



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case No: C26/2023

In the matter between:

CITY OF CAPE TOWN

Applicant

and

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

First Respondent

THUTUZELA NDZOMBANE

Second Respondent

SAMWU OBO DONOVAN BOOYSEN

Third Respondent

Heard: 2 September 2025

Delivered: 16 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 16 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 (Ndzombane) in terms of section 145 of the Labour Relations Act¹. The review application brings to the fore, like many before it, the existence of some irregularities by a commissioner in the conduct of the arbitration proceedings, but where this court is required to determine whether, despite the irregularities, the conclusion reached is a reasonable conclusion based on the evidence presented. It is not for this court to replace its own decision with that of the commissioner, as this would be tantamount to an appeal. The court must determine whether the conclusion reached by the commissioner is one that a reasonable decision-maker could not reach after consideration of all the evidence that was presented.

Background

- [2] The third respondent (Booyesen) was employed as a clerk on 1 December 2011. During 2016, Booyesen and his sister (Daphne), who was also employed and dismissed by the applicant (City), purchased an immovable property situated at 47 Juno Street, Woodlands, Mitchell's Plain (the property) as Daphne could not qualify for a bond on her own. Booyesen and Daphne had an agreement that she would purchase Booyesen's share in the property as soon as she was able to afford the bond on her own.

¹ Act 66 of 1995, as amended.

- [3] During October 2021, a contravention notice, in Booysen's name, was issued in terms of section 26 of the Electricity Supply-By-Law following an investigation conducted at the property which revealed tampering inside the electricity distribution board, which is a contravention of the By-Law. On 11 January 2022, Booysen addressed an email to the city whereby he lodged a dispute to the contravention notice. On 16 February 2022, a notice of disciplinary hearing was issued to Booysen, scheduled to take place on 28 February 2022. Booysen was charged as follows:

“CHARGE 1: You misconducted yourself in that between January 2017 and October 2021, you were grossly dishonest when you contravened section 26 of the Electricity Supply By-Law when it was found that you tampered with your electricity service connection at your private residence at 47 Juno Road, Woodlands, Mitchell's Plain for personal gain.

Alternatively: You misconducted yourself in that between January 2017 and October 2021, you were dishonest by being an accomplice/accessory in contravening section 26 of the Electricity Supply By-Law when it was found that you tampered with your electricity service connection at your private residence at 47 Juno Road, Woodlands, Mitchell's Plain for personal gain.”

- [4] On 18 May 2022, Booysen was found guilty of gross dishonesty in that he was the co-owner of the property and, as such, jointly responsible for the tampering which occurred. Booysen was subsequently dismissed and a letter terminating Booysen's employment was issued on 18 May 2022. On 23 May 2022, Booysen lodged an appeal against his dismissal. On 20 June 2022, the appeal was dismissed in that the chairperson found that the process was procedurally and substantively fair and based on the evidence, recordings, arguments, mitigation and aggravation, the sanction will remain in force.
- [5] On 30 June 2022, Booysen referred a dispute to the first respondent (SALGBC). After the dispute remained unresolved following the conciliation and after

requesting that the dispute be arbitrated, the dispute was arbitrated on 6 September 2022 and 8 November 2022, respectively. On 5 December 2022, Ndzombane issued an arbitration award.

Arbitration award

- [6] Ndzombane found that Booysen's dismissal was substantively unfair and ordered the City to reinstate Booysen retrospectively to the date of dismissal, on the same terms and conditions of employment that existed prior to his dismissal. The City was also ordered to pay back pay in the amount of R84 512.46.

Grounds of review

- [7] The applicant challenges the arbitration award on the basis of various acts of misconduct and/or irregularities committed by Ndzombane in relation to his duties. Some of the grounds are as follows:
- a. Incorrect finding that there is a possibility that Booysen was not aware of tampering, which is in direct conflict with Ndzombane's view that Booysen could have been aware or was involved in the tampering.
 - b. Incorrectly draws the conclusion that the City implies that Booysen is the only person capable of tampering and that the City does not think any adult is capable of tampering.
 - c. Misconceives the nature of the dispute in that he incorrectly concludes that either Booysen, his sister or his mother could have been involved in tampering, as there was no direct evidence that Booysen tampered with the electricity and, on a balance of probabilities, Booysen is not guilty of the charges levelled against him, despite evidence to the contrary.
 - d. Failure to take into consideration that there was a competent alternative charge.

