# THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C107/2024

In the matter between:

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| **UPFRONT CONCIERGE SERVICES (PTY) LTD** | **Applicant** |
| and | |
| **LANA ROSE MORISON** | **First Respondent** |
| **COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION** | **Second Respondent** |
| **ANDRE SIEBERT N.O.** | **Third Respondent** |

**Heard:** **5 September 2025**

**Delivered:** **9 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**

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**DE KOCK, AJ**

Introduction

[1] This matter came before the court as an application to review the arbitration award issued by the third respondent (Siebert) in terms of section 145 of the Labour Relations Act[1].

Background

[2] The first respondent (Morison) referred an alleged unfair dismissal dispute to the second respondent (CCMA) claiming that she had a reasonable expectation for her 12-month fixed term contract of employment to be renewed. The contract was for the period January 2023 to December 2023. Morison was, however, employed in June 2022 although it is not clear from the evidence whether there was a 3-month probation period or a 6-month fixed term contract from June to December 2022. It is not necessary for a finding in this regard to be made for purposes of this review application.

[3] The fixed term contract of employment was linked to the concierge service agreement between the applicant and the hotel site where Morison was placed. The business agreement between the applicant and the hotel was re-negotiated or renewed each year, and Morison's contract was conditional on the renewal of the client agreement.

[4] On 18 December 2023, Morison was asked to sign her fixed term contract which had been in her possession since March 2023 but had not been signed. She was

[1] Act 66 of 1995, as amended.

informed that it was for audit purposes. On 19 December 2023, Morison was called in and advised that the contract would not be renewed as the applicant felt that she could no longer be trusted. Morison had a fair expectation that her contract would be renewed in January 2024 and regarded the non-renewal of her contract on 19 December 2023 as an unfair dismissal.

Arbitration award

[5] Siebert identified a key element of the award to decide whether Morison had a reasonable expectation for her contract to be renewed. Siebert refers to Morison's evidence that she expected the contract to be renewed as her direct line manager told her this in as many words. She was told to sign the contract, but that there was no reason to be concerned as it was a formality for audit purposes to sign a contract every year. All staff did this. Siebert states that the line manager, Mr. Heldsinger (Heldsinger), confirmed this and that Mr. Mally (Mally) also confirmed that if it had not been for Morison's close relationship with Heldsinger, who acted in bad faith to the company, the applicant would have renewed her contract.

[6] Based on the aforesaid, Siebert finds that Morison had a reasonable expectation that her contract would have been renewed in January 2024. He finds further that it follows that Morison was dismissed on the day that she was informed that her contract would not be renewed, i.e., 19 December 2023. Siebert finds that it was undisputed that the applicant did not follow a disciplinary process but simply failed to renew the contract based on Morison's relationship with Heldsinger. The dismissal was found to be unfair both procedurally and substantively. Siebert considered that Morison worked for one and a half year from June 2022 to 19 December 2023 and ordered the applicant to pay to Morison six months' compensation in the amount of R78 000.00.

Grounds of review

[7] The applicant is challenging the arbitration award on three grounds. The first ground in relation to Siebert's finding that Morison had a reasonable expectation of renewal. It is stated that the first enquiry to determine whether there was a reasonable expectation is whether Morison believed that her fixed term contract of employment would be renewed, which is a subjective enquiry into the mind of an employee. Secondly, whether the employee was reasonable in believing that her fixed term contract of employment would be renewed, which is an objective enquiry. It is submitted that Siebert only dealt with the subjective enquiry, which is based on what Heldsinger told Morison, and failed to consider whether Morison's expectation was reasonable. Siebert was therefore misguided in fact and law when he made the finding that Morison had a reasonable expectation of renewal.

[8] The second ground of review is that Siebert found that Morison was only dismissed because, or as a result, of her close association with Heldsinger. It is submitted that Siebert failed to consider crucial evidence before him, as Morison and Mally testified that the reason for the non-renewal was because Morison worked closely with Heldsinger but that she never came forward to the applicant to disclose Heldsinger's wrongdoing. Her failure to act positively resulted in a breakdown of trust. Despite this evidence, Siebert found that the non-renewal was because, or as a result of Morison's close association with Heldsinger.

[9] The third ground of review is that Siebert found that the applicant failed to follow a disciplinary hearing. This finding was incorrect. The applicant was not required to hold a disciplinary hearing because Morison was employed on a fixed term contract, which is subject to annual review.

Review Test

[10] The parties agreed that the 'correctness' test is applicable to the first ground of review and that the 'reasonableness' test is applicable to the second and third ground of review.

