THE LABOUR COURT OF SOUTH AFRICA
AT JOHANNESBURG

Of interest to other judges
Case no: JR 1780/22

In the matter between:

GAUTENG DEPARTMENT OF ROADS AND TRANSPORT	**Applicant**
and	
GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL	**First respondent**
M SAMBO *N.O.*	**Second Respondent**
MULALO LEAH NEMAVHADWE	**Third Respondent**

Heard: 05 March 2025
Delivered: 28 November 2025

Summary: (Review- Unfair dismissal case – substantive fairness – Misconduct relating to soliciting money from a business license applicant – Employee not admitting misconduct until arbitration proceedings – employed in a position requiring confidence in the incumbent's integrity – arbitrator inter alia collapsing issue of employees' capability with her trustworthiness – operationally untenable to retain employee where trust relationship broken)

LABOUR COURT

JUDGMENT

LAGRANGE, J

Nature of the application

[1] This is a review in terms of s 145 of the Labour Relations Act 66 of 1995 ("LRA") to set aside an arbitration award issued by the second respondent under the auspices of the GPSSBC (case GPBC 956/2021) on 27 May 2022. The third respondent, Ms M Nemavhadwe ('Nemavhadwe') was dismissed after she solicited money from a member of the public while processing his licensing application and thereafter asked that the incident not be reported because she did not want to lose her job. The dispute referred to arbitration but because of the concessions made at arbitration the essential question to be decided by the arbitrator concerned whether dismissal was a fair sanction.

[2] The applicant has also applied for condonation for the late filing of the review application. The review application was filed just over a month later after the expiry of the mandatory six-week period for launching an application after receiving an arbitration award. The applicant (the Department') acted reasonably promptly in issuing authority to the state attorney to proceed with the review application about 10 days after it was received. However, by the time the six-week deadline was about to expire the process for requesting quotations from counsel was still underway. The draft application had been prepared by the end of July but there was no explanation for the additional fortnight it took between the completion of the draft and the filing of the application. Except for that last mentioned period, the explanation is acceptable. Whether condonation should be granted despite the gap in the explanation will depend on other factors such as the prospect of success. I am persuaded that the prospects of success were good and on that basis condonation for the late filing of the review application is granted. Because the merits of the review are fully canvassed below, it is unnecessary to set out the analysis of the prospects of success separately

LABOUR COURT

Brief Chronology

[3] In November 2007 Ms M L Nemavhadwe ('Nemavhadwe') commenced employment with the applicant ('the GDRT') an Administrative Officer. She had a clean disciplinary record until her dismissal

[4] On 2 September 2019, Nemavhadwe sent a WhatsApp message to Mr Voller, a member of the public, requesting money while processing his Manufacturer, Importer, and Builder (MIB) application. She indicated she was broke and needed money.

[5] On 3 September 2019, Nemavhadwe sent another WhatsApp message to Mr Voller asking him to ensure his wife did not report the incident, stating she did not want to lose her job. The next day she was called in by the acting Deputy Director and asked to provide a statement, which she refused to do. Following this meeting, she returned to her duties and continued working without suspension.

[6] Nemavhadwe continued working until the outcome of her disciplinary enquiry which resulted in her summary dismissal on 28 May 2021.

[7] Shockingly, she was only charged with misconduct on 3 November 2020 more than a year after the incident. Unfortunately, as some of the case law indicates, such a laid back approach to instituting disciplinary action is not an exception to the rule in government employment practices, Ostensibly this was because of the need to gather evidence and internal bureaucratic steps, but it seems the greater part of the explanation was that she was the only employee in the section where she worked that was "good at her work at the time". Hence considerations of operational expedience and convenience outweighed requirements to ensure the integrity of work performed by Nemavhadwe. This was the principal reason she was not suspended or transferred and continued performing her duties until dismissal. Nemavhadwe even trained new staff during the long delay. Despite being charged at the beginning of November 2020, it was only in late February the following year that the enquiry was concluded, resulting in a decision to dismiss her on 7 March 2021. Her internal appeal was dismissed on 28 May 2021.

LABOUR COURT

The arbitration award

[8] The charges were that: she solicited money from a member of the public while processing his application on 2 September 2019, and, on the following day, requested the same client not to report her conduct to the Department.

[9] The arbitrator recorded that she had admitted both acts of misconduct, accepted their seriousness, and acknowledged she had been dishonest in the internal hearing and appeal by disputing the truth of the charges. She claimed she had done so on the advice of her shop steward. He also found that she had breached the eNatis user undertaking. This is National Traffic Information System, which she improperly used to obtain information of the person she approached to solicit money from them.

[10] The arbitrator also found Nemavhadwe acknowledged that her actions were unethical and serious but did not volunteer an apology and never expressed sincere regret for the impact of her conduct. She did nothing to try and repair the trust relationship. The arbitrator expressly acknowledged that this undermined her case for lenient treatment.

