



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR1173/19

In the matter between:

ABF LEGEND LOGISTICS (PTY) LTD

Applicant

and

JAO PEDRO MARRENGULA

First Respondent

COMMISSIONER M.P. MNGOMEZULU

Second Respondent

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

Third Respondent

Heard: 20 August 2025

Delivered: 29 August 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for handing down judgment is deemed to be 29 August 2025.

JUDGMENT

DE KOCK, AJ

Introduction

[1] This matter came before the court as an application to review the arbitration award issued by the second respondent. The applicant raised various grounds of review alleging that the first respondent failed to apply his mind to the evidence presented and that his findings are not those of a reasonable decision-maker. The outcome of the award is that the first respondent was dismissed, and that his dismissal was procedurally and substantively fair. The applicant was ordered to pay to the first respondent an amount of R65 671.48, said amount equivalent to seven months, as compensation. The crucial issue that the second respondent was required to determine was whether the first respondent was dismissed. The second respondent found, on the evidence before him, that the first respondent discharged the onus of proving that he was dismissed.

Test on review

[2] The courts have held that the test on review test regarding the existence of a dismissal is the “correctness” test and not the “reasonable” test. The Labour Appeal Court in *SA Rugby Players Association v SA Rugby (Pty) Ltd and Others*¹ stated:

“[39] The issue that was before the commissioner was whether there had been a dismissal or not. It is an issue that goes to the jurisdiction of the CCMA. The significance of establishing whether there was a dismissal or not is to determine whether the CCMA had jurisdiction to entertain the dispute. It follows that if there

¹ (2008) 29 ILJ 2218 (LAC).

was no dismissal, then the CCMA had no jurisdiction to entertain the dispute in terms of s 191 of the Act.

[4] The CCMA is a creature of statute and not a court of law. As a general rule, it cannot decide its own jurisdiction. It can only make a ruling for convenience. Whether it has jurisdiction or not in a particular matter is a matter to be decided by the Labour Court. In *Benicon Earthworks & Mining Services (Edms) Bpk v Jacobs NO & others* (1994) 15 ILJ 801 (LAC) at 804C-D, the old Labour Appeal Court considered the position in relation to the Industrial Court established in terms of the predecessor to the current Act. The court held that the validity of the proceedings before the Industrial Court is not dependent upon any finding which the Industrial Court may make with regard to jurisdictional facts but upon their objective existence. The court further held that any conclusion to which the Industrial Court arrived on the issue has no legal significance. This means that, in the context of this case, the CCMA may not grant itself jurisdiction which it does not have. Nor may it deprive itself of jurisdiction by making a wrong finding that it lacks jurisdiction which it actually has. There is, however, nothing wrong with the CCMA enquiring whether it has jurisdiction in a particular matter provided that it is understood that it does so for purposes of convenience and not because its decision on such issue is binding in law on the parties. In Benicon's case the court said at 804C-D:

'In practice, however, an Industrial Court would be short-sighted if it made no such enquiry before embarking upon its task. Just as it would be foolhardy to embark upon proceedings which are bound to be fruitless, so too would it be fainthearted to abort the proceedings because of a jurisdictional challenge which is clearly without merit.'

In my view the same approach is applicable to the CCMA.

[41] The question before the court a quo was whether on the facts of the case a dismissal had taken place. The question was not whether the finding of the commissioner that there had been a dismissal of the three players was justifiable, rational or reasonable. The issue was simply whether objectively speaking, the facts which would give the CCMA jurisdiction to entertain the dispute existed. If

such facts did not exist, the CCMA had no jurisdiction irrespective of its finding to the contrary.”

[3] If the court is satisfied that the employee was dismissed, it must apply the usual *Sidumo* reasonableness test on review of the decision as to fairness. The test focuses on the outcome “is the arbitrator’s decision capable of reasonable justification on all the material that was before the arbitrator”.²

Arbitration proceedings

[4] The second respondent, upon being advised that the existence of a dismissal was in dispute, first listened to the first respondent’s evidence, as the onus was on the first respondent to prove that he was dismissed. The first respondent was not represented during the arbitration proceedings, and the second respondent was required to guide the first respondent in certain respects. The court notes that the transcribed record seems to be missing various parts of the evidence presented with frequent references to ‘inaudible’.

