Ncoyini's conduct on 4 April 2022, when he drove Namibia Logistics truck in the oncoming traffic lane, over solid double white barrier lines, overtaking one truck and attempting to overtake another truck that was indicating and turning right. This caused an accident and resulted in extensive damage to both trucks.

[9] Mr Ncoyini was further alleged to have failed to wear a seatbelt, with his reckless driving having endangered the lives of fellow road users and his behaviour having placed the company at risk.

[10] The charges, in sum, spoke to gross negligence, breaching traffic laws, and bringing the companies name into disrepute on the part of Mr Ncoyini, in relation to the collision, with reference to specific provisions of the Company Disciplinary Code of Conduct.

[11] On 11 April 2022 at his disciplinary hearing, Mr Ncoyini plead Not Guilty to Charges 1 to 4 but plead Guilty to Charges 5 and 6. The video footage of the collision, obtained from Namibia Logistics truck, played an important evidentiary role at Mr Ncoyini's disciplinary hearing.

[12] Mr Ncoyini was found Guilty of the remaining Charges (Charges 1 to 4) and given his plea of Guilty on Charges 5 and 6, meant that he was found Guilty on all of the 6 charges brought against him by Namibia Logistics.

[13] The chairperson of Mr Ncoyini's disciplinary hearing recommended his summary dismissal, and he was accordingly dismissed by Namibia Logistics on 19 April 2022.

[14] Mr Ncoyini referred an unfair dismissal dispute to the second respondent (NBCRFI), and the matter was arbitrated on 22 and 29 July 2022. The issue to be decided by the arbitrator was whether Mr Ncoyini's dismissal was substantively fair (procedural fairness was not placed in dispute).

The arbitrator's findings

[15] In the arbitration award the arbitrator understood the issue as being whether the applicant's dismissal was substantively fair, and, if not, the appropriate relief to be awarded.

[16] The arbitrator, in her analysis of the evidence and argument, placed much emphasis on the medical certificate and an alleged instruction by Namibia Logistics for Mr Ncoyini to drive the truck on 4 April 2022.

[17] The arbitrator recorded that before she could even entertain the charges, the question she had to pose to herself, was if Mr Ncoyini was fit to do the trip. The arbitrator found that Mr Ncoyini was not, and that Namibia Logistics was irresponsible and inconsiderate to expect Mr Ncoyini to carry out that kind of an instruction.

[18] It also appeared critical to the arbitrator's ultimate reasoning and finding that Namibia Logistics was not present when the accident occurred and that therefore their evidence was not probable.

[19] The arbitrator took issue with the only evidence relied upon by Namibia Logistics being the video footage that was played at arbitration. In the arbitrator's view it did not show Mr Ncoyini overtaking on a barrier line, and, even if Mr Ncoyini had done so it could have been due to the pain that he was experiencing.

[20] The arbitrator was ultimately of the opinion that Namibia Logistics failed to prove on a balance of probabilities that the dismissal was substantively fair and that compensation in the amount of R 80 400.00 (six months remuneration) would be appropriate relief.

Namibia Logistics review grounds

[21] Namibia Logistics seeks a review of the arbitration award dated 12 August 2022, in terms of section 145 of the Labour Relations Act¹ (the LRA) on the basis of the *Sidumo and another v Rustenburg Platinum Mines Ltd and others*² test.

[22] Namibia Logistics contends that the arbitrator was continuously distracted by her cellphone during the arbitration proceedings, including when material evidence such as the truck mounted video footage was played.

¹ No. 66 of 1995, as amended.

² (2008) 28 ILJ 2405 (CC); (2007) 28 ILJ 2405 (CC).

[23] Namibia Logistics further contends that the arbitrator did not appreciate the overall onus in unfair dismissal disputes and committed numerous factual and legal errors.

[24] Namibia Logistics also takes issue with the arbitrator's failure to consider the charges on which Mr Ncoyini was found guilty, and the arbitrator's overall evaluation and assessment of the evidence led at arbitration.

24.1 Namibia Logistics takes particular issue with the arbitrator's evaluation and assessment of the video footage, which it asserts is at odds with what is actually evidenced from such footage, being various acts of misconduct committed by Mr Ncoyini.

[25] Namibia Logistics lastly contends that the arbitrator, at the very least, misconceived the nature of the enquiry and/or arrived at a decision that no reasonable decision maker could have arrived at.

Relevant legal principles

[26] I have to deal with the grounds of review within the context of the test this Court must apply in deciding whether the arbitrator's decision is reviewable.

