



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 2144/21

In the matter between:

AUTOZONE

Applicant

and

DIALE NTSOANE N.O.

First Respondent

**DISPUTE RESOLUTION CENTRE FOR
THE MOTOR INDUSTRY**

Second Respondent

LESETJA PAUL MATSAUNG

Third Respondent

Heard: 16 May 2024

Delivered: 6 November 2025

JUDGMENT

KUMALO, AJ

Introduction

- [1] In these proceedings, the applicant seeks an order reviewing and setting aside the arbitration award issued under case number MIPT 32350, dated 13 September 2020. The award was issued by the first respondent (the Arbitrator), acting under the auspices of the second respondent, the Dispute

Resolution Centre for the Motor Industry. In the award, the Arbitrator found that the dismissal of the third respondent was substantively unfair and ordered his retrospective reinstatement. The third respondent is opposing the review application.

Background

- [1] The third respondent commenced employment with the applicant in July 2010, occupying the position of Sales Representative. On 20 October 2020, the applicant brought allegations of misconduct against the third respondent, specifically relating to the misappropriation of company funds.¹ An internal inquiry into the allegations was conducted, and on 12 November 2020, the third respondent was dismissed from the applicant's employ.
- [2] The dismissal dispute was referred to the second respondent, and conciliation was conducted on 11 December 2020. Following the unsuccessful conciliation, the second respondent issued a certificate of non-resolution on 21 January 2021. The matter was subsequently referred to arbitration, resulting in the issuance of the impugned award by the Arbitrator.

Arbitration award

- [3] The Arbitrator recorded that the applicant's evidence included, inter alia, that on or about 12 September 2020, a customer arrived at its premises and reported that he had been sold an incorrect vehicle part. When asked to provide proof of purchase, the customer instead presented a credit receipt. Mr Obed Khumalo, the third respondent's manager, accessed the applicant's inventory system to verify the transaction and discovered that the part in question remained in stock and had not been sold. The customer demanded a

¹ The notice to attend the enquiry read as follows:

Nature of complaint: Misappropriation of company funds (regarded as theft), in that:

- On the 10th September 2020, you credited a deposit of R900.00 and gave the customer a gasket set they ordered.
- You however, failed to book the gasket set and also failed to give the customer a receipt nor his money back.
- Due to this, the company suffered a financial loss of R900, which you took for your own personal gain and R531.71 for the lost gasket set, which you are liable for.
- This type of behaviour is totally unacceptable and has placed the trust relationship between yourself and the company in jeopardy.

refund and was advised to return on the following Monday, when the third respondent would be on duty.

- [4] On the following Monday, the customer returned and approached Mr Khumalo and a junior manager. The junior manager drafted a written statement, which the customer signed. The customer refused to engage with the third respondent, stating that they wanted nothing further to do with him. Mr Khumalo subsequently arranged for a replacement vehicle part and handed it over to the customer the next day.
- [5] The Arbitrator further noted that the third respondent had maintained an unblemished disciplinary record over a period of approximately ten years. On 20 October 2020, the third respondent voluntarily consented to undergo a polygraph examination. The results, received on 21 October 2020, indicated no deception in response to any of the questions posed regarding “stock loss.” Notably, upon the third respondent’s return to duty on 12 September 2020, Mr Khumalo failed to inform him of the customer’s complaint. Even after the customer had left the premises, the third respondent was not confronted with the allegations. Furthermore, although he was present at the workplace on 15 September 2020, neither Mr Khumalo nor Mr Venter informed him of any misconduct allegations. He only became aware of the accusations upon receiving the notice of suspension.
- [6] The third respondent denied issuing the disputed proof of credit receipt and maintained that his involvement was limited to accepting a deposit and placing the order on the customer’s behalf. He asserted that he did not have the authority to generate a proof of credit receipt, as such authority was reserved for managers. He further denied having written his details on the back of the receipt. Additionally, he disputed the suggestion that the polygraph examination was unrelated to the charges of misconduct.
- [7] The third respondent alleged that on 7 August 2020, Mr Khumalo used his login credentials to process a sale involving a clutch kit while the third respondent was temporarily absent from the workplace. Upon discovering this, he approached Mr Chris Venter to request a password change. He

further referred to another incident in which he was accused of failing to sell a vehicle battery, despite a receipt confirming the sale. He claimed that Mr Khumalo had completed the disputed transaction using his login credentials, particularly as the transaction was recorded at 17:01—a time when he had already left the premises.