[5] The first respondent testified that he was employed on 26 January 2017 as a truck driver and that he was dismissed on 19 December 2017. The first respondent was off duty from 14 to 18 December 2017. He received a call on 18 December 2017 from Paul, the supervisor, saying that they have been looking for him without success. According to the first respondent, he was due to resume work the following morning, i.e., 19 December 2017. He was advised to wait for the arrival of Mr. Fouche, the owner of the company, the following morning. The first respondent, on 19 December 2017, was summonsed to the office by Mr. Fouche. Present in the office was Mr. Fouche and a lady unknown to the first respondent.

² *Fidelity Cash Management Service v CCMA & others* [2008] 3 BLLR 197 (LAC) at para 103; *National Union of Mineworkers and another v Rustenburg Platinum Mine (Mogalakwena Section) and others* [2015] 1 BLLR 77 (LAC) at 27.

[6] Mr. Fouche told him to pack his belongings and leave the premises. The only reason advanced was that Mr. Fouche could not work with a person of the first respondent's caliber. This court must note that where the transcribed record is not entirely clear on what the evidence was, the court relied on what was stated in the award as to the summary of the evidence that was presented.

[7] It is, however, clear from the transcribed record that the second respondent's survey of the first respondent's evidence is supported and this court accepts that the summary is correct. The first respondent testified that he went outside and waited at the gate and that he was told to 'fokoff'. The first respondent was not told what he did wrong, and he was never taken to a hearing nor given a dismissal letter.

[8] During cross-examination, it was put to the first respondent that he testified during the first arbitration hearing that he was unemployed for ten months and that he was not honest because he was employed. The transcribed record, again, is not clear as to the exact questions in this regard, and the first respondent's answers. The court, however, notes that it does appear that the issue of the first respondent having been employed by a different company was put to him during cross-examination, as supported by the applicant's bundle of documents. It does not appear from the transcribed record that the first respondent denied the questions posed to him in this regard. The first respondent was then questioned whether he knew what the normal processes are when people are dismissed.

[9] The applicant called Mr. K Coetzee as their only witness. Mr. Coetzee's evidence was entirely based on the normal procedures that the applicant follows when disciplining and dismissing employees. The evidence presented in this regard will not be summarised for purposes of this judgment but is noted by this court. Mr. Coetzee, however, was unable to give any direct evidence as to the events that transpired on 19 December 2017, as testified to by the first respondent. In fact, it appears that Mr. Coetzee was not even employed by the applicant at the time that the first respondent claimed that he was dismissed.

Arbitration award

[10] The second respondent, after surveying the evidence correctly finds that he is required to determine whether the first respondent was dismissed, and if so, whether the dismissal was procedurally and substantively fair. The second respondent accepted the first respondent's evidence that he was dismissed based on a balance of probabilities and because the first respondent's evidence regarding what transpired in Mr. Fouche's office was unchallenged. The second respondent specifically states that there was no rebuttal evidence from Mr. Fouche.

[11] The second respondent finds further that, having found that the first respondent was dismissed, the first respondent was dismissed immediately upon return from his off days for no apparent reason, despite his attempt to understand the reason thereof. The decision to dismiss was not preceded by any attempt to follow correct procedure. The second respondent finds Mr. Coetzee's evidence irrelevant to the issue that he was required to determine.

[12] Insofar as relief is concerned, the second respondent noted that the first respondent did not seek reinstatement. In respect of compensation, the second respondent noted that the primary reason for awarding compensation is to place the first respondent in the same position had he not been dismissed. The second respondent then finds that the first respondent's chances of getting a similar job in the industry are slim and that he remains unemployed and ordered the applicant to pay seven months' compensation as just and equitable compensation.

Evaluation

[13] This court is required to determine three issues in this review application. The first issue is whether the second respondent's finding that the first respondent was dismissed is correct. The second issue is whether his decision that the dismissal was

procedurally and substantively fair is a decision that a reasonable decision-maker could not reach. The applicant also takes issue with the amount of compensation awarded and the court will deal with this as the third issue to be determined by this court.