- e. Failure to consider the relevant facts and evidence that Booysen, an owner, and occupant of the relevant property and an electricity consumer, was found in contravention of section 26 of the Electricity Supply-By-Law and duly benefitted directly and indirectly.
- f. Acted unreasonably by failing to draw the most probable inference that Booysen, at the very least, ought to have been aware of the tampering based on the proven facts.

Review Test

[8] 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 *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.”

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

³ Id at para 110.

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

- [9] 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.
- [10] 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 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
- [11] 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:

⁵ *Fidelity* at para 102.

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).

“[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 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"

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

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

“[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.”

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

Evaluation of grounds of review

- [14] In commencing the evaluation of the grounds of review this court notes that it is common cause that Booyesen was a co-owner, occupier and consumer of the property at the time of the contravention of section 26 of the Electricity Supply

By-Law. The overwhelming evidence, and it in fact appears to be common cause, is that there was tampering with the electricity line that supplies electricity to the property. The tampering occurred by exposing the inner of the line before the line runs into the electricity meter, which can cause electricity to be bypassed for other appliances whilst, at the same time, still supplying electricity through the distribution board. The evidence is also overwhelming that there was a very reduced use of electricity at the property for some time. It is this reduction in the average use of electricity at the property that led to an investigation and the subsequent issue of the contravention notice. This court is satisfied that there was sufficient evidence of tampering to the electric line at the property, as Ndzombane also found in the arbitration award. The crucial question for consideration is whether the City discharged the onus, on a balance of probabilities, that Booysen was guilty of either the main charge, or the alternative charge.

- [15] Before analysing Ndzombane's findings in this regard, it is necessary to refer to section 26 of the Electricity Supply By-Law, which reads as follows:

"(1) No person shall in any manner or for any reason whatsoever tamper with, interfere with, vandalise, fix advertising medium to, or deface any meter or metering equipment or service protective device or supply mains or any other equipment of the Service Provider or illegally connect into the electricity wiring of any other consumer.

(2) Where prima facie evidence exists of a customer and/or any person having contravened subsection (1), the Service Provider may disconnect the supply of electricity to the consumer, and that person shall be liable for all fees and charges levied by the Service Provider for such disconnection.

(3) Where interference or damage is caused by any individual, having contravened subsection (1), legal action may be instituted against such individual.

(4) Where a consumer and/or any person has contravened subsection (1) and such contravention has resulted in the meter recording less than the true consumption, the Service Provider shall have the right to recover from the consumer the full cost of his estimated consumption.

(5) The determination by the Service Provider shall be prima facie evidence of such consumption."

[16] To put context to section 26, it is necessary to refer to the definition of 'consumer', 'occupier' and owner in terms of the Electricity Supply By-Law. 'Consumer' in relation to premises is defined as:

"(i) any occupier thereof;

(ii) any person who has a valid existing agreement with the Service Provider for the supply of electricity to such premises; or

The owner of the premises."

[17] 'Occupier' in relation to any premises is defines as:

"(a) any person in actual occupation of such premises;

(b) any person legally entitled to occupy such premises;

(c) in the case of such premises being subdivided and let to lodgers or various tenants, the person receiving the rent payable by such lodgers or tenants, whether on his own account or as agent for any person entitled thereto or interested therein; or

(d) any person in control of such premises or responsible for the management thereof, and includes the agent of any person when he/she is absent from the Republic of South Africa or his/her whereabouts are unknown."

[18] 'Owner' in relation to premises, means the person in whom is vested the legal title thereto, provided that-

“(a) in the case of immovable property-

- (i) leased for a period of not less than 50 years, whether the lease is registered or not, the lessee thereof; or*
- (ii) beneficially occupied under a servitude or right analogous thereto, the occupier thereof; or*

(b) if the owner as hereinbefore define-

(i) is deceased or insolvent, has assigned his estate for the benefit of his creditors, has been placed under curatorship by order of court or is a company being wound up or under judicial management, the person in whom the administration of such property is vested as executor, administrator, trustee, assignee, curator, liquidator or judicial manager, as the case may be;

(ii) is absent from the Republic of South Africa, or if his address is unknown to the Service Provider, any person who as agent or otherwise receives or is entitled to receive the rent in respect of such property; and

(iii) if the Service Provider is unable to determine who such person is, the person who is entitled to the beneficial use of such property,

Shall be deemed to be the owner thereof to the exclusion of the person in whom is vested the legal title thereto.”

[19] The importance of the aforesaid section 26, and the definitions of 'consumer', 'occupier' and 'owner' is that any reference to someone tampering with electricity supply to a property must be viewed in the context of such person being a 'consumer', 'occupier' and 'owner' of the property. In the case of the charge against Booysen, referring to 'you have tampered', same must be considered in the context that 'you' refers to a person who is a consumer, occupier and/or

owner of the property. In Booysen's case, he was all three of the aforesaid, i.e., a consumer, occupier and co-owner of the property.

