



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D1395 /19

Not Reportable

In the matter between:

WILLOWTON LOGISTICS (Pty) Ltd

Applicant

and

DETAWU obo Sabelo Thafeni

Respondent

Heard: 23rd April 2025

Delivered 3rd October 2025

JUDGMENT

MM Govender AJ

ISSUE

[1] The applicant seeks to Review and set aside the award issued on 8th September 2019 by the NBCRFI Bargaining Council and seeks the following relief :

- (a) Reviewing, and setting aside or correcting, in terms of S145 of the Labour Relations Act 66 of 1995 'LRA', the arbitration award handed down by the Third Respondent under case number PMBRFBC52698 dated 8th September 2019, (and received on 26th September 2019);
- (b) Substituting the arbitration award with an order of the above Honourable Court that the First Respondent's dismissal was fair;
- (c) Making such order as this Honourable Court deems appropriate for the further conduct of the proceedings;
- (d) Directing the first respondent to pay the costs of the application;
- (e) Granting the applicant further or alternative relief.

[2] The applicant averred that the award was reviewable on several grounds summarized as follows:

- (i) The Third Respondent's award is unreasonable and is wholly and materially flawed;
- (ii) The Third Respondent disregarded and failed to deal in his analysis with the relevant evidence relating to the 17th and 19th July;
- (iii) The Third Respondent took on the role of the representative of the Third Respondent and made improper subjective findings;
- (iv) The Third Respondent imposed a subjective understanding of the offensive/disrespectful words used by the First Respondent;
- (v) The Third Respondent's analysis is factually incorrect and inaccurate in relation to the key wage document;
- (vi) The Third Respondent's conclusion that the Applicant's main witness was not a credible witness was not consistent with the evidence.

BRIEF BACKGROUND

[3] The first respondent was employed as a driver at the time of his dismissal and had worked for the Applicant since 30 September 2013,

The first respondent was dismissed (his services were terminated on 13th August 2018) following a disciplinary enquiry conducted by the Applicant relating to the following charges :

- (i) Gross insubordination
- (ii) Gross insubordination and/or insolence..
- (iii) Use of company property without authority in that on 19th July 2018

[4] The issue emanated from the applicant's decision to introduce a revised key tag procedure after an incident relating to the dual usage of the key tag.

[5] The time line between the 12th and 19th July 2018 was briefly as follows

12th July 2018

A problem with driver dual tags is identified.

13th July 2018

The applicant's version is essentially as follows

Fleet Controller Prageshan Reddy (Pregga) calls the first respondent and other employees to his office to sign off on the new procedure . Three drivers sign the document with no issue. The applicant said that he wanted to consult his attorney

on the following Monday (16th July). Pregga gave him permission to do so.

Pregga

said that on the 13th July the applicant had come into the office and when he asked him about the drivers meeting on the previous day 'he swung his hand and

said your boss knows fuck all'. He said so in the presence of Supervisor controller

Trishan Nundlall.

16th July 2018 (the following Monday)

The Applicant's version is that security informed the First Respondent to see HR Officer Ms Meyer but the applicant refuses to do so and said that he did not recognise the authority of Ms Meyer on HR issues.

17th July 2018

The Applicants' version is that the HRO asked Pregga to tell the First Respondent

see her but he refused to do so and said ' the Company does Fuck all for him '.

The first respondent denied that he used said wordage.

Pregga sent the applicant a sms to see him and in a subsequent telephone chat

with Pregga the First Respondent admits that he 'shouted' over the phone and said :

' he was tired of the Fuckin rules of the company '

' he does not trust anyone at the company '

' he cannot cannot sign Fuck /Fok all'

19th July 2018

Security attempted to escort applicant to HR. Applicant refused and attempted to

leave in another company vehicle without permission to do so . He was then escorted off the premises by security .

[6] It is noted that the first respondents' general version is that his conduct on the 16th 17th and 19th resulted from the pressure from Pregga to sign the driver tag document.

His version was that he had told Pregga that he would consider signing the document after consulting with his attorney on 23rd July 2018.

The Applicant and Respondent did not attest to a common time line but the above time line confirms clear dissention relating to the signing of the driver tag document. The charge of insolence is related to the language allegedly used by the first respondent.

He denied doing so otherwise but admitted the interaction on 17th July 2018.

ANALYSIS

[7] The test on Review was clarified by the Constitutional Court in **Sidumo and Another v Rustenburg Platinum Mines Ltd and Others** ¹ held that *the reasonableness standard should now suffuse section 145 of the LRA*” and that the threshold for reasonableness of an award”..is [whether] the decision reached by the Commissioner *is one that a reasonable decision maker could not reach*’.

[8] **The Supreme Court of Appeal in Herholdt v Nedbank and Another** ² (Congress of SA Trade Unions as Amicus Curiae) held 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 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.’

[9] The applicant cited the following main grounds on which it averred that the award of the Arbitrator was reviewable.

