



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case No: C16/2024

In the matter between:

THE CITY OF CAPE TOWN

Applicant

and

SAMWU OBO DOROTHY CAROLUS

First Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL (WESTERN CAPE)**

Second Respondent

COMMISSIONER DU PLESSIS N.O.

Third Respondent

Heard: 4 September 2025

Delivered: 8 September 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 8 September 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 (hereinafter referred to as “the commissioner”) in terms of section 145 of the Labour Relations Act¹ (LRA). This review application is in essence what is referred to as a ‘penalty review’, which means that the subject matter of the review is the appropriateness of sanction given an alleged act or acts of misconduct. The challenge in a review application is then based on a decision-maker’s alleged failure to properly consider and apply the evidence in support of the decision that they arrived at.

Background

[2] Pursuant to a finding of guilty and the imposition of demotion in rank in disciplinary proceedings instituted against the first respondent (hereinafter referred to as “the respondent”) by the applicant, the respondent lodged an unfair labour practice dispute with the second respondent (hereinafter referred to as “SALGBC”). The arbitrator issued an award on 20 April 2022 and concluded that the respondent was not subjected to an unfair labour practice in respect of her demotion.

[3] The respondent, dissatisfied with the award, brought a review application in terms of section 145 of the LRA under case number C241/2022, which award was set aside by the Labour Court on limited grounds and remitted back to the SALGBC for a

¹ Act 66 of 1995, as amended.

determination on the inconsistent application of discipline in relation to the permanent demotion of the respondent from a level T12 to a level T11.

[4] The third respondent (hereinafter referred to as “the commissioner”) arbitrated the dispute in accordance with the judgment of the Labour Court and issued an award on 11 December 2023 in favour of the respondent. The commissioner found that the applicant committed an unfair labour practice in demoting the respondent indefinitely; that the applicant must reinstate the respondent as a supervisor T12 on the same T12 notch that she was on at 11 August 2021; that the necessary arrangements must be put in place so that the respondent can report for duty as a supervisor T12, by no later than 1 January 2024; and that any back payment of salary, taking into account the required statutory deductions, resulting from the backdated reinstatement, must be paid to the respondent by 31 January 2024.

Arbitration award

[5] The commissioner, after surveying the evidence, delivered a comprehensive analysis of the evidence and arguments presented during the arbitration proceedings. In specific, the commissioner referred to various judgments relating to the issue of consistency in disciplinary actions in the workplace. After referring to said case law, the commissioner states that the principles applicable to deciding consistency (parity) are as follows:

- a. Consistency is an element of disciplinary fairness, it is not a rule unto itself.
- b. An employer might not be guilty of inconsistency if he or she is able to differentiate between the two acts of misconduct or the actors involved.
- c. Evidence must be led by an employer to justify why employees were treated differentially.
- d. Employees must be measured against the same standards, a like for like comparison.

- e. Did the chairperson of the disciplinary enquiry conscientiously and honestly determine the misconduct.
- f. The decision by the employer not to dismiss other employees in the same misconduct must not be capricious or induced by improper motives or by a discriminating management policy. In other words, the reasons for differentiation should be sound and *bona fide*.
- g. A value judgment must always be exercised.
- h. The principle is not intended to profit employees who commit serious acts of misconduct and is to be applied with caution.

[6] The commissioner refers to four similar cases that were referred to during the arbitration and finds that had there been other cases where employees were also demoted, as in the case before him, or been dismissed or given a lesser sanction, that evidence would most probably have been presented. The parties were not restricted to the four names that the respondent referred to during the first arbitration.

[7] The commissioner then sets out the details of the four similar cases regarding the negligence, or gross negligence of these four employees in relation to firearms. In the case of J Louw (Louw), his firearm was removed from the safe in circumstances where he had not locked the safe. Louw was a supervisor and thus also part of middle management. Louw was negligent in not locking his safe, whereas the respondent's negligence was found to lie in the fact that she had not reported the missing safe key. The respondent was also middle management. Louw was not charged with negligence *per se*. His actions were clearly negligent. After a plea bargain, thus a plea of guilty, he was given a sanction of five days' unpaid suspension. Louw was negligent, and so too was the respondent negligent. It cannot be a distinguishing factor that his firearm was immediately retrieved. His behaviors caused the theft of the firearm. The distinguishing factor was that he conceded wrongdoing, pleaded guilty and entered into a plea bargain agreement.

