



THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Not Reportable

Case no: D744/2021

In the matter between:

**THE MEC, DEPARTMENT OF ECONOMIC DEVELOPMENT,
TOURISM AND ENVIRONMENTAL AFFAIRS**

Applicant

and

LG NAIDU

First Respondent

**GENERAL PUBLIC SERVICE SECTOR
BARGAINING COUNCIL**

Second Respondent

P JAIRAJH

Third Respondent

Heard: 19 August 2025

Delivered: 13 November 2025

**Summary: Review application – duty of proper consideration – ill treatment
of subordinate – lack of authority to recommend appointments.**

JUDGMENT

MKHATSHWA, AJ

Introduction

- [1] This is an opposed review application for the review and setting aside of the Award of the Third Respondent under case number GPBC674/2016, and for the substitution of the award with an order finding that the First Respondent was fairly dismissed from the Applicant's employ.
- [2] The Applicant further seeks costs of the application by any party who opposes the granting of the order.

Background facts

- [3] At the commencement of the hearing of this application, a substantive application was brought on behalf of the First Respondent for his substitution as a party to the review application with Mr Theven Pothraju (ID Number 8912075240083), the Executor of his estate, as the First Respondent, as sadly, the First Respondent died on 19 April 2025, after the close of pleadings.
- [4] The Applicant in this matter did not oppose the application for substitution; accordingly, the application for substitution was granted before the hearing of the matter on the merits.
- [5] The First Respondent was charged with six counts of misconduct. Initially, it had been seven counts, two of which were subsequently combined (counts two and three).
- [6] The first two charges related to an incident pertaining to defamation and intimidation of a junior colleague, Mr Sizwe Dlamini (Dlamini). Charge three related to fruitless expenditure by the Applicant for not collecting a mobile phone which he had initially ordered as part of his benefit entitling him to a work mobile phone. Charges four, five and six related to the First Respondent submitting a recommendation to his superiors without following the correct procedures, which resulted in 25 administrative clerks being upgraded from salary level five to level seven.

- [7] He was found guilty and dismissed (his last pay date being reflected as 15 March 2016) after he failed to attend the disciplinary hearing on the basis that he had been booked off sick by his psychiatrist. He referred the matter to arbitration, and the Third Respondent rendered an award dated 15 June 2021, where she found that the dismissal was procedurally and substantively unfair. She ordered the reinstatement of the First Respondent without any loss of benefits to his position as HR Manager. She further ordered the Applicant to pay the First Respondent back pay in the amount of R4 320 630.09, subject to statutory deductions. She also ordered the Applicant to pay interest on the above amount from 1 August 2021 to the date of payment.

Grounds of review

- [8] In summary, the Applicant raised the following grounds of review in arguing that the award of the Third Respondent is one which no reasonable arbitrator would have made on the evidence before her:

- 8.1 The Third Respondent failed to follow the correct legal processes in determining the various disputes of fact and committed errors of fact and law.
- 8.2 She relied on hearsay and double-hearsay evidence without any basis for the receipt of such evidence having been laid and in circumstances where no weight could have been given to such evidence.
- 8.3 She failed to grasp the material issues before her, or the nature of the function she was required to perform.

- [9] On the specifics, regarding charges one and two, the Applicant argues as follows:

- 9.1 The evidence of Dlamini related to two incidents, one occurred in December 2013 when the First Respondent became annoyed with Dlamini because the First Respondent's mobile phone had not arrived on time.

- 9.2 The second incident occurred when the First Respondent exceeded the permissible limit placed on his mobile phone usage, resulting in his mobile phone being 'soft locked' by the service provider. The First Respondent had accosted Dlamini, shouted at him, and verbally abused him in front of a number of people in the foyer of the building where Dlamini worked.
- 9.3 The second incident was witnessed by Mabaso, who testified that she was shocked by the manner in which the First Respondent had shouted at Dlamini. Mabaso was aware that the First Respondent had indeed exceeded the usage limit on his mobile phone and confirmed that neither she nor Dlamini could have done anything until there was authorisation, from their superior, Mr Chili (Chili), for the limit to be exceeded and for the mobile phone to be reactivated.
- 9.4 Ms Carol Langa (Langa) confirmed in her testimony that she had been in her office when the First Respondent confronted Dlamini. Further that she heard the First Respondent shouting at Dlamini. Her office is situated in the vicinity of the foyer where the incident occurred. She had left her office to see what the commotion was about, and she witnessed the remainder of the conduct of the First Respondent toward Dlamini. According to Langa, Dlamini appeared shocked and intimidated, and Dlamini did not respond to the verbal abuse.