- (i) The credibility finds against its man witness Pregasen (Pregga)Reddy;
- (ii) The Arbitrators subjective views of what is acceptable conduct between the first respondent and his superiors;

- (iii) The Arbitrators subjective interpretation of the meaning of “ Fuck All”;
- (iv) The value the Arbitrator placed on the aspects of insubordinate conduct and vulgar language.

[10] Central to the charge of Insolence - and directly associated to the charge of Insubordination – is the applicant’s usage of language generally considered as being disrespectful to the First Respondent’s superiors and the Company itself. The Applicant’s averment is that the First Respondent did so wilfully and repeatedly.

[11] The Arbitrator elected not to apply the plain language interpretation of said wordage and imposed a subjective ‘cultural based’ interpretation that effectively diminished the gravity of the offence. The Arbitrator did so without any oral or wrtten evidence.

The arbitration award records the following

It is noteworthy that the First respondent admits that he used the following language

‘ he was tired of the Fuckin rules of the company ‘

‘ he does not trust anyone at the company ‘

‘ he cannot cannot sign Fuck/Fok all’

[12] The following excerpt of the arbitration transcript ³ is significant and persuasive. It shows quite clearly that arbitrator superimposed his understanding and interpretation of the swear word ‘ fuck’ with ‘fok’ over that of the clear evidence of witness Pregga. In point fact despite the arbitrators intervention – that bordered on cross examination – the witness’s evidence remained consistent.

‘Mr Reddy : He swung his hand and said your boss know fuck all

Commissioner : Fok all

Mr Reddy. : Fuck all

Mr Schabort. : Just hear what the Commissioner is asking you. There is a differernce between fuck all and fok all

Mr Makhadama : No....

Commissioner : No,no,no he is leading the witness, he wants him to make a difference. What is the problem ?

Mr Reddy. : He said fuck all. Fuck all,yes

Commissioner. : Don't worry about the terms. I know these terms,I listen to them when English speaking people is talking, and when African is talking, I know even it means when who says what, fok all. Im sure he said ' your boss knows fok all". He said that ?

Mr Reddy : Well, he said fuck all the English one, yes. I heard fuck all.

Commissioner : That's how you heard it, okay "

[13] One of the primary grounds of review relates to the arbitrator's credibility assessment of Pregga's Evidence

The evidence of Pregga was central to the applicant (employers) case at the arbitration He was the fleet controller . He also managed the process almost exclusively to secure the sign off of the the new key tag process document. It is from this process that the charges of insolence and insubordination emanate .

The applicant alleges as its first ground of review that the arbitrators conclusion that Pregga was an unreliable witness was unreasonable and cited several excerpts of the evidence record in substantiation of this allegation .

[14] The gist of the arbitrators conclusion is contained in the following paragraph of the award ⁵

"This is another indication that Reddy was never a good witness, and I am not surprised when he was being cross examined, I picked up that he is not a witness I can trust.

[15] The arbitrators determination that Pregga's testimony was not as clear as one would expect is not without merit . Pregga for instance ought not to have been unclear on whether he left work early on 16th July 2018 because he was unwell.

[16] This court is however obliged to record that there were also very clear issues of communication on the part of the representative Mr Makgedama.

The communication confusion may be discerned from the following exchange from the transcript ⁴ .

Mr Makhedama. Was left but not by – was left, but as it was left, it was clear as to who

left the instruction

Mr Schabort Commissioner I've got it, I put it to you

Mr Makhedama. No, is Maya

Mr Schabort. ...Maya left the instruction with the security officer

Commissioner. No no the applicant left the instruction

Mr Schabort. ...that's what

Mr Makhedama. Not

Commissioner. But who left the instruction now ?

Mr Makhedama. That is correct. That's correct

Commissioner. What is correct Sir ?

Mr Makhedama. To ask. The instruction was given to the security officer by Maya, to say, advise the applicant to come to see me

Commissioner. Eish

[17] The arbitrator himself admitted to struggling to understand the representative as indicated in his successive comment :

“ COMMISSIONER: You are making life very difficult for us Mr Makhedama, the way you construct your questioning, it is difficult to understand what you are talking about. I can't blame you, it's the language problem. I must say, I have been trying very hard, even yesterday, to understand what you mean by Davis, and you mean device, it is very difficult to understand you.

Said unclear communication by the representative might well explain – in part at least - the sometimes confusing responses from Pregga .

[18] Be that as it may they are pockets of areas of Pregga's evidence that seems to not be as clear and precise as one might expect from a manager of his seniority and intimate knowledge of the incident.

It is however not sufficient enough to conclude that he was a generally unreliable witness.

[19] The arbitrator was required to make a clear determination on a balance of probabilities whether the first respondent was guilty of insubordination and / or insolence or not. He did not do so.