[8] M Mbengashe (Mbengashe), a constable, left his firearm in the ablution facilities at the Mitchells Plain police station. It went missing. He was charged with gross negligence and given three days' unpaid suspension as sanction. There is no evidence that he acknowledged wrongdoing or entered into a plea bargain agreement. The sanction seems remarkable light considering that he was charged with gross negligence and seems to have been found to have acted so. Like the respondent, he did not admit to wrongdoing. Unlike the respondent, he was a very junior employee.

[9] R Phillips (Phillips), a superintendent, thus also part of middle management, was accused to have been negligent when she left her firearm in the ablution facilities at the Metro Police Head Quarters. Her behaviour was not what was expected of her and amounted to negligence. That her firearm was found and stored in the vault was not her doing. She still acted negligently. She pleaded guilty, entered into a plea bargain and was given a sanction of 10-days unpaid suspension.

[10] T Wilson (Wilson) was accused of the negligent loss of her firearm when it went missing from her home. She was a junior employee, pleaded guilty and was given ten days' unpaid suspension. She was also declared to be incompetent to possess or own a firearm. From the evidence it seems that the firearm was used in the decease of her partner.

[11] The commissioner then turns to the respondent and finds that she was part of middle management and had to set an example. So too, however, was Solomons and Louw. Solomons, Louw and Wilson all pleaded guilty and entered into a plea bargain agreement as per the disciplinary code. Thus, all three admitted their wrongdoing. To this day, the respondent does not concede to any wrongdoing despite the fact that she knows that an internal chairperson, an arbitrator, and a judge had found that she acted negligently. The lenient treatment of Mbengashe was not fully explained.

[12] The commissioner continues to state that, despite the respondent not conceding to misconduct, it does seem that she was held to a higher standard than Louw and

Solomons, but also when compared to Wilson and Mbengashe. The behaviour in all these cases is what matters. In all five matters the employees acted negligently. No reasons for the differentiation were testified about, apart from that the respondent did not concede to have acted negligently, whereas three of the comparators did concede to negligence. There is no reliable evidence that the respondent's behaviour for not reporting the missing key was more reprehensible than Louw not locking his safe, Solomons and Mbengashe leaving their firearms in ablution facilities and Wilson's firearm disappearing from her home.

[13] The commissioner goes on to find that it is a very distinguishable factor that the respondent does not concede to wrongdoing. By doing so she would show to her employer that she is sorry for what happened and would not let it happen again. It seems from the court's observations that the respondent was not altogether open when she made her written statement to SAPS. That might well have been why her competency to hold a firearm license was not investigated. No evidence was presented that the consistency issue was raised during the disciplinary hearing. The chairperson therefore seems to have taken a decision based on the facts of the case as presented.

[14] The commissioner states that once consistency is raised, the onus is on the employer to prove that it acted consistently. Despite the onus of an unfair labour practice resting on the respondent, the applicant must still prove that it acted consistently in disciplining employees accused of the same acts of misconduct. Given the commissioner's views regarding the inconsistencies, he finds that the sanction of indefinite demotion was too harsh. He however agreed that, given that the respondent did not enter a plea bargain, demotion in itself was not an unfair sanction. The commissioner also considered the respondent's seniority, that demotion is permissible in terms of the disciplinary code and finds that a temporary demotion of 12 months would not have been an unfair sanction.

[15] In conclusion, the commissioner finds that the applicant was not wrong in finding that the respondent committed serious misconduct. The sanction imposed was unfair

given the circumstances, particularly how other colleagues were treated for committing the same misconduct. The commissioner therefore ordered the applicant to reinstate the respondent as superintendent on the T12 grade, on the same salary notch as 11 August 2021, but reinstatement will be backdated to 12 September 2022. This means that the respondent was effectively demoted to a T11 grade for a period of 12 months.

Grounds of review

[16] The applicant challenges the arbitration award on the following review grounds:

- a. The commissioner determined the issue of sanction in a piecemeal fashion notwithstanding the evidence placed before him.
- b. The commissioner failed to properly apply his mind in respect of the alleged inconsistency challenge given that the respondent's case was clearly distinguishable from other comparative cases.
- c. There was no evidence to support the commissioner's conclusion that the respondent was judged on a higher standard compared to the rest of her colleagues.