[10] Regarding charges four, five, and six, the evidence led showed that:

- 10.1 The First Respondent signed a memorandum to the Member of the Executive (MEC) on 23 April 2014, recommending that administrative clerks in the Applicant's employ at salary levels four, five and six be upgraded to salary level seven. The memorandum claimed, among others, that the posts in question were in fact being performed at level seven. It claimed that the Department of Public Service and Administration (DPSA) and the office of the Premier, KwaZulu-Natal, had been consulted regarding the upgrades and that the DPSA Minister had mandated its implementation.

- 10.2 The memorandum was subsequently signed by Chili and Mr DK Golding (Golding) on 6 and 7 May 2013, respectively, approving the First Respondent's recommendation. The MEC signed the memorandum approving the First Respondent's recommendation on 23 May 2013.
- 10.3 The result of the above was that 25 administrative clerks, mostly at level five, were parachuted to level seven. It is Golding who contacted the DPSA to investigate the memorandum. An investigation by the DPSA ensued, and a report was issued in November 2014.
- 10.4 One of the issues raised by the report was in respect of Circular no.1 of 2013 from the office of the Premier, which had confirmed benchmark job descriptions to ensure consistency across the public service. Among the findings in the report were that the MEC was incorrectly advised, that both the office of the Premier and the DPSA were consulted (when in fact they were not), the process deviated from the set principles in the Provincial Job Evaluation Unit without providing any rationale for such a deviation, notwithstanding that it was a provision of the policy on job evaluation of the province and that there was clear evidence of a disjuncture on the equate reports which seemed to have been completed to mislead the top management and executive authority.
- 10.5 The report recommended a reversal of the upgrades and disciplinary action against those responsible.
- 10.6 According to the evidence led at the arbitration:
- 10.6.1 The DPSA is the custodian of job evaluation in the province.
- 10.6.2 The effect of Circular no. 1 of 2013 was that if any department felt that there were problems with the job descriptions, such a department must approach the office of the Premier, which would coordinate with the Central Job Evaluation Unit and send such a query to the DPSA.

10.6.3 Mr Paresh Maharaj (Maharaj), the Deputy Director: Labour Relations and Ms Deborah Khoathane (Khoathane), who was involved in the DPSA investigation, confirmed that the provisions of the Departmental Job Evaluation Policy had to be followed, and a proper process of job evaluation prior to any decision was required. According to Maharaj, the First Respondent had attempted to approve the upgrades through the Departmental Job Evaluation Unit, which the First Respondent chaired, after the upgrades had already been implemented. Members of the Job Evaluation Panel declined to do so. Maharaj was a member of the Panel.

10.6.4 According to Ms Babalwa Mapisa (Mapisa), to whom the First Respondent reported, she testified that these irregular upgrades caused chaos, and the Applicant had made attempts to reverse them. Eventually, this was not done due to threats of industrial action. Permission was eventually sought from the MEC not to reverse the upgrades due to the effect that it would have on a fragile labour relations environment.

Analysis of the evidence

[11] The First Respondent's evidence at the arbitration can be summarised as follows:

11.1 He sought to argue that there was a conspiracy to get rid of him by, among others, Golding, Dlamini and Mapisa, as he was seen as a stumbling block to their corrupt endeavours. He produced no evidence to that effect.

11.2 He tried to paint Dlamini as a racist, alleging that Dlamini had used a racist slur directed at him on the basis of his Indian descent. During his evidence-in-chief, the First Respondent did not mention this aspect even when his legal representative attempted to extract it from him.