- [20] Why is it important to consider the charge against Booysen in this context? It is simply because, whoever tampered with the electricity supply to the property, the consumer, occupier and/or owner of the property will be held liable. It is not necessary to link a specific person to the offense before action can be taken. Ultimately, the consumer, occupier and/or owner of the property will be held liable for any contravention of section 26 of the Electricity Supply By-Law. The reason for this is obvious, as if the City is required to identify the person who has tampered with the electricity, and is unable to do so, the consumer, occupier and/or owner must be held accountable for what is in essence theft of electricity.
- [21] Returning to the main charge against Booysen, and the alternative to the main charge, it is not required for the City with reference to "you tampered" to prove that Booysen is the person who physically tampered with the electricity supply. What the City was required to prove firstly is that there was tampering with the electricity at the property, which was established by overwhelming evidence. Once it was established that there was tampering, which there was, the City was required to prove that Booysen can be held liable for such tampering, and the resultant loss to the City, in his capacity as a consumer, occupier or co-owner of the property. If the City was able to do so, that would be sufficient for Booysen to have been found guilty of the charge, or the alternative charge against him.
- [22] It is this understanding of the Electricity Supply By-Law where Ndzombane got it wrong in the analysis of the evidence, which constitutes an irregularity in the conduct of the arbitration proceedings. Ndzombane restricted his findings and conclusion to his incorrect understanding that the City was required to prove that it was Booysen who physically tampered with the electricity. This is not what was required from him. Ndzombane was required to determine whether there was tampering, which he found that there was, and then, in terms of the Electricity Supply By-Law, determine whether Booysen could be held liable for the said

tampering, and loss of income to the City in his capacity as a consumer, an occupier and a co-owner of the property, whilst being an employee of the City.

- [23] It is necessary to refer to Ndzombane's analysis to properly consider the City's review application. Ndzombane finds that the evidence shows that there was tampering of the electricity in the distribution board at the property. He finds that, on a balance of probabilities, the City was able to prove that there was electricity tampering at the property for a considerable period with reference to 2017 to 2021. He finds further that evidence shows that the occupants of the property were receiving electricity for free, which can easily be categorized as stealing. The residents of the house have complied with the contravention order and, apparently, every resident who is involved in the tampering with electricity will face the same sanction. This will be the end of the story.
- [24] Ndzombane finds that it is clear to him that the City was correct to subject Booysen, who was an employee of the City, to a disciplinary hearing to establish whether Booysen was involved in the tampering with electricity or was aware or ought to have been aware of the tampering. According to Ndzombane, it was important to look at the arrangement reached between Booysen and Daphne as to why the house was purchased by both of them, and he finds that Booysen's evidence shows that he did not get involved in the maintenance or any improvements in the house. Apparently, their roles were clearly stipulated.
- [25] Ndzombane finds that Booysen was residing at the granny flat at the property, and that the water bill accounts for the property were under Booysen's name. He finds that it was the City's duty to prove that Booysen was aware of the tampering with electricity, or that he tampered with electricity, or ought to have been aware that there was tampering with electricity. In this regard, the City relied on circumstantial evidence to prove its case. In this regard, the City relies on the following proven facts:
- a. Booysen was reflected as the owner of the property.

- b. The water bill was in Booysen's name.
- c. Booysen stayed at the property during the period of tampering.
- d. If there was a problem with arrears, Booysen would enter into an agreement with the City to resolve the issue if there was tampering with the electricity.

[26] Based on these proven facts, so Ndzombane states, the City appeals that a negative inference be drawn that Booysen was aware of the tampering with the electricity at the property or that he had tampered with the electricity. In contrast to these proven facts, the following facts counters the City's version:

- a. Booysen stayed in the granny flat.
- b. Booysen was not involved with the operations of the house, including maintenance and any improvements.
- c. There was an agreement between Booysen and Daphne that he would be bought out in the future.
- d. Booysen did not physically buy electricity for the property, as such was the responsibility of his mother.
- e. Booysen became aware that there was electricity tampering in the house when he received the contravention order.
- f. The house belonged to Daphne.
- g. There were a lot of adults residing in the house.

[27] Based on these facts, Booysen implies that he was not aware of the tampering with electricity in the house.