[17] The nub of the applicant's case is that, during arbitration, the respondent failed to make out a case based on an inconsistency challenge on the alleged unfair sanction. In consequence, the award is not one which another commissioner would have reached. It falls outside the band of reasonableness.

Review Test

[18] In *Sidumo & another v Rustenburg Platinum Mines Ltd & others*,² the Court held that "*the reasonableness standard should now suffuse section 145 of the LRA*", and that the threshold test for the reasonableness of an award was: "*... Is the decision reached by the commissioner one that a reasonable decision maker could not reach?...*"³. In

² (2007) 28 ILJ 2405 (CC); 2008 (2) SA 24 (CC).

³ Id at para 110.

*Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)*⁴ the Court applied this reasonableness consideration as follows:

“In summary, the position regarding the review of CCMA awards is this: A review of a CCMA award is permissible if the defect in the proceedings falls within one of the grounds in s 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)(a)(ii), the arbitrator must have misconceived the nature of the inquiry 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.”

[19] This test has thus been applied as a two-stage review enquiry. Firstly, the review applicant must establish that there exists a failure or error on the part of the arbitrator. If this cannot be shown to exist, that is the end of the matter. Secondly, if this failure or error is shown to exist, the review applicant must then further show that the outcome arrived at by the arbitrator was unreasonable. If the outcome arrived at is nonetheless reasonable, despite the error or failure, that is equally the end of the review application. In short, in order for the review to succeed, the error or failure must affect the reasonableness of the outcome to the extent of rendering it unreasonable.

[20] Further, the reasonableness consideration envisages a determination, based on all the evidence and issues before the arbitrator, as to whether the outcome of the arbitrator arrived at can nonetheless be sustained as a reasonable outcome, even if it may be for different reasons or on different grounds.⁵ This necessitates a consideration by the review court of the entire record of the proceedings before the arbitrator, as well as the issues raised by the parties before the arbitrator, with the view to establish

⁴ (2013) 34 ILJ 2795 (SCA); [2013] 11 BLLR 1074 (SCA) at para 25.

⁵ *Fidelity* at para 102.

whether this material can, or cannot, sustain the outcome arrived at by the arbitrator. In the end, it would only be if the outcome arrived by the arbitrator cannot be sustained on any grounds, based on the material, and the irregularity, failure or error concerned is the only basis to sustain the outcome the arbitrator arrived at, then the review application would succeed.⁶

[21] In *Goldfields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA & Others*⁷ the Labour Appeal Court further explained the reasonableness test in the following terms:

“[15] A ‘process-related review suggests an extended standard of review, one that admits the review of an award on the grounds of a failure by the arbitrator to take material facts into account, or by taking into accounts facts that are irrelevant, and the like. The emphasis here is on process and not result. Proponents of this view argue that where an arbitrator has committed a gross irregularity in the conduct of the arbitration as contemplated by s145(2), it remains open for the award to be reviewed and set aside irrespective of the fact that the decision arrived at by the arbitrator survives the Sidumo test. I disagree. What is required is first to consider the gross irregularity that the arbitrator is said to have committed and then to apply the reasonableness test established by Sidumo. The gross irregularity is not a self-standing ground insulated from or standing independent of the Sidumo test. That being the case, it serves no purpose for the reviewing court to consider and analyse every issue raised at the arbitration and regard failure by the arbitrator to consider all or some of the issues albeit material as rendering the award liable to be set aside on the grounds of process-related review.”

and

“[20] To do it differently or to evaluate every factor individually and independently is to defeat the very requirement set out in section 138 of the LRA which requires

⁶ See *Campbell Scientific Africa (Pty) Ltd v Simmers & others* (2016) 37 ILJ 116 (LAC); [2016] 1 BLLR 1 (LAC) at para 32; *Anglo Platinum (Pty) Ltd (Bafokeng Rasemone Mine) v De Beer & others* (2015) 36 ILJ 1453 (LAC); [2015] 4 BLLR 394 (LAC) at para 12.

