



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR2014/22

In the matter between:

POLYOAK PACKAGING (PTY) LTD

Applicant

and

AUBREY MOTEKANG MOKOENA, N.O

First Respondent

THE METAL AND ENGINEERING INDUSTRIES

BARGAINING COUNCIL

Second Respondent

DUMISANI MILTON SHEZI

Third Respondent

Heard: 10 June 2025

Delivered: 31 October 2025 (This judgment was handed down electronically by emailing a copy to the parties. The 31st of October 2025 is deemed to be the date of delivery of this judgment).

JUDGMENT

MUSIKER, AJ

Introduction

- [1] This is a review application, in terms of which, the Applicant seeks to review and set aside the arbitration award of the First Respondent (Commissioner) dated 29 July 2022.
- [2] The review application is opposed by the Third Respondent.

Background

- [3] It is common cause between the parties that Mr Dumisani Shezi (Third Respondent) placed a notice upon the notice board, absent of the permission by the Applicant to do so. There was a delay in the implementation of disciplinary action against the Third Respondent owing to a strike and consequential lockout that occurred at the premises of the Applicant.
- [4] The employee was charged with the following act of alleged misconduct:
- ‘insubordination in that you placed a notice up at the Blowpack clocking machine on the 13th October 2018 without permission. As a shop steward you are well aware that permission to put up any notice up for the employees attention requires permission from the HR department. The notice placed at the clocking machine related to a national strike against plastic employers; and was intended to mobilize Polyoak employees¹.’
- [5] The Third Respondent was dismissed from the employ of the Applicant on 13 October 2018. Aggrieved by his dismissal, the Third Respondent lodged an unfair dismissal dispute with the CCMA in terms of which he sought his dismissal from the Applicant to be declared to be substantively and procedurally unfair².
- [6] On 29 July 2022, the Commissioner rendered an arbitration award and ordered as follows:

¹ Page 1 of the record of proceedings.

² Page 85 of the record of proceedings.

'The dismissal of the Applicant, Mr Dumisani Shezi by the Respondent, Polyoak Packaging (Pty) Ltd, was procedurally fair but substantively unfair.

The Respondent, Polyoak Packaging (Pty) Ltd is ordered to reinstate the applicant, Mr Dumisani Shezi Into its employee on terms and conditions no less favorable to him than those that governed the employment relationship immediately prior to his dismissal. The applicant must report for duty on 24 August 2022.

The respondent, Polyoak Packaging (Pty) Ltd must pay the applicant, Mr Dumisani Shezi R127 821.60 (one hundred and twenty seven thousand, eight hundred and twenty one rand and sixty cents) backpay. The backpay amount must be paid into the applicant's bank account by no later than 24 August 2022.'

- [7] In rendering the award, The Commissioner offered the following rationale in respect of his award:

'the Respondents case is two pronged. The first part is that the applicant breached a rule contained in the collective agreement. The second part is that, by breaching the rule he undermined the Respondent's authority.

Breaching the rule - it is common cause that the applicant was not a signatory to the collective agreement. When the collective agreement was signed, he was not a shop steward. The evidence before me does not suggest that the applicant had knowledge of the contents of the agreement, when he affixed the notice on the notice board. In fact, Mr Raboroko testified that the applicant was not part of the training which he attended in 2018 I further noted that the applicants witness was part of that meeting and his testimony was that they were not trained about affixing notices on the notice board. The applicant witness's testimony was not challenged.'

The applicant's argument

³ Page 21 of the pleadings bundle.

The notice that was placed on the notice board

[8] The notice that was placed on the notice board read as follows:

‘wage increases on actuals. 2 years wage agreement. Finalization on outstanding demand. No to downward variations of conditions of employment. Fight for a living wage. National Union of Metalworkers of South Africa is calling on members, shop stewards and locals to mobilise to defeat these unholy alliance between SEIFSA, MEWUSA, PCASA, SEIFA and CEO To take us back to the dark days of apartheid, low wages, bad conditions, baaskap and lack of training or black people.’

[9] The Applicant submits that the content of the notice was incorrect and misleading. The demand as set out in the notice had no consequence in the plastic sector and referred to a demand at the Main Chamber of the Metal and Engineering Industry. The plastic chamber formed a sub-chamber in the metal and engineering industry.

[10] The Applicant submits that the misconduct of the Third Respondent is exacerbated by the intention of the Third Respondent to drive disharmony through the Company and cause havoc within the workplace. Serving to militate the employees into striking in an instance where the demand did not extend to the Applicant.