[14] Insofar as the applicant takes issue with the conduct of the second respondent in assisting the first respondent to give evidence relevant to his dismissal, this court does not share the view that the second respondent's actions were unwarranted. The first respondent had no representative and had to be guided in presenting his evidence regarding the existence of a dismissal. The same applies to the applicant's attack on the second respondent unnecessarily interfering with the applicant's representative in cross-examination. Although it does appear from the transcribed record that the second respondent did interfere with the cross-examination, this court is not of the view that such interference had a material effect on the outcome at which the second respondent arrived at.

[15] In respect of the first issue, i.e., whether the first respondent was dismissed, this court finds no reason to interfere with the decision by the second respondent. The first respondent's evidence regarding the events of 19 December 2017 was not rebutted by Mr. Fouche. For the evidence of the first respondent to be rejected, the applicant was required to call Mr. Fouche as a witness. In the absence of Mr. Fouche having been called, and there appears to be no good reason why he was not called, the second respondent was correct in accepting the first respondent's evidence as unchallenged. The second respondent was also correct to find Mr. Coetzee's evidence irrelevant under circumstances where Mr. Coetzee was not even employed on 19 December 2017. Mr. Coetzee's evidence served no purpose whatsoever and the second respondent correctly failed to attach any weight to his evidence. Whether the applicant follows procedures, after the fact, has no bearing on the first respondent's evidence that Mr. Fouche told him to 'fokoff'. There is no evidence that the applicant followed up on the first respondent not reporting for duty after 19 December 2017 such as instituting disciplinary actions for desertion or absence without permission. This court therefore

accepts that the second respondent's finding that the first respondent was dismissed, based on the evidence presented to him, was the correct decision.

[16] The second issue is whether the second respondent's decision that the dismissal was procedurally and substantively unfair is a decision that a reasonable decision-maker could not reach. Based on the evidence before the second respondent, this court is of the view that the second respondent's decision is one that a reasonable decision-maker could reach. Once it is accepted that there was a dismissal, it is clear from the evidence that there was no reason for the dismissal, and no procedures that were followed.

[17] This brings the court to the third issue in terms of the relief awarded. The court has perused the transcribed record and can find no reference to any evidence having been presented that the first respondent testified that the chances of him getting a similar job in the industry are slim and that he remains unemployed. In fact, the transcribed record shows that the applicant's representative took the first respondent to task about not being honest of being unemployed for ten months, as he testified to in a previous arbitration. Although much of the questions in this regard is referenced in the transcribed record as 'inaudible', it was put to the first respondent that his evidence in the previous arbitration was dishonest, and reference was made to "January". The reference to "January" during cross-examination to "January" must be accepted to refer to the fact that the first respondent was employed by Vuzani Investments on 9 January 2018. This is confirmed by an appointment confirmation letter that was before the second respondent.

[18] It therefore follows that the second respondent's finding of the first respondent testifying that the chances are slim of getting a similar job in the industry and that he remains unemployed is not supported by the evidence and is in fact false. No such evidence was presented and the second respondent's reliance on such non-existent evidence in support of the relief that was awarded was irregular. The first respondent, on his own version, confirmed in the award that the primary reason for awarding

compensation is to place the first respondent in the same position had he not been dismissed. By awarding seven months' compensation, the second respondent departed from his own understanding of what the purpose is in awarding compensation. The second respondent's finding in respect of the amount of compensation awarded is unreasonable and is a decision that a reasonable decision-maker could not reach.

[19] This court therefore accepts the applicant's challenge regarding the relief awarded. Given the evidence that the first respondent obtained alternative employment on 9 January 2018, and there being no evidence that the salary he earned from Vuzani Investments was less than the salary that the first respondent earned whilst working at the applicant, the appropriate relief ought to have been to award one month's compensation.

[20] In the premises, the following order is made:

Order

1. The application for the arbitration award to be reviewed and set aside is granted only in respect of the relief awarded. The relief granted to the first respondent, in terms of paragraph [27] of the award, is replaced with the following order:

The applicant is ordered to pay to the first respondent, within seven days from the date of this judgment, compensation in the amount of R9 381.64, said amount being equivalent to one month's salary.

2. There is no order as to costs.

C. de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

H Horn

Instructed by:

Yusuf Nagdee Attorney

For the Third Respondent:

G Leshaba from MM MITTI Inc. Attorneys

LABOUR COURT