[20] The arbitrator interpreted the swear word used by the first respondent within a customary context without any supporting evidence . This interpretation served to ameliorate the intensity of the plain language understanding of the word.

[21] The applicant and first respondent attest essentially to mutually destructive versions with regard to the key tag issue document.

In ***Stellenbosch Farmers Winery Group (Pty) Ltd and another v Martell et Cie and Others***⁶ , it was held:

“[5] On the central issue as to what the parties decided there are two irreconcilable

versions. So too on a number of peripheral issues that may have a bearing on the probabilities. The techniques employed by the courts in resolving factual disputes of this nature may be summarized as follows. To come to a conclusion

on the disputed issues the court must make a finding on :

- (a) the credibility of the various factual witnesses;
- (b) their reliability ;and
- (c) the probabilities

.....in light of its assessment of (a) , (b) and (c) the court will then, as a final step, determine whether the party with the onus of proof has succeeded in discharging it.

[22] There are two mutually destructive versions.

In Version A (that of the First Respondent) is that he was willing to comply and was not insubordinate but had genuine concerns about the new key tag document , its cost , clarification etc and wanted the comfort of the advice of his attorney on 23rd July 2018 before he signed the document. He became increasingly frustrated with Pregga's insistence that he signed the document before the 23rd July 2018. He intimates that his language marked said frustration.

[23]. In Version B (that of the applicant) the first respondent's conduct was insubordinate and insolent. He had refused to sign the key tag document without proper reason. He had said that he needed to consult with his attorney on 16th July 2018. His insolent language was unprovoked and unwarranted and in breach of company rules.

His committed several acts of insubordination and his language followed suit .

[24] There is no dispute that the rule was necessary given the issue with the dual driver tags. The first document had been signed by other drivers prior to the time that the applicant was requested by Pregga to sign the document.

[25] The two primary witness are Pregga and the first respondent. Pregga's evidence whilst not perfect is generally coherent and convincing. It is also no evidence that Pregga had reason to fabricate his version of the events.

The first respondent's evidence by comparison is less convincing.

The events from 16th to the 23rd July 2018 do not support his version. If so he would have expected to simply say verbally and in writing that he would consider signing the document after his consultation with his attorney on 23rd July 2018.

His acts of insubordination and insolence do not align with his version that he simply wanted to take legal advice before signing the document.

His conduct stretches far beyond the parameters of this concern .

The respondent is an employer with a HR dept - this ought to be the port of call of an genuinely aggrieved employee .

[26] Based on relative credibility, reliability and probability the applicant's version is more convincing than that of the first respondent and on a balance of probabilities is the preferred version of the two mutually destructive versions.

[27] The arbitrators award is not the award of a reasonable decision maker . A reasonable decision maker would have concluded that on a balance of probability the applicant was guilty of the charge of insubordination and insolence as charged.

[28] The arbitrator failed to make a clear determination on the question of guilt and therefore did not deal with sanction. He then attempted to remedy the situation by limiting the first respondents back pay with the following confusing comment at paragraph 181 of the award

"..However if I have regard to the fact that the applicant does not come with clean hands, as he conceded that he used disrespectful or strong language to his superior that he was 'funkin tired of the company rules', whilst I am of the view that dismissal would have been harsh under the circumstances, I hold the view that no message would be sent to him if he gets full back pay. As a corrective measure, he should forfeit a portion of his back pay."

The arbitrator seems to have conflated the fundamental concepts of Guilt and Sanction.

The landmark Constitutional Court judgment decision in **Sidumo v Rustenberg Platinum Mines Ltd and others (supra)** determined the test for appropriate sanction and listed several factors that should be considered. These factors are noted in particular both the seriousness of the offence and the applicant's unblemished disciplinary record.

The court does not find a basis to award costs.

ORDER

1. The arbitration award is reviewed and replaced with the following order :

Mr Maputle is reinstated on the following terms :

- 1.1 A 12 month final written warning for insubordination is issued in accordance with terms of the disciplinary code. The warning period will commence from the date of reinstatement;
 - 1.2 Reinstatement will commence from the date on which the third respondent reports to the Applicant in order to resume work;
 - 1.3 Reinstatement shall not be with retrospective effect;
2. The order of reinstatement must , within 15 days of the date of this judgment,be served on the Respondent (union). Mr Maputle must within 90 days of said date of service tender to resume work failing which the order will automatically lapse

3. No order as to costs

MM Govender

Acting Judge of the Labour Court of South Africa

Appearances

Applicant: Mr GM Kirby- Hirst McGregor Erasmus Attorneys

Respondent: Mr TS Mnisi – Mnisi Attorneys

1. (2007) 12 BLLR 1097 CC

2. (2012) 33 ILJ 1789 LAC

3. Transcript page 99, lines 16-25 and page 100, lines 1-4

4. Transcript page 183, line 20-25 and page 184 lines 1-14

5 Pleadings page 25 paragraphs 155-165

6 2003 (1) SA 11 SCA