- [8] The Arbitrator further noted that the third respondent was dismissed on allegations of misappropriation of funds, which he denied. A negative inference was drawn from the applicant's failure to confront the third respondent in the presence of the customer, particularly given that the customer had been asked to return on a Monday specifically so that the third respondent would be present. The Arbitrator reasoned that if all parties, including the customer, genuinely believed that the third respondent had issued the proof of credit receipt and sold the vehicle part, they would have been eager to confront him while he was still present at the workplace.
- [9] The arbitrator found that the vehicle part ordered by the third respondent remained in the inventory, which supported the third respondent's assertion that he had indeed placed the order and accepted the R900 payment from the customer. The only evidence directly linking the third respondent to the alleged misconduct was the handwritten details on the back of the proof of credit receipt. These details were attributed to the third respondent, but he denied being their author. His denial was weighed against the customer's statement, which contained assertions relevant to the authorship of the receipt. This contrast formed a key part of the arbitrator's evaluation of the credibility and reliability of the evidence presented.
- [10] The arbitrator concluded that the mere presence of the third respondent's details on the proof of credit receipt did not constitute sufficient evidence to prove that he had completed the disputed transaction. In the absence of direct testimony from the customer, who was central to establishing the elements of the alleged misconduct, the arbitrator found that there was no substantive evidence linking the third respondent to the misappropriation of funds. As a result, the applicant failed to discharge the burden of proof

required to establish that the third respondent had engaged in any wrongdoing.

Discussion

- [11] The principles governing review applications are well-established. The central question is whether the decision made by the arbitrator is one that a reasonable decision-maker could not have reached. This standard ensures that the review process does not simply substitute the court's view for that of the arbitrator but rather assesses whether the arbitrator's conclusion falls within the bounds of reasonableness.²
- [12] This principle underscores that an arbitrator must properly apply their mind to the issues before them. A failure to do so renders the decision not only unreasonable but also unlawful, as it constitutes a breach of the right to administrative justice. In such cases, the decision may be subject to review and potentially set aside, as it falls outside the bounds of what a reasonable decision-maker would conclude.³ Simply put, arbitration awards must meet the standard of reasonableness. If an award is found to be unreasonable, meaning it is a decision that no reasonable arbitrator could have reached, it must be set aside on review. This principle ensures that decisions are not only lawful but also just and rational, in line with the constitutional right to administrative justice
- [13] The Labour Appeal Court has clarified that the correct standard for reviewing an arbitrator's decision is whether the outcome is one that no reasonable decision-maker could have reached. This means that the review process does not focus on whether the decision was correct, but rather whether it was so unreasonable that it falls outside the bounds of what a reasonable arbitrator could conclude. If the arbitrator fails to properly engage with the issues or evidence, and the result is an irrational or unjustifiable outcome, the award may be set aside on review:

² See *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* [2007] 28 ILJ 2405 (CC).

³ *CUSA v Tao Ying Metal Industries and Others* [2008] ZACC 15; 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC); [2009] 1 BLLR 1 (CC); (2008) 29 ILJ 2461 (CC) at para 134.