[11] In respect of the 'correctness' test, the Labour Appeal Court in *Jonsson Uniform Solutions (Pty) Ltd v Brown and Others*[2] held:

> *"[33] The generally accepted view is that we have a bifurcated review standard viz reasonableness and correctness. The test for the reasonableness of a decision was stated in Sidumo and Another v Rustenburg Platinum Mines Ltd and Others as follows: "Is the decision reached by the commissioner one that a reasonable decision-maker could not reach?"*
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> *[34] In assessing whether the CCMA or the Bargaining Council had jurisdiction to adjudicate a dispute, the correctness test should be applied. The court of review will analyse the objective facts to determine whether the CCMA or Bargaining Council had the necessary jurisdiction to entertain the dispute. See SARPA v SA Rugby (Pty) Ltd and Others; SA Rugby (Pty) Ltd v SARPU.*
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> *[35] The issues in dispute will determine whether the one or the other of the review tests is harnessed in order to resolve the dispute. In matters where the factual finding of an arbitrator is challenged on review, the reasonable decision-maker standard should be applied. Where the legal or jurisdictional findings of the arbitrator are challenged the correctness standard should be applied. There will, however, be situations where the legal issues are inextricably linked to the facts so that the reasonable decision-maker standard could be applied.*
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> *[36] It is therefore important to determine whether the dispute, between the parties, is a jurisdictional one or not. The dispute to be resolved determines the test to be applied. In this matter, the dispute between the parties was whether there was in fact a dismissal. If there was no dismissal the Bargaining Council would not have jurisdiction. If there was a dismissal the Bargaining Council would have jurisdiction. The existence or otherwise of a dismissal is therefore a jurisdictional issue. The correctness standard and not the reasonableness standard should therefore be applied. The court a quo, as both parties agreed, applied the wrong standard."*

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[2] (DA10/2012) [2014] ZALCJHB 32 (13 February 2014) at para 33 to 36.

[12] The Labour Court in *Jones v The Commission for Mediation, Conciliation and Arbitration and Others*[3] held that:

> *"Accordingly, the question before the court is simply whether the arbitrator was correct in determining that Jones had been dismissed when her contract was not renewed. In this regard, it is important to note that a dismissal in terms of section 186(1)(b)(i) of the LRA is confined to determining whether there was a reasonable expectation that a fixed term contract should be renewed and does not include an expectation about permanent employment on the expiry of a fixed term contract."*

[13] In respect of the 'reasonableness' test, the Constitutional Court in *Sidumo & another v Rustenburg Platinum Mines Ltd & others*,[4] 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?..."*[5]. In *Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)*[6] the Court applied this reasonableness consideration as follows:

> '*… 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 the 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.*'

[14] 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

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[3] (C709/2018) [2021] ZALCCT 10 (6 January 2021) at para 16.
[4] (2007) 28 ILJ 2405 (CC); 2008 (2) SA 24 (CC).
[5] Id at para 110.
[6] (2013) 34 ILJ 2795 (SCA); [2013] 11 BLLR 1074 (SCA) at para 25.

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.

[15] 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.[7] 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 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.[8]

[16] The court will now proceed to consider the review application against the above principles and tests applicable to review applications.

<u>Evaluation of grounds of review</u>

[17] In commencing the evaluation of the grounds of review this court notes that it is common cause that, but for Morison's close relationship with Heldsinger and her failure to report wrongdoing by Heldsinger to the applicant, Morison's contract would have been renewed. This is a crucial consideration in these review proceedings, and it was also a key consideration by Siebert in finding that Morison had a reasonable expectation



[7] *Fidelity* at para 102.
[8] 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.

for renewal. To demonstrate the concessions in this regard, it is necessary to refer to the evidence of Mally, who testified on behalf of the applicant.

> *"**MR R PHILANDER:** So can you just say for the record once again, why did you not renew her contract?*
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> ***MR E MALLY**: Because as I said, there was trust, there was for me, there was trust, I have trust issues. For the reason I explained in my…"*
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> *"**COMMISSIONER:** You are saying, you know what, we're not saying she is guilty. We're also not saying she's innocent. We're saying, oh, we don't know. We can't trust her. And that is her concern, that she's being badmouthed.*
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> ***MR E MALLY:** Okay, but this was in response, Commissioner and Mr Attorney, this was in response to their question, why did you let Shane and Lana go? And we said we let Shane go because that's what he did, and we had to let Lana go because they worked together, and obviously because they worked together, I mean, there was an element of trust, which was logical for me."*
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> *"**COMMISSIONER:** It's clear that you dismissed her, or not dismissed her, that you let her go, or you didn't renew a contract based on that.*
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> ***MR E MALLY:** Yeah"*
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> *"**COMMISSIONER:** Okay. Fair enough. If she's great this year, if you keep this contract, you must keep her next year.*
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> ***MR E MALLY:** Obviously, yes."*
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> *"**COMMISSIONER:** And if it is great for the next year, you keep it for the next year.*
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> ***MR E MALLY:** Yes, it's in the nature of the concierge business – [interrupted]*
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> ***COMMISSIONER:** So you would have kept her year on year contract if she was not associated with him?*
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> ***MR E MALLY:** If the element of trust wasn't broken and certain … yeah, obviously, I would acknowledge that. Once again I would assert as in my evidence in chief, that there was an element of trust that was broken and that's why I couldn't continue keeping her in our employ. And that's why I didn't renew the contract. I'm not saying she was a terrible worker, that's not my point."*