- 11.3 Regarding the memorandum recommending the upgrades, the First Respondent argued that it was actually the work of a junior colleague, Mr Thula Lukele (Lukele). Lukele, testifying for the First Respondent and mentioned that the First Respondent was aware of the circumstances surrounding the memorandum, including the representations made in it. The fact of the matter is that the First Respondent signified his approval of the memorandum that was prepared by Lukele when he signed it and subsequently sent it to his superiors. Lukele was no longer in the employ of the Applicant at the time that he testified.
- 11.4 The Third Respondent makes the point in the analysis of the evidence that there were contradictions from witnesses (she doesn't mention those witnesses), but she accepts that memory fades over time.

Procedural fairness

- 11.5 Regarding procedural fairness, the Third Respondent accepts (correctly) that the onus to provide an affidavit from his medical doctor rested with the First Respondent. Further that the fact that the First Respondent sent a medical certificate did not mean that his representatives would not also attend the hearing to make representations.
- 11.6 However, the Third Respondent bases her finding of procedural unfairness on the length of time it took to charge the First Respondent. The upgrades were implemented in the middle of 2013. Golding contacted the DPSA in September 2014 for the purposes of investigating the memorandum and the circumstances of the upgrades. The investigation report by the DPSA was released in November 2014. Regarding the incident when the First Respondent took a mobile phone that did not belong to him (and did not collect the mobile phone that was ordered for him), and the incident of the verbal abuse of Dlamini took place in December 2013 and early in 2014, respectively. The First Respondent was served with the initial charges in June 2015. While the above timelines may appear to be long, considering the steps taken by

the Applicant to process the disciplinary hearing against the First Respondent, the nature of the charges against the First Respondent and his level of seniority, they cannot be considered to be inordinately long so as to have resulted in procedural unfairness against the First Respondent.

Substantive fairness

- [12] The Third Respondent starts by referring to item 2 of Schedule 8 of the Labour Relations Act¹. She also makes the point that the First Respondent put various versions to the witnesses, which differed from his evidence-in-chief. Further that, throughout the First Respondent's testimony, his various versions were not put to the Applicant's witnesses. At this point, it should have been apparent to the Third Respondent that the untested versions of the First Respondent ought to have been rejected.
- [13] Regarding charges one and two, the Third Respondent acknowledges that Wust testified that it was frustrating, and it got tense when he and the First Respondent could not get their phones. She also accepts that the First Respondent banged Dlamini's table and pointed his fingers; she, however, takes issue with the fact that Dlamini did not report Wust. She also takes issue with the fact that two witnesses stated that the First Respondent told Dlamini that he would 'crush' him, and therefore it is improbable that Dlamini would have forgotten the word. The charge itself does not refer to the word 'crush', but Dlamini also said that he could not remember everything.
- [14] It begs the question, why would two witnesses choose the same word which they said they heard? The third Respondent refers to the security guards having been in the vicinity, but that would not be proof that Dlamini was not verbally abused by the First Respondent, considering there was no physical violence involved. The Third Respondent, while accepting that there was an altercation in the corridor, seems to find its justification by finding that Chili had given Dlamini an instruction to remove the soft lock and when Dlamini did not lift the soft lock, that then led to the altercation. This cannot be an excuse

¹ Act 66 of 1995, as amended.

for the First Respondent's conduct as described by Dlamini and those who witnessed the incident.

- [15] In respect of charge three, the Third Respondent finds that evidence was not presented of the actual fruitless expenditure. In a single short paragraph in the Award, she basically found that the First Respondent was not guilty on this charge. Two issues arise on this charge. Firstly, the First Respondent was not entitled to the phone that he took. Even if he paid the amount of R1 100, the fact of the matter is that he took a phone he was not entitled to. Secondly and most importantly, the First Respondent misled his superior, Chili, by saying that he qualified for the phone that he took, when he did not qualify for it. Last but not least, having taken someone's phone would mean that the other person would have needed to have another Galaxy Note 3 phone ordered for him/her.
- [16] Regarding charges four, five and six, the Third Respondent accepts that Maharaj and Persad testified that at the Job Evaluation Meeting, there was no decision as to the upgrades and that the panel was of the view that there was nothing that could be done as the MEC had approved the upgrades, a version that the First Respondent initially challenged but eventually agreed to.
- [17] She then dedicates a considerable amount of time to the fact that the First Respondent was charged with 13 counts when the total number of upgrades was 25. While the Applicant found it difficult to explain this discrepancy, even at the time of the hearing of this review application, it really comes down to an administrative oversight. There is no discernible reason why the First Respondent ended up being charged with 13 instead of 25 upgrades.
- [18] The Third Respondent picked up on the inconsistency argument. Namely, that Lukele and Chili ought to have been charged. An argument that seems to have been constructed as an afterthought by the First Respondent. In addition to that, both Lukele and Chili no longer work for the Applicant.
- [19] She concludes simply by saying that she is not satisfied that the evidence tendered by the Applicant is more probable than that of the First Respondent

and that, accordingly, the dismissal of the First Respondent was substantively unfair.