The Constitutional Court further held that to determine whether a CCMA commissioner's arbitration award is reasonable or unreasonable, the question that must be asked is whether or not the decision or finding reached by the commissioner "is one that a reasonable decision maker could not reach". (par 110 of the *Sidumo* case). If it is an award or decision that a reasonable decision-maker could not reach, then the decision or award of the CCMA is unreasonable, and, therefore, reviewable and could be set aside. If it is a decision that a reasonable decision-maker could reach, the decision or award is reasonable and must stand. It is important to bear in mind that the question is not whether the arbitration award or decision of the commissioner is one that a reasonable decision maker would not reach, but one that a reasonable decision maker could not reach. The Constitutional Court stated that, where a Court must decide the reasonableness or otherwise of a decision, '(a) judge's task is to ensure that the decisions taken by administrative agencies fall within the bounds of reasonableness as required by the Constitution.'⁴

And

Whether or not an arbitration award or decision, or a finding of a CCMA commissioner, is reasonable must be determined objectively with due regard to all the evidence that was before the commissioner and what the issues were that were before him or her. There is no reason why an arbitration award or a finding or decision that, viewed objectively, is reasonable should be held to be unreasonable and set aside simply because the commissioner failed to identify good reasons that existed which could demonstrate the reasonableness of the decision or finding or arbitration award.⁵

- [14] In *South African Rugby Union v Watson and Others*,⁶ the Labour Appeal Court reaffirmed the critical distinction between a review and an appeal. The Court held that a review under section 145 of the Labour Relations Act is not concerned with whether the arbitrator's decision was correct, but whether it was one that a reasonable decision-maker could have reached. The Court cautioned against treating a review as if it were an appeal, which involves reassessing the merits of the case. It emphasised that the review process

⁴ *Ibid* at 97.

⁵ *Ibid* at 103.

⁶ [2018] ZALAC 57; (2019) 40 ILJ 1052 (LAC); [2019] 7 BLLR 638 (LAC) at para 33.

must focus on the overall reasonableness of the arbitrator's decision, rather than dissecting the reasoning in a piecemeal fashion. The judgment reinforces that the role of the reviewing court is to determine whether the arbitrator's conduct and conclusions fall within the bounds of legality and rationality, not to substitute its own view for that of the arbitrator and held as follows:

In my view, applying the principles which have been developed with regard to review in terms of s145 of the LRA, the decision to dismiss first respondent, given the findings which were arrived at by both the court *a quo* and the third respondent on the charges, was unquestionably one that a reasonable decision-maker could have made on the facts of the case. The test is not whether the arbitrator's award meets the precision that might be expected from a judgment of the Labour Court. It is one thing to argue that such a mistake justifies a different result on appeal, but a very different approach must be taken, when in a case such as the present, the decision of third respondent is the subject of a review.

- [15] The essence of the applicant's case is that the arbitrator failed to properly consider relevant evidence, including hearsay, in reaching his findings. It is contended that the arbitrator disregarded the customer's hearsay statement, which clearly implicated the third respondent by stating that he had issued the proof of credit receipt. Furthermore, the arbitrator did not determine the admissibility of the hearsay evidence, nor did he apply the applicable legal framework governing such evidence. This omission, it is argued, materially affected the outcome of the proceedings and rendered the award unreasonable.
- [16] The assertion that the arbitrator failed to consider the customer's statement is unfounded. A holistic reading of the award reveals that the arbitrator acknowledged the statement but concluded that the only evidence linking the third respondent to the alleged misconduct was the inscription on the proof of credit receipt, an aspect not addressed by the customer's statement. The arbitrator ultimately found that the overall evidence favoured the third respondent, thereby indicating that the hearsay evidence was indeed considered. Accordingly, there is no basis for the claim that the arbitrator

committed a reviewable irregularity by failing to take the hearsay evidence into account.