⁷ (JA 2/2012) [2013] ZALAC 28; [2014] 1 BLLR 20 (LAC); (2014) 35 ILJ 943 (LAC) (4 November 2013).

the arbitrator to deal with the substantial merits of the dispute between the parties with the minimum of legal formalities and do so expeditiously and fairly. This is also confirmed in the decision of CUSA v Tao Ying Metal Industries. Failing to consider a gross irregularity in the above context would mean that an award is open to be set aside where an arbitrator (i) fails to mention a material fact in his award; or (ii) fails to deal in his/her award in some way with an issue which has some material bearing on the issue in dispute; and/or (iii) commits an error in respect of the evaluation or considerations of facts presented at the arbitration. The questions to ask are these: (i) In terms of his or her duty to deal with the matter with the minimum of legal formalities, did the process that the arbitrator employed give the parties a full opportunity to have their say in respect of the dispute? (ii) Did the arbitrator identify the dispute he was required to arbitrate (this may in certain cases only become clear after both parties have led their evidence)? (iii) Did the arbitrator understand the nature of the dispute he or she was required to arbitrate? (iv) Did he or she deal with the substantial merits of the dispute? and (v) Is the arbitrator's decision one that another decision-maker could reasonably have arrived at based on the evidence?"

and

"[21] Where the arbitrator fails to have regard to the material facts it is likely that he or she will fail to arrive at a reasonable decision. Where the arbitrator fails to follow proper process he or she may produce an unreasonable outcome (see Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others 2006 (2) SA 311 (CC)). But again, this is considered on the totality of the evidence not on a fragmented, piecemeal analysis. As soon as it is done in a piecemeal fashion, the evaluation of the decision arrived at by the arbitrator assumes the form of an appeal. A fragmented analysis rather than a broad based evaluation of the totality of the evidence defeats review as a process. It follows that the argument that the failure to have regard to material facts may potentially result in a wrong decision has no place in review applications. Failure to have regard to material facts must actually defeat the constitutional imperative that the

award must be rational and reasonable - there is no room for conjecture and guesswork”

[22] The Labour Appeal Court in *Head of the Department of Education v Mofokeng and Others*⁸ provided the following exposition of the review test:

“[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 inquiry. 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 inquiry, 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. A material error of this order would point to at least a prima facie unreasonable result. The reviewing judge must then have regard to the general nature of the decision in issue; the range of relevant factors informing the decision; the nature of the competing interests impacted upon by the decision; and then ask whether a reasonable equilibrium has been struck in accordance with the objects of the LRA. Provided the right question was asked and answered by the arbitrator, a wrong answer will not necessarily be unreasonable. By the same token, an irregularity or error material to the determination of the dispute may constitute a misconception of the nature of the enquiry so as to lead to no fair trial of the issues, with the result that the award may be set aside on that ground alone. The arbitrator, however, must be shown to have diverted from the correct path in the conduct of the arbitration and as a result failed to address the question raised for determination.”

⁸ (JA14/2014) [2014] ZALAC 50; [2015] 1 BLLR 50 (LAC); (2015) 36 ILJ 2802 (LAC) (1 October 2014).

[23] The court will now proceed to consider the review application by the applicant against the above principles and the test applicable to review applications.

Evaluation of grounds of review

[24] In commencing the evaluation of the grounds of review this court notes from the applicant's heads of argument, and their submissions in court that it is common cause that there were a number of employees who committed similar offences. Similar in that all five employees were accused with the loss of firearms, although the circumstances as to how the firearms were lost differ. However, this is a case of repetitive misconduct by the employees. The applicant therefore argues that, to that end, the applicant had no other option but to send a clear message that such misconduct will no longer be tolerated. It is also argued that this sanction, referring to the permanent demotion of the respondent, serves as a deterrent in line with the Code.

[25] From these submissions, it appears that the applicant wanted to send a clear message to their employees who commit similar offences. The case against the respondent, and the sanction of permanent demotion from a T12 to a T11 was done to serve as a deterrent and to send a clear message. This, however, is not how an employer should address repetitive misconduct by employees. An employer cannot just decide one day, and with one specific case, that the employee implicated in a similar kind of repetitive misconduct must now be used to send the clear message, and for what is quite a harsh sanction under the circumstances, to serve as a deterrent.