[27] *Sidumo*³ is the prevailing authority on when a decision of an arbitrator is reviewable in terms of section 145 of the LRA. Section 145 is now suffused by the constitutional standard of reasonableness with the question to be asked being: Is the decision reached by the Commissioner one that a reasonable decision maker could not reach?

[28] The Supreme Court of Appeal, Labour Appeal Court, and Labour Court, in its subsequent jurisprudence has clarified the review test.⁴

³ (2008) 28 ILJ 2405 (CC) at page 59, paragraph 110.

⁴ *Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)* (2013) 34 ILJ 2795 (SCA) page 2803 where the SCA clarified that a result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was placed before the arbitrator; See also *Gold Fields Mining SA (Pty) Ltd v CCMA* [2014] 1 BLLR 20 (LAC) at page 26 paragraph [20] which sets out

[29] The failure by an arbitrator to apply his or her mind to issues which are material to the determination of a case will usually be an irregularity, but before such an irregularity will result in the setting aside of the award, it must in addition reveal either a misconception of the true enquiry or result in an unreasonable outcome.⁵

[30] The Labour Appeal Court⁶ has emphasised that an arbitration award will be considered to be reasonable when there is a material connection between the evidence and the result. Conversely, an arbitration award will be deemed to be unreasonable if it is entirely disconnected from the evidence, unsupported by any evidence and involves speculation by the arbitrator.

Evaluation

[31] *Sidumo*⁷ reminds us that the LRA requires an arbitrator to determine whether a disputed dismissal was fair. First, the arbitrator has to determine whether or not misconduct was committed on which the employer's decision to dismiss was based. The next part or step in the process is that the fairness of the dismissal must be assessed.

[32] The arbitrator records in the arbitration award that before she could even entertain the charges the question she posed to herself was whether Mr Ncoyini was fit to do the trip.

the proper questions to be asked in terms of a review under section 145(2)(a)(i) and (ii) of the LRA; See also *Head of Department of Education v Mofokeng & Others* (2015) 36 ILJ 2802 (LAC) at paragraphs [30] to [33]; See also *Shoprite Checkers v Commission for Conciliation, Mediation and Arbitration & Others* [2015] 10 BLLR 1052 (LC) at paragraphs [9] and [10] which dealt with determining when a failure by a Commissioner to consider facts will be reviewable; See also *Democratic Nursing Organisation of SA on behalf of Du Toit & another v Western Cape Department of Health & Others* (2016) 37 ILJ 1819 (LAC) at paragraph [15]; See also *Makuleni v Standard Bank of South Africa* (2023) 44 ILJ 1005 (LAC) at paragraphs 2 and 3.

⁵ *Head of Department of Education v Mofokeng & Others* (2015) 36 ILJ 2802 (LAC) at paragraphs [30] to [33].

⁶ *Quest Flexible Staffing Solutions (Pty) Ltd (A Division of Adcorp Fulfilment Services (Pty) Ltd) v Lebogate* (2015) 36 ILJ 968 (LAC); See also *Bestel v Astral Operations Ltd & others* [2011] 2 BLLR 129 (LAC)

⁷ (2008) 28 ILJ 2405 (CC) at paragraph 58; See also *Massmart Holdings Ltd v Reddy & others* (2022) 43 ILJ 1297.

[33] The charges broadly related to gross negligence, the breaching of traffic laws and bringing the companies name into disrepute on the part of Mr Ncoyini, in relation to the collision. Specific reference was made in the charges to provisions of the Company Disciplinary Code of Conduct, which captured the nature of the charges as being very serious, and, in most instances, attracting a sanction of summary dismissal.

[34] The arbitrator failed to engage, in any manner or form, with whether or not misconduct in the form of the charges was committed by Mr Ncoyini on which Namibia Logistics decision to dismiss was based.

[35] The arbitrator did not seek to establish if there was a workplace rule in existence and whether Mr Ncoyini breached that rule. The arbitrator completely bypassed the conventional process of factual adjudication in which she was required to decide on the issue of misconduct.

[36] It was however critical that the arbitrator made such a finding on whether Namibia Logistics had proven gross negligence, the breaching of traffic laws and bringing the companies name into disrepute against Mr Ncoyini, in order to then proceed in assessing the fairness of Mr Ncoyini's dismissal.

[37] It is my view that the arbitrator misconceived the nature of the enquiry and incorrectly evaluated the evidence, which resulted in her coming to an unreasonable finding.

[38] The arbitrator placed much store on an alleged unreasonable instruction being issued to Mr Ncoyini by Namibia Logistics as a reason for not having to fully engage with the charges on which he had been dismissed. The evidence led at the arbitration and on the medical certificate produced by Mr Ncoyini was that as of 4 April 2022, he was able to resume normal duty which would have included driving a 34-ton truck.