The recognition agreement and the Third Respondent

[11] The existence of the recognition and procedural agreement signed between the Applicant and the National Union of Metalworkers of South Africa (NUMSA)⁴ is common cause between the parties and sets out *inter alia*:

“shop steward” shall mean a company employee who is a paid up member of the Union, and who has been elected in terms of the Union’s constitution and who has been recognized by the Company as such;⁵

“the union” the National Union of Metalworkers of South Africa (NUMSA)⁶;

⁴ Page 135 – 144 of the record of proceedings.

⁵ Page 136 of the record of proceedings.

⁶ Page 137 of the record of proceedings.

The union undertakes to submit for the Company's approval or material for such display. The company reserves the right to withhold approval for placement in cases where such is likely to be detrimental to the good relationship between the parties and or the company's operations⁷.

Any such notice shall be dated and written under the unions official letterhead and or bear the full name of the union and the signature of an accredited union official and or committee member⁸.

In order to be displayed such notice must be signed or initialed by the applicable company representative or his official nominee indicating the management's approval. Once approved the shop stewards will place the notices on the designated notice boards.⁹

- [12] The recognition agreement was signed between the Applicant and NUMSA on 6 June 2015. Shortly after signature of the recognition agreement, the Third Respondent was elected as a shop steward.

The Blue Book, The Polyoak Way (disciplinary code)

- [13] In terms of the disciplinary code:

'the sanction for "*distributing or displaying hand-written or printed matter without authorization from management*" attracts a final written warning as a first offence and dismissal as a second offence¹⁰.

The offence of insubordination attracts the sanction of dismissal as a first offence¹¹.'

The alleged errors made by the Commissioner

⁷ Page 139 of the record of proceedings.

⁸ Page 139 of the record of proceedings.

⁹ Page 139 of the record of proceedings.

¹⁰ Page 125 of the record of proceedings.

¹¹ Page 124 of the record of proceedings.

[14] It is the Applicant's case that the Commissioner made factual errors in that he failed to resolve a dispute of fact by weighing up the probabilities. The Applicant submits that the Third Respondent was aware of the rule that he breached, based on the following:

14.1. Holding the position of a shop steward and his relationship being governed by the recognition agreement;

14.2. The Third Respondent was aware of the provisions of the Applicant's disciplinary code.

[15] The applicant submits that the Commissioner failed to assess the probabilities, and had he done so, the Commissioner would have determined that the Third Respondent was aware of the rule for *inter alia* the following reasons:

15.1. The recognition agreement that governed the appointment of the shop stewards;

15.2. The Applicant's disciplinary code, which sets out all of the rules of the Company, including the rule regarding the placement of notices upon the notice board. The existence of the blue book was not placed in dispute;

15.3. The notice was placed on the notice board on a Saturday, when the HR department was not working, revealing the underhanded manner in which the Third Respondent operated.

[16] In stating the following, the Commissioner committed a gross and reviewable irregularity:

'Based on all the above, it is evident that there was no rule in place stating that the applicant, as a shop steward, was required to 1st ask for management's permission before fixing the national strike notice on the notice board. The applicant did not even know that the union was required to first ask for management permission before giving him the notice to affix on the notice board. As mentioned above the content of the collective agreement

were unknown to him. My view is that the applicant did not breach a rule nor did he undermine the Respondent's authority. He was asked by NUMSA to notify the employees that there was an upcoming national strike, and he simply and honestly carried out to the union's request.'

The respondent's argument

[17] The Third Respondent submits that the award of the Commissioner is unassailable, most pertinently for the following reasons:

- 17.1. The correct distinction was made by the Commissioner regarding the difference between "UNION" and "SHOP STEWARD" in the recognition agreement;
- 17.2. There was no evidence to prove that the Third Respondent received training regarding affixing notices to the notice board;
- 17.3. There was no evidence that the Third Respondent was aware of the rule; and
- 17.4. There was an inconsistency in discipline as other employees placed notices on the notice board, yet the third respondent was the only employee who was disciplined for this offence.

[18] The Third Respondent's case is premised on the allegation that the Third Respondent ought not to have been charged with the offence of insubordination and simply the Third Respondent was to have been charged with the offence relating to affixing the document to the notice board, attracting a less punitive sanction than the ultimate penalty of dismissal.

Analysis

[19] It cannot be said that the Third Respondent ought to escape liability solely on the pretense that the Union is to blame for the publication of the notice which was placed upon the notice board. This resulted in a situation where the Third Respondent failed to take any accountability for his actions. It is nonsensical that the Third Respondent should circumvent all responsibility for his actions.