[26] When an employer is faced with repetitive misconduct, and in this case negligence and/or gross negligence regarding the loss of firearms, and previous sanctions such as a 3-day, 5-day or 10-day suspension without pay are not deemed sufficient to deter such action, the employer must take appropriate and fair actions to address the issue. This would include issuing memorandums, amending the disciplinary code, and advising employees that as from a certain date onwards, any negligence regarding the loss of firearms will be dealt with more severely. The employer is obliged

to remove any previous sanctions that may have been applied by stating clearly that, from a certain date onwards, the misconduct will be met with whatever the employer deems to be a more appropriate sanction.

[27] In this regard, the Labour Appeal Court in *Cape Town City Council v Masitho and Others*⁹ held as follows:

*“In SACCAWU & Others v Irvin & Johnson (1999) 8 BLLR 741 (LAC) at 751 B this court reiterated that consistency is an element of disciplinary fairness, and that it “is really the perception of bias inherent in selective discipline which makes it unfair”, but went on to observe that the flexibility which is inherent in the exercise of discretion will inevitably create the potential for some inconsistency. I am not at all sure that disciplinary decisions involve the exercise of a discretion, but even if that is so, fairness would seem to me to generally require any such discretion to be exercised consistently. While it is true that an employer cannot be expected to continue repeating a wrong decision in obeisance to a principle of consistency (751D), **in my view the proper course in such cases is to let it be known to employees clearly and in advance that the earlier application of disciplinary measures cannot be expected to be adhered to in the future.** Fairness, of course, is a value judgment, to be determined in the circumstances of the particular case, and for that reason there is necessarily room for flexibility, but where two employees have committed the same wrong, and there is nothing else to distinguish them, I can see no reason why they ought not generally to be dealt with in the same way, and I do not understand the decision in that case to suggest the contrary. Without that, employees will inevitably, and in my view justifiably, consider themselves to be aggrieved in consequence of at least a perception of bias.” (Emphasis added)*

[28] This court agrees with the commissioner, and therefore with the applicant that losing a firearm, and failing to take proper precautions by locking a safe and not forgetting firearms in ablution facilities are very serious offences. The problem for the

⁹ (2000) 21 ILJ 1957 (LAC).

applicant is that a precedent had been set, by the applicant, as to what an appropriate sanction would be. Up until the respondent's case, the most severe sanction for such a serious offence, according to the evidence, was a 10-day unpaid suspension.

[29] In the absence of engaging employees and advising that henceforth the sanction for negligence or gross negligence will be severe, employees are led to believe, as a result of the employer's own precedent setting sanctions, that at most a 10-day suspension without pay would be applied as an appropriate sanction. What the applicant did, which was to use the respondent's case to send a clear message and to apply an out of the ordinary harsh sanction of a permanent demotion, compared to previous sanctions, cannot be regarded as a fair labour practice.

[30] The applicant, in any event, did exactly that by, after the respondent's permanent demotion, introducing a Consequence Management Process to standardise all charges and sanctions. The loss of firearms has since been deemed dismissible misconduct. This was, however, after the applicant already used the respondent's case as a deterrent and as a means to send a clear message. In a nutshell, the applicant's actions in this regard are an unfair labour practice in itself.

[31] The second issue noted by this court is that, unlike what counsel for the applicant initially attempted to argue, the respondent's permanent demotion was changed to a temporary demotion of 12 months, which demotion coincided with a reduction in pay. This is a very important consideration in these review proceedings, as the commissioner, considering the seniority of the respondent, her failure to plead guilty and to enter into a plea bargain, applied a sanction far more severe than any of the four employees who were previously disciplined for similar offences. The commissioner effectively applied a temporary 12-month demotion with a reduction in pay for the duration of the 12 months. As stated already, prior to the respondent's case, the only evidence presented in respect of sanction for the same or similar offences was a 3-day, 5-day and a 10-day suspension without pay. There is a huge difference between a 3-

day, 5-day and 10-day unpaid suspension and a permanent demotion with a reduction in pay, which the commissioner altered to one of a temporary demotion for 12 months.