- [17] The key issue is whether the arbitrator's conclusion that the third respondent's version outweighed both the customer's statement and the applicant's evidence is reasonable. This requires a holistic assessment of the evidence to determine whether the outcome is one that no reasonable arbitrator could have reached. In the present matter, it must be accepted that the arbitrator's conclusion was reasonable. This is because he considered the customer's statement and found it insufficient to establish a link between the third respondent and the alleged misconduct.
- [18] The arbitrator assessed the weight of the evidence by highlighting the absence of the customer's testimony, alongside the third respondent's explanation that Mr Khumalo had access to his password and had previously used it to conduct transactions. This context is critical in evaluating the nature of the dispute. It becomes evident that the issues raised in this application pertain more to the correctness of the arbitrator's reasoning than to the lawfulness or reasonableness of the outcome. As such, the applicant's challenge is characteristic of an appeal rather than a review, given that it focuses on the arbitrator's reasons rather than whether the decision itself is one that no reasonable arbitrator could have reached.
- [19] It is irrelevant whether the reviewing court disagrees with the arbitrator's reasoning. The sole inquiry is whether the outcome satisfies the standard of reasonableness. In this case, the arbitrator discharged his duties by evaluating the evidence in its entirety, including the disputed aspects, and reaching a conclusion based on that assessment. Even if the arbitrator's conclusion is arguably incorrect, it does not render the award reviewable. What matters is that the arbitration process was fair, and the issues were properly ventilated. Accordingly, the award is not susceptible to being set aside on review.
- [20] Even if the allegations that the arbitrator failed in his duties regarding the admission of hearsay evidence are accepted, the review application must still

be dismissed. The Labour Appeal Court has made it clear that hearsay evidence is inadmissible unless it is either consented to by the opposing party or admitted in the interests of justice, as contemplated in section 3 of the Law of Evidence Amendment Act. The Court emphasised that arbitrators must not remain passive when hearsay evidence is introduced and must exercise their discretion actively and lawfully. A failure to properly assess the admissibility of hearsay evidence at the appropriate stage may amount to a reviewable irregularity. However, such an irregularity only justifies setting aside the award if it renders the proceedings fundamentally unfair or leads to an unreasonable outcome.

There are three circumstances wherein hearsay evidence may be admitted: on consent between the parties; on provisional admittance with an understanding that the person upon whose credibility the probative value of the evidence depends is to testify at some future point in the proceedings; or by the court if the court, on consideration of relevant factors, is of the opinion that it would be in the interests of justice to admit the evidence.⁷

- [21] The arbitration record reflects that the third respondent objected to the admission of hearsay evidence on the basis that the customer was not called to testify. As there was no agreement between the parties regarding the admission of such evidence, and the customer ultimately did not testify, the admission of hearsay in these circumstances would have infringed upon the third respondent's constitutional right to a fair hearing. The third respondent was denied the opportunity to confront his accuser, which is a fundamental aspect of procedural fairness. In light of this, it is evident that admitting the hearsay evidence would not have served the interests of justice.
- [22] The third respondent consistently maintained that his password had been compromised by Mr Khumalo and that it was improbable he would have printed the proof of credit receipt at the time alleged. In light of this, it was incumbent upon the applicant to present more than hearsay evidence to substantiate the allegations of misconduct. The arbitrator weighed the

⁷ *CTP Gravure (Pty) a division of CTP Limited v Statutory Council for Printing Newspaper and Packaging Industry and Others* [2025] ZALAC 16 at para 26.

customer's statement against the credibility and reliability of the third respondent's version and ultimately concluded that the evidence did not support the claim of misconduct.