- [20] The liability that the Third Respondent attracts ought not to simply be for the offence of "*affixing a notice to the notice board*", especially in an instance that drove dire consequences for the Applicant and its business.
- [21] The Third Respondent was elected as a shop steward shortly after the implementation of the recognition agreement in 2015. He had been a shop steward for some time before his dismissal. Given the period of having served as a shop steward, the probabilities suggest that the Third Respondent was well acquainted with the content of the recognition agreement.
- [22] Considering the harmful and dishonest content of the notice that was posted and the disruptions that it was designed to cause, the Third Respondent, in a position of authority, ought to have known better than blindly posting the notice on a public notice board.
- [23] The probabilities suggest that the Third Respondent was indeed well aware of his actions and the potential consequences of posting false information on the notice board. I believe that the probabilities suggest that the Third Respondent intentionally broke the rule.
- [24] Even if I were to accept that the Third Respondent, a shop steward, who had served in the position for a period of time, was unaware of the content of the recognition agreement, I cannot then say the same for his knowledge of the Applicant's disciplinary code.
- [25] The fundamental shortcoming of the Commissioner was that he failed to consider the content, reasonableness and knowledge by the Third Respondent of the disciplinary code.
- [26] The Commissioner incorrectly placed far too great emphasis on the duty of the Union contained in the recognition agreement, thus giving the Third Respondent the opportunity to circumvent the consequences of the role that he played in posting false information on the notice board and attempting to lure the workforce into disharmony.

- [27] The Commissioner erred in his failure to consider and apply the content of the Applicant's disciplinary code to the misconduct of the Third Respondent.
- [28] I believe that the probabilities suggest that the Third Respondent was well aware of either the disciplinary code or the recognition agreement, but most likely, both. I am of the view that the actions of the Third Respondent were intentional and designed to drive disharmony within the workplace. The Third Respondent's actions amount to misconduct, and such misconduct should attract a punitive sanction.
- [29] In deciding the question regarding the appropriate nature and wording of the charge faced by the Third Respondent:

*Sylvania Metals (Pty) Ltd v M.C Mello N. O and others*¹², the Labour Appeal Court held that:

'Insubordination in the workplace context generally refers to the disregard of an employer's authority or lawful and reasonable instructions. It occurs when an employee refuses to accept the authority of a person in a position of authority over him or her and, as such, is misconduct because it assumes a calculated breach by the employee of the obligation to adhere to and comply with the employer's lawful authority. It includes a willful and serious refusal by an employee to adhere to a lawful and reasonable instruction of the employer, as well as conduct which poses a deliberate and serious challenge to the employer's authority even where an instruction has not been given.'

- [30] I do not believe that the charge against the Third Respondent should have been merely "affixing", I believe that, considering that the Third Respondent was well aware of the rule through various documents, the Third Respondent's conduct amounts to that of insubordination. The offence of insubordination is punishable, in terms of the Company's disciplinary code, with the sanction of dismissal.
- [31] I hold the view that the Commissioner failed to consider the pertinent evidence of the Company's disciplinary code. I further believe that the Commissioner failed to properly consider the probabilities that the Third

¹² (JA83/2015) [2016] ZALAC 52 (22 November 2016) at para 17.

Respondent knew and understood the content disciplinary code and the recognition agreement. Most importantly, the Commissioner failed to consider the consequences faced by the Applicant as a result of the Third Respondent's misconduct.

[32] It is as a result of the above that I believe that another reasonable decision maker, faced with the same facts as the Commissioner, would have arrived at a finding substantially different to that of the First Respondent. Accordingly, the arbitration award of the Commissioner has met the test for review and stands to be set aside.

Costs

[33] I have had regard to the requirements of law and fairness in considering costs, and having done so, I am of the view that a cost order is not warranted in this matter.

[34] In the premises, I make the following orders:

Order

1. The arbitration award dated 29 July 2022 issued under case GAJB16716-21 by the first respondent is reviewed and set aside, and replaced with the following order:

‘The dismissal of Dumisani Milton Shezi by Polyoak Packaging (Pty) Ltd was procedurally and substantively fair.’

2. There is no order as to costs.

N.S. Musiker

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Anton Baker Attorneys

Instructed by: Adv Withaar

For the Respondent: Brian Khanyile

Instructed by: KMB Attorneys

LABOUR COURT