[32] It is therefore difficult to comprehend firstly that the commissioner failed to apply his mind. It is clear to this court that the commissioner committed no irregularity and that he did not misconceive the nature of the enquiry. This should then be the end of the review application, and the second leg of reasonableness does not have to be entertained. This court in any event considered the second leg of the review test, which is whether the commissioner's outcome is one that a reasonable decision-maker or commissioner could not reach. The commissioner, as can be seen from his extensive and well-reasoned award, considered all the evidence, the relevant case law and he arrived at a decision that falls well within the bands of reasonableness. In fact, it might even be argued that, given the inconsistency in the application of the rule, the sanction by the commissioner was unduly harsh to the respondent. Be that as it may, there was no cross review delivered, and the respondent accepted the 12-month demotion on a reduced rate of pay.

[33] This court agrees that a permanent demotion, given the totality of circumstances and more specifically the inconsistent application of the rule by the applicant, was extremely harsh and constitutes an unfair labour practice. The commissioner's award is not subject to be reviewed and set aside on the review test.

[34] This court will nonetheless address the applicant's further submissions in support of the grounds of review. Insofar as the applicant alleges that the commissioner determined the issue of sanction in a piecemeal fashion, there is no merit in this allegation. As stated already, the commissioner determined all the evidence before him, applied his mind to the evidence, and arrived at a reasonable conclusion. There is nothing in the award that shows to this court that the commissioner determined the issue of sanction in a piecemeal fashion.

[35] Insofar as the applicant alleges that the commissioner failed to apply his mind in respect of the alleged inconsistency challenge given that the respondent's case was clearly distinguishable from other comparative cases, this court finds no merit in this ground of review. The commissioner sets out in detail the circumstances of the other four cases and he compares the facts of their respective cases to the facts present in the respondent's case. This court fails to find that the respondent's case was clearly distinguishable. The commissioner explains clearly why he found that the cases were indeed comparable, and to what extent he viewed the respondent's actions, or failures, to be more serious than the other cases. There is one crucially important common denominator in all five cases, and that is that all five employees were negligent in the safekeeping of their firearms.

[36] As found by the commissioner, leaving one's firearm in ablution facilities is not any less negligent than losing a spare key to one's safe, and not reporting it. Leaving one's safe unlocked, leading to the firearm being stolen is not any less negligent than losing a spare key. All these are instances of negligence, and this court may even categorise it as gross negligence. Such negligence deserves to be met by appropriate disciplinary action, which the applicant regarded as a 3-day, 5-day and 10-day unpaid suspension as a sanction. It is for an employer to set the standard in the workplace. When the standard is set by applying a certain sanction to a contravention, it must be accepted that this is the sanction that employees may expect for a contravention.

[37] Insofar as the third ground of review is concerned that there was no evidence to support the commissioner's conclusion that the first respondent was judged on a higher standard compared to the rest of her colleagues, this court finds no merit in this ground of review. On the applicant's own submissions before this court, the applicant wanted to send out a clear message and they applied a sanction as a deterrent. This is clearly judging the respondent on a higher standard and making an example of her for repetitive misconduct by employees before her. In any event, the respondent was treated far more harshly by the commissioner than any of the other four employees who served as comparators.

[38] The commissioner clearly relied on various case law regarding inconsistent application of the rule regarding firearms, he considered the evidence as a whole, and he applied the case law to the facts before him. Having done that, the commissioner arrived at a reasonable decision. This court can find no reason to interfere with the commissioner's handling of the arbitration, his reasoning in his award, and the outcome that he arrived at.

Costs

[39] In terms of the provisions of section 162(1) of the LRA, this court has wide discretion when it comes to the issue of costs. The court is mindful of the *dictum* of the Constitutional Court in *Zungu v Premier of the Province of Kwa-Zulu Natal and Others*¹⁰ when it comes to the issue of costs in employment disputes. The respondent is still employed by the applicant and there is a continuing employment relationship. The respondent will be reinstated on a T12 salary grade after having served a 12-month demotion. This court therefore can find no reason, in law and fairness, to make any order as to costs against the applicant.

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

Order

1. The application for the arbitration award to be reviewed and set aside is refused.
2. The applicant is ordered to comply with the award within 10 days from the date of this judgment.
3. No order is made as to costs.

C. de Kock

Acting Judge of the Labour Court of South Africa

¹⁰ (2018) 39 ILJ 523 (CC).

Appearances:

For the Applicant:

S Mbobo

Instructed by:

Timothy and Timothy Inc. Attorneys

For the First Respondent:

E Geldenhuys from Macgregor Erasmus Attorneys

LABOUR COURT