[39] The arbitrator's own views during the arbitration on the alleged instruction are also at odds with its seeming importance as captured by her in the arbitration award.

[40] During the arbitration, the arbitrator seemingly accepted that there had been discussions between Mr Ncoyini and Mr Ceronio, the general manager for the division, about Mr Ncoyini driving the truck. Mr Ncoyini had communicated to Mr Ceronio that he was able to drive. The arbitrator actually took issue, at arbitration, with its characterisation as an instruction.

[41] The allegations of bias made by Namibia Logistics against the arbitrator are however not borne out by the record.

[42] It is also not apparent from the record that the arbitrator was continuously distracted by her cellphone during the arbitration proceedings, including when material evidence such as the truck mounted video footage was played.

[43] There was no interjection by Namibia Logistics representative at arbitration, when the video footage was played, or at other points of the arbitration, from which this Court is able to glean that this was an issue that arose at arbitration.

[44] The arbitrator critically failed to make a finding on whether Namibia Logistics had proven gross negligence, the breaching of traffic laws and bringing the companies name into disrepute against Mr Ncoyini.

[45] The arbitrator's failure to decide on the issue of misconduct, and to assess the fairness of Mr Ncoyini's dismissal meant that the arbitrator misconceived the nature of the enquiry and incorrectly evaluated the evidence, which resulted in her coming to an unreasonable finding.

[46] The arbitrator's evaluation and assessment of the video footage is also directly at odds with what is actually able to be evidenced from such footage.

[47] The arbitrator in the arbitration award minimised the role that Mr Ncoyini played in the accident, and accepted the reasons advanced by him for removing his seatbelt, due to cramp, and his denial that he overtook on a double barrier line.

[48] Part of the arbitrator's reasoning, on the probabilities, was that Namibia Logistics witnesses were not present when the accident occurred, that the only evidence that they had relied on as evidence was the video footage. The arbitrator found that the video footage did not show Mr Ncoyini overtaking on a double barrier line, but that even if he had done so it would have been as a result of the pain that he was in.

[49] The video footage is critical and directly contradicts the findings made by the arbitrator. The arbitrator was required to have regard to the video footage of the incident.

[50] The video footage clearly showed that Mr Ncoyini had both of his hands on the steering wheel of the truck; that he was not wearing a seatbelt; that he attempted to overtake not one, but two trucks, late at night by crossing a double white barrier line in which he would have been exposed to oncoming traffic; that he caused an accident; and that he drove the truck in a grossly negligent and reckless manner.

[51] All of the evidence that served before the arbitrator spoke to the magnitude of Mr Ncoyini's misconduct, that he breached a workplace rule, and the rules of the road with calamitous consequences, including endangering fellow road users.⁸

[52] It is evident that the arbitrator failed to apply her mind to the material evidence, in the form of the video footage, that was placed before her and that this resulted in an outcome that is unreasonable.

[53] Considering the evidence before the arbitrator holistically, the arbitrator's findings are disconnected from the evidence and the decision reached by the arbitrator is one that no reasonable decision maker could have reached. There is a clear basis for this court to interfere with the award on review.

[54] Summary dismissal was a sensible, appropriate and fair sanction to be imposed by Namibia Logistics against Mr Ncoyini given the clear operational risk that

⁸ *Algoa Bus Co (Pty) Ltd v Tirisano Transport & Services Workers Union on behalf Of Mzawi & others* (2025) 46 ILJ 89 (LAC).

Mr Ncoyini posed to Namibia Logistics business as a truck driver on the country's national roads.

[55] Namibia Logistics could not fairly have been expected to continue the employment relationship with Mr Ncoyini.

[56] The arbitration award must be reviewed and set aside. In exercising my discretion and given that the complete record of the arbitration proceedings is before me, I have decided to substitute the arbitration award rather than remit the matter for a fresh hearing.

Costs

[57] With reference to the issue of costs, this Court has a broad discretion to make costs orders in accordance with the requirements of law and fairness.

[58] In my view, the interests of justice will best be served by making no order as to costs.

[59] In the result, the following order is made:

Order

1. The arbitration award issued by the first respondent under case number GAEK 4576 – 22 dated 12 August 2022 is reviewed and set aside, and is substituted with an award in the following terms:

'The third's respondent's dismissal is procedurally and substantively fair'

2. There is no order as to costs.

ZM Navsa

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr. Sean Snyman of Snyman Attorneys.

For the Third Respondent:

Advocate S Goso

Instructed by:

Magunda Attorneys

LABOUR COURT