- [23] The applicant contended that the arbitrator failed to make a ruling on the admissibility of hearsay evidence, thereby rendering the evidence unreliable and the outcome unreasonable. However, this assertion is not supported when the full record is considered. The prejudice contemplated under section 3 of the Law of Evidence Amendment Act relates to procedural fairness, specifically, the disadvantage faced by a party who cannot cross-examine the original declarant of hearsay evidence. Such prejudice is inherent in all instances where hearsay is admitted. Therefore, in determining admissibility, the arbitrator must weigh this prejudice against the reliability of the hearsay evidence and assess whether its admission would serve the interests of justice. To mitigate prejudice, the substance of the hearsay evidence must be disclosed in the witness's statement, which the opposing party must have access to.⁸
- [24] The procedural safeguard concerning hearsay evidence is designed to protect the constitutional rights of the party against whom such evidence is tendered, not the party seeking to introduce it. In this case, the applicant was the party seeking to rely on hearsay evidence and therefore suffered no prejudice from the arbitrator's failure to make a formal ruling on its admissibility. Despite the third respondent's objection, the applicant was permitted to lead the hearsay evidence, and the arbitrator considered the contents of the customer's statement in his overall assessment. Accordingly, the alleged irregularity lacks materiality in the context of these proceedings.
- [25] Whether the ruling on admissibility was made during the hearing or in the award is immaterial. The irregularity, if any, did not result in procedural unfairness or an unreasonable outcome. As held in *Head of Department of Education v Mofokeng & Others*,⁹ flaws in the arbitrator's reasoning, such as

⁸ *S v Waldeck* 2006 (2) SACR 120 (NC) at paras 37 - 38.

⁹ *Head of Department of Education v Mofokeng & Others* 2015) 36 ILJ 2802 (LAC) at paras 31 -33.

failure to apply the mind or reliance on irrelevant considerations, must be assessed to determine whether they led to a misconceived inquiry or an outcome that no reasonable decision-maker could reach. Only if the conclusion is untenable does it warrant review and setting aside. The Labour Appeal Court held that:

“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.”

- [26] Even if it is accepted that the arbitrator committed an irregularity by failing to make a formal ruling on the admissibility of hearsay evidence, the decisive question remains whether the arbitration award is reasonable when assessed against the evidence presented. The record does not support the contention that, had the hearsay evidence been admitted or given greater weight, the overall evidence would have established that the third respondent committed

the misconduct. The arbitrator considered the customer's statement despite the third respondent's objections and weighed it against the broader evidentiary context. This approach reflects a reasonable assessment. Ultimately, the materiality of any procedural error or irregularity must be evaluated in light of the reasonableness of the outcome, and in this case, the award withstands scrutiny.

- [27] The arbitrator's conclusion that the customer's statement, introduced without the testimony of the declarant whose credibility was central to its probative value, must be weighed against the third respondent's consistent account that his password was compromised and that Mr Khumalo was responsible, cannot be faulted. The applicant cannot use these proceedings to retrospectively improve its case or seek a rehearing of the arbitration. The arbitrator was faced with a clear objection to the hearsay evidence and an unsatisfactory explanation for the customer's absence. No valid reason was provided for the failure to call the customer as a witness. In exercising his discretion under section 138(1) and (2) of the Labour Relations Act, the arbitrator reasonably preferred the third respondent's evidence over that of the applicant.

Costs:

- [28] It must be concluded that this review application was fundamentally flawed from the outset. The applicant ought to have recognised that, notwithstanding the alleged procedural irregularities, the arbitrator's overall conclusion was reasonable and could not be faulted. The applicant was legally represented, which should have heightened its awareness of the importance of resolving labour disputes expeditiously. The LRA prioritises the swift and efficient resolution of workplace disputes, and applications lacking merit undermine this objective and burden the dispute resolution system unnecessarily.
- [29] This conclusion further reinforces the final and binding nature of arbitration awards as provided under section 143 of the Labour Relations Act. The strict standard applied in review proceedings is intended to confine such challenges to instances where the fairness of the process is genuinely in question.

Despite clear legislative and judicial guidance, the applicant pursued this review in substance as an appeal, disregarding the legal requirements governing review applications. This conduct undermines the integrity of the dispute resolution process and warrants judicial censure. In light of the frivolous nature of the application and the failure to meet the stringent review threshold, the applicant should be ordered to bear the costs of these proceedings.

[30] In the premises, the following order is made.

Order:

1. The application to review and set aside the arbitration award issued by the first respondent is dismissed with costs.

M. Kumalo

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the applicant: M. van As, instructed by Fluxmans Attorneys.

For the third respondent: Z.S. Mothupi, instructed by Masetla Attorneys Incorporated

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