[28] Ndzombane finds that there is a possibility that Booysen was aware or was involved in the tampering with electricity in the house. On the other hand, it is

also possible that Booysen was not aware of the tampering in the house. The City appears to imply that Booysen was the only person who was capable of tampering with the electricity in the house. Ndzombane finds that, at best, the City wants him to speculate based on strong suspicion that Booysen had tampered with the electricity. As the matter stands there is a high possibility that either Booysen, Daphne and his mother could have been involved in the tampering with electricity. There is, however, no direct evidence that Booysen had tampered with the electricity as per the charge. For this reason, Ndzombane finds that, on a balance of probabilities, the City failed to prove that Booysen had tampered with the electricity during the period January 2017 to October 2021 and, consequently, that the dismissal was substantively unfair.

[29] Ndzombane's findings are with respect a finding that a reasonable decision-maker, faced with the same evidence, could not reach. As stated already, the City did not have to prove that Booysen was the one who physically tampered with the electricity. The City proved that there was tampering in the house from 2017 to 2021 during which time Booysen was a consumer, an occupier and a co-owner. Booysen was one of the persons to be held responsible for any tampering with the electricity on the property, whether done by himself, Daphne, or the mother. On the evidence before Ndzombane, the tampering would have been done by either one of Booysen, Daphne, or the mother. The household benefitted from the reduced electricity purchases due to the tampering with the electricity.

[30] The facts relied on by Ndzombane to counter the common cause facts relied on by the City are not sufficient to exonerate Booysen as a consumer, occupier and co-owner of the property. Section 26 states very clearly who will be held liable if it is determined that there was tampering with electricity and in terms of section 26, Booysen was one of the persons to be held responsible. A consumer, occupier and co-owner cannot simply sit back and claim unawareness of the tampering with electricity on property that is co-owned by him and his sister.

- [31] It is further highly improbable that Booysen would not have been aware, if it was not him that physically tampered with the electricity, that someone else in the household, i.e., Daphne or his mother, were responsible for the tampering with the electricity, which in turn led to substantial savings for the household and to a direct loss to the City. On worst case scenario, Ndzombane should have found Booysen guilty to the alternative charge to the main charge especially based on his capacity as consumer, occupier and co-owner. The alternative charge refers to Booysen being an accomplice or accessory in contravention of section 26 when it was found that 'you' tampered with your electricity service connection for personal gain.
- [32] The City was required to prove Booysen's guilt on a balance of probabilities. The proven facts support a finding that Booysen ought to have been found guilty of either tampering with the electricity himself, or at the very least being an accomplice to the tampering of electricity. Daphne and Booysen's mother testified during the arbitration proceedings and not one of them owned up to tampering with the electricity. There is no other person who could have tampered with the electricity other than Booysen, Daphne or his mother. It cannot be that, since there is no direct evidence of who it was that physically tampered with the electricity, that no one can be held responsible for the losses suffered by the City from 2017 to 2021 in circumstances where Booysen and Daphne were solely responsible for the property during the period before 2017, when the use of electricity started reducing, to 2021 when the contravention was discovered.
- [33] Therefore, it is this court's finding that Booysen's acquittal of the main charge, or the alternative charge, is a finding that a reasonable decision-maker could not reach.
- [34] This then brings the court to the final question as to whether the sanction of dismissal is an appropriate sanction for the contravention of section 26. In Ndzombane's own finding, he equates the tampering with electricity to stealing. Ndzombane confirms that it is well accepted that an employee cannot be

involved in acts of dishonesty, and that it is common cause that the City has a rule that regulates acts of theft, misrepresentation and dishonesty. He also confirms that there is no dispute about the reasonableness of the rule and the consistent application of the rule by the City. He confirms that, in employment law, a premium is placed on honesty because conduct involving moral turpitude by employees damages the trust relationship on which the contract is founded. It is perfectly clear that a rule guarding against dishonesty is reasonable, and it may invite a sanction of dismissal.

[35] But for Ndzombane's failure to find Booysen guilty of the charge, or alternative charge against Booysen, the only appropriate sanction for the contravention of the rule, i.e., being at the very least an accomplice to the tampering of electricity causing the City a financial loss at the expense of the household's personal gain, is that of summary dismissal. There is no reason for this court to refer this matter back to the SALGBC to be determined by another arbitrator. All the evidence was placed before this court and this court is able to dispose of the matter based on the transcribed record, and the bundle of documents used during the arbitration.

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

Order

1. The application for the arbitration award to be reviewed and set aside is granted.
2. The first respondent's dismissal was substantively fair.
3. No order is made as to costs.



C. de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

A Samuels

Instructed by:

Timothy and Timothy Attorneys

For the Third Respondent:

Application for review not opposed