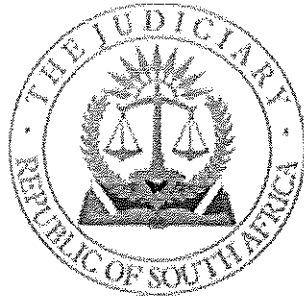




Not reportable

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT CAPE TOWN

Case no: C68/2024

In the matter between:

ISAAC FARI

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

PHILIP SACK N.O.

Second Respondent

ZARA CLEANING SERVICES

Third Respondent

Date of Hearing: 9 September 2025

Date of Judgment: 22 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 22 September 2025.

Summary: (Application to review a CCMA arbitration award in which the commissioner dismissed a claim for alleged underpaid bonuses in terms of section 73A of the BCEA – Award reasonable – application dismissed).

JUDGMENT

LESLIE AJ

- [1] This is an unopposed application, brought in terms of section 145 of the Labour Relations Act 66 of 1995 ("the LRA") to review and set aside an arbitration award issued by the second respondent ("the commissioner") under the auspices of the first respondent ("the CCMA").
- [2] The applicant was the claimant in the CCMA. His claim was brought under section 73A of the Basic Conditions of Employment Act 75 of 1997 ("the BECA") for amounts allegedly unpaid to the applicant by his former employer, the third respondent.
- [3] Most of the background facts were common cause. The third respondent provides cleaning services to various clients, one of which is the Somerset Hospital. The applicant was employed as a Team Leader with effect from March 2020. Team Leaders are paid a Team Leader bonus of R250 on a monthly basis.
- [4] During March 2022, the applicant was promoted to Supervisor. In that position, the applicant was entitled to a Supervisor bonus of R2500 per month. The applicant received the Supervisor bonus for part of March 2022, the whole of April 2022 and part of May 2022.
- [5] From June 2022 until the termination of his employment in February 2023, the applicant did not receive the Supervisor bonus. He was paid the Team Leader bonus.

- [6] The applicant claimed that he was entitled to the Supervisor bonus for the balance of May 2022 until February 2023. The amount claimed was R19125.
- [7] The issue in dispute before the commissioner turned on what had happened in May 2022. The third respondent's version was that the applicant had been unhappy with the money he was being paid in the Supervisor role. In May 2022, the applicant had attended the third respondent's head office and had stepped down from his Supervisor role. From then onwards, the applicant worked as a Team Leader again.
- [8] The third respondent did not call a witness from its head office to testify. Instead, Mr Talkmore Chaemesa, employed by the third respondent as a Supervisor at the Somerset Hospital, gave evidence on behalf of the third respondent. He testified that the applicant was not happy with the money he received as a Supervisor. In May 2022 the applicant attended the third respondent's head office and when he returned he was no longer a Supervisor but continued as a Team Leader. The office had telephonically informed Mr Chaemesa of this fact.
- [9] After May 2022, the applicant never complained that he was being short paid – albeit that he no longer received the Supervisor bonus. Mr Chaemesa testified that the applicant performed the services of a Team Leader from May 2022 until February 2023. He confirmed in a staff meeting, at which the applicant was present, that the applicant was no longer a Supervisor.
- [10] The applicant's payslips continued to record that the applicant was a Supervisor – something which Mr Chaemesa referred to as a technical error. However, the payslips reflected that the applicant was not paid the Supervisor bonus and that he only received the Team Leader bonus. The applicant's timesheets, used to generate salary payments, were signed by the applicant and reflected that from May 2022 he was a Team Leader.
- [11] The applicant's version was that he had worked as a Supervisor from March 2022 until February 2023. He had retained his Supervisor uniform and badge. He denied that he had stepped down as a Supervisor in May 2022.

The applicant suggested that he had not complained about being short-paid during his employment, as he feared victimisation.

- [12] The commissioner, who was steeped in the matter and heard the evidence of the witnesses firsthand, found in favour of the third respondent. He found that Mr Chaemesa gave clear and concise evidence and was held to be credible.
- [13] Although the third respondent did not call a witness from its head office, Mr Chaemesa's evidence was corroborated *inter alia* by the contents of the timesheets and the applicant's payslips. It weighed heavily with the commissioner that the applicant must have been aware that he was no longer receiving the Supervisor bonus from May 2022 until February 2023 (a period of eight months), yet he failed to raise any complaint about this with his employer. Although the applicant claimed he was concerned about being victimised, he only lodged his claim at the CCMA in June 2023 – four months after his employment terminated.
- [14] For these reasons, the commissioner held that the applicant had not discharged his onus under section 73A of the BCEA.
- [15] In order to succeed in this review application, the applicant was required to overcome the stringent test for reasonableness set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* 2008 (2) SA 24 (CC), namely that on all the relevant evidence before the commissioner no reasonable arbitrator could have dismissed the applicant's claim under section 73A.
- [16] In my view, the award is eminently reasonable and does not warrant interference on review. The commissioner weighed up the competing versions and found that the third respondent's version was more credible and probable than that of the applicant. In particular, the third respondent's version was corroborated by material documents – including the applicant's signed timesheets and his payslips. The applicant was unable to plausibly explain why he had not complained about the alleged short-pay for the 8 month period between May 2022 and February 2023.
- [17] I mention, for the sake of completeness, that at the hearing of this application Mr Fari handed up an affidavit deposed to by Mr Chaemesa on

30 August 2025. In that affidavit, Mr Chaemesa states that he was not present at the head office either when the applicant was promoted to Supervisor or at any time thereafter. This is not evidence that served before the commissioner at the time when the award was issued. It can have no bearing on the question that arises for determination, namely, whether the award is reasonable in relation to the material that was properly before the commissioner.

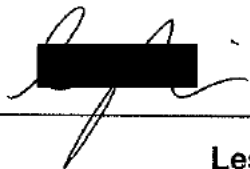
[18] The review application accordingly falls to be dismissed.

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

Order

[1] The application is dismissed.

[2] There is no order as to costs.



Leslie AJ
Acting Judge of the Labour Court of South Africa

Representatives –

For the applicant:

In person

For the first respondent:

No appearance