[18] It is clear from Mally's evidence that, but for the trust issues, Morison's contract would be renewed. There is no other reason why her contract would not have been renewed, as the contract with the client was still on-going. In Mally's own words, the contract would have been renewed. The applicant also argued that it was never a *fait accompli* that the contract would be renewed annually because, *inter* alia, such a renewal was contingent on the existence of the service agreement with the client. It was established that the service agreement continued in 2024. Morison did not only have a subjective expectation that the contract would be renewed, as advised by Hedldsinger, but also an objective and reasonable expectation given that the service agreement with the client continued in 2024. The applicant confirmed even on their own version that this would have been an objective expectation because, but for the trust issue, the contract would have been renewed.

[19] In this court's view these concessions are sufficient to establish the requirements of an expectation of renewal both subjectively and objectively. The annual renewal of the contract was for audit purposes. As happened in this matter, the fixed term contract was abused by getting rid of an employee for disciplinary reasons under the guise of the termination of a fixed term contract.

[20] Morison was appointed on either probation or a 6-month contract in June 2022. As stated already, these contracts were not placed before this court. It then appears that in March/April 2023 Morison was presented with the 12-month contract, which she did not sign. Morison, however, kept the contract. The question to be asked then is what the nature of her employment as from January 2023 to March/April 2023, as she was not presented with any contract for these initial 3 to 4 months of 2023.

[21] The signing of the 12-month contract was never followed up until 18 December 2023, the very day before the applicant advised Morison that the contract would not be renewed. It is obvious that the applicant knew that they required a signed contract to rely on the non-renewal thereof the very next day due to a loss of trust in her. Unfortunately for the applicant, the fact that Morison signed the contract did not

exonerate them from the reasonable expectation that Morison had that the contract would be renewed. As stated already, it is common cause that, but for the trust issues arising from Morison's failure to report wrongdoing, the contract would have been renewed. On the applicant's own evidence, Morison's expectation was reasonable and a natural inference from the applicant's own version.

[22] What the applicant did in this matter is to dismiss Morison for disciplinary related issues without following any procedure and without even having any evidence that she was aware of the wrongdoings. A fixed term contract cannot be abused to terminate an employee's services for disciplinary related issues. The applicant was required to discipline Morison, if they believed that there were grounds to do so, and not to rely on the termination of a fixed term contract which would otherwise have been renewed. This goes to the second and third grounds of review.

[23] This court therefore finds that Siebert's decision that there was a reasonable expectation of renewal was the correct decision. His decision further that, as there was a reasonable expectation of renewal, Morison was dismissed is the correct decision based on the evidence before him. In respect of his finding that the dismissal was procedurally and substantively unfair, Siebert's findings fall within the band of reasonableness. In fact, having found that Morison was dismissed, it is obvious and clear that her dismissal was unfair both substantively and procedurally. Procedurally in that no procedure was followed, and substantively in that there was no proof that Morison was aware of wrongdoings that she was required to report.

[24] It is simply impermissible for an employer to rely on the expiry of a fixed term contract of employment, which would otherwise have been extended in the employer's own version, but for unsubstantiated allegations of a loss in trust. The applicant was required to allow the contract to be extended, as it would have been but for the alleged lost in trust, and to pursue disciplinary proceedings if there was sufficient proof of misconduct, or loss in trust. The applicant's failure to do so resulted in an abuse of the

fixed term contract at the expense of complying with fair procedures, and at the expense of having to prove the allegations resulting in a loss of trust.

[25] In respect of the compensation awarded, the applicant attempted to challenge this during arguments. However, this court pointed out that this was not a ground of review in the founding affidavit and that the court will not accept this as a further ground of review. This challenge was not further pursued. The court, however, notes that awarding 6 months' compensation was very reasonable, as 12 months' compensation could also reasonably have been awarded given that she had a reasonable expectation of another 12-month contract at the very least.

Costs

[26] Both parties agreed that they are not pushing for an order as to costs and that they will abide by the court's decision in this regard. This court can find no reason in law and fairness to order costs against the applicant given the parties' respective submissions.

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

Order

1. The application for the arbitration award to be reviewed and set aside is denied.
2. No order is made as to costs.

C. de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: HS Kroon from Dixon Attorneys Inc.

For the Third Respondent: C May from BDP Attorneys