- [20] The evidence in respect of charges one, two and three was overwhelming. Some of the contradictions (such as whether the word ‘crush’ was used by the First Respondent) notwithstanding, the material allegations against the First Respondent were proven on a balance of probabilities.
- [21] Regarding the more serious charges: four, five and six, the First Respondent did not deny the underlying facts, namely that he signed the memorandum without ensuring that the job evaluations were done properly. Even if Lukele prepared the memorandum, the First Respondent was remiss in not verifying its contents before appending his signature to it. As a subject matter expert, more was expected of him instead of serving as a post box, with the obvious consequences that, at a stroke of his pen, 25 upgrades were approved by his superiors, with the concomitant chaos that was referred to, let alone the financial implications of the irregular upgrades.
- [22] CCMA arbitrations and those of bargaining councils are governed by both section 33 (right to just administrative action) and section 34 (right to a fair hearing) of the Constitution.² Recently, in *Vodacom (Pty) Ltd v Makate and Another*³, the Constitutional Court held that ‘*the duty of proper consideration is an integral component of the [section 34] fair hearing right*’, and that, in order to acquit itself of this duty, a court ‘*should have regard to all material evidence and all material submissions bearing on the issues it must decide*’ (own emphasis)⁴. CCMA commissioners and bargaining council arbitrations are governed by section 34; consequently, the same applies to them.
- [23] In reference to section 34 of the Constitution, Ngcobo J found in *Sidumo & another v Rustenburg Platinum Mines Ltd & others* (in a passage endorsed by the majority in *Commercial Workers Union of SA v Tao Ying Metal Industries & others*) that “*the parties to a CCMA arbitration must be afforded a fair trial*”; that they have “*a right to have their cases fully and fairly determined*”; and that

² *Sidumo & another v Rustenburg Platinum Mines Ltd & others* (2007) 28 ILJ 2405 (CC) (*Sidumo*) at paras 112 and 124.

³ 2025 (10) BCLR 1174 (CC).

⁴ *Ibid* at para 45.

'where a commissioner fails to apply [their] mind to a matter which is material to the determination it can hardly be said that there was a fair trial of issues' (own emphasis).⁵ Following on this, Ngcobo J found that *'it follows therefore that where a commissioner fails to have regard to material facts, the arbitration proceedings cannot in principle be said to be fair because the commissioner fails to perform [their] mandate'* (own emphasis).⁶ This all accords with Vodacom's articulation of the duty of proper consideration.

[24] It is evident from the above that the Third Respondent did not properly consider the evidence before her, she overlooked material evidence proving the allegations against the First Respondent, she gave undue weight to matters that were of little or no significance, she misconstrued the enquiry that she ought to have conducted in the matter, and as a result she reached a decision that a reasonable commissioner faced with the same evidence would not have reached. Accordingly, her award cannot stand.

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

Order

1. The First Respondent, as a party to the review application, is substituted with Mr Theven Pothraju (ID Number 8912075240083), the Executor of the First Respondent's estate.
2. The award of the Third Respondent is reviewed and set aside, and it is substituted with the following order:

'The dismissal of the employee, LG Naidu, is found to be procedurally and substantively fair.'
3. There is no order as to costs.

⁵ *Sidumo* at para 267; *Commercial Workers Union of SA v Tao Ying Metal Industries & others* (2008) 29 ILJ 2461 (CC) para 76.

⁶ *Sidumo* at para 268.

M. Mkhathshwa

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant: Mr P Schumann

Instructed by: PKX Attorneys

For the First Respondent: Mr M Titus, McGregor Erasmus Attorneys Inc.

LABOUR COURT