[11] Despite these findings, he found dismissal too harsh principally because the Department had not suspended or transferred her, allowed her to continue working, and because she had long service, personal hardships, and it was her first offence. She did admit to her guilt at the arbitration hearing. He ordered her immediate re-employment but without backpay, which he felt was a balanced outcome that avoided the harshness of a dismissal but ensured she did not benefit from her conduct

Grounds of review

[12] The Department contends that the arbitrator's decision was unreasonable both as to outcome and, alternatively, was unreasonable in a process-related sense. In particular it argued he attached undue weight to her non-suspension/continued employment, undervalued her admitted dishonesty and lack of remorse in a trust-sensitive licensing role. He also failed to apply the principles in AutoZone v

LABOUR COURT

Dispute Resolution Centre of Motor Industry and Others1 and City of Johannesburg v Jacobs N.O. and Others.2

[13] In Autozone the Labour Court had held that even though the employee in question had been involved in deceitful misconduct the fact that he was not suspended and was only dismissed about a month later indicated that the trust relationship had not broken down. The Labour Appeal Court rejected this holding:

> *"[12] … An employer relying on irreparable damage to the employment relationship to justify a dismissal would be prudent normally to lead evidence in that regard, unless the conclusion that the relationship has broken down is apparent from the nature of the offence and/or the circumstances of the dismissal. Where the offence in question reveals a stratagem of dishonesty or deceit, it can be accepted that the employer probably will lose trust in the employee, who by reason of the misconduct alone will have demonstrated a degree of untrustworthiness rendering him unreliable and the continuation of the relationship intolerable or unfeasible.*
>
> *[13] Dishonest conduct, deceitfully and consciously engaged in against the interests of the employer, inevitably poses an operational difficulty. The employer thereafter will be hard pressed to place trust in such an employee. It will be difficult going forward for any task involving a measure of discretion or reliance to be entrusted to the deceitful therefore, may very well justify the dismissal. An employer is entitled to have a driver it can rely on to act in good faith to advance and protect its interests. Sikhakhane's conduct shows that he is not such a driver. It was not necessary for Autozone in such circumstances to have produced evidence to show that the employment relationship had been irreparably destroyed."*[3]

(emphasis added)

[14] In *Jacobs* the employees were dismissed after being found guilty of assisting applicants for learner driver licenses to answer questions in the test. The court noted that they had been found guilty of dishonesty and bringing the city council into disrepute. However, when the arbitrator had imposed a final written warning as a sanction, this court found that it demonstrated that he failed to appreciate the gravity of the misconduct was such that it destroyed the trust relationship between the parties[4].

---

[1] (2019) 40 *ILJ* 1501 (LAC)

[2] [2021] 6 BLLR 579 (LC);

[3] At paragraph 20.

[4] At paragraphs 81-82.

LABOUR COURT

[15] Further it claims he erred in law by ordering reemployment without regard to the Public Service Regulations, 2016[5]. In particular Regulation 61 prohibits employment of a former employee who has been dismissed in terms of section 1 for acts of misconduct in the public service for the applicable period from the date of dismissal in relation to the kind of misconduct listed in the table therein. In the case of Nemavhadwe, this concerned Regulation 61 (1)(a) which deals with the *"offering or receipt of any undue gratification or the facilitation of such offering or receipt; or..."* This carries a prohibition on re-employment for a period of 5 years from the date of dismissal.

[16] Nemavhadwe cited the Constitutional Court decision in *Stokwe v MEC: Department of Education, Eastern Cape and Others* [6] in support of her contention that the Department's delay and her continued work without suspension show that trust did not break down, rendering dismissal too harsh. If Nemavhadwe had launched a cross-review alleging that the arbitrator ought to have found that the delay in disciplining her rendered her dismissal procedurally unfair, that case might have been in point, but the case had no bearing on whether the length of the employee's continued employment after an act of misconduct was committed until the date of being sanctioned affected the determination of whether a breakdown in trust had occurred. In fact, in *Stokwe* even though the dismissal took place five years after the employee irregularly awarded a contract to her husband, the constitutional court still upheld the substantive dismissal of her dismissal. [7]

Evaluation

[17] The arbitrator's inference that trust remained intact from the Department's continued utilization of Nemavhadwe, to such an extent she was used to train other employees, is difficult to reconcile with the decisions in *AutoZone* and *Jacobs.* In settings where integrity is intrinsic to the job such as licensing, revenue collection, or providing access to systems, proven dishonesty is commonly incompatible with continued employment. On the admitted facts that she solicited money from a member of the public whose license application was

[5] GNR.877 of 29 July 2016: Public Service Regulations, 2016 (Government Gazette No. 40167), as amended.

[6] (2019) 40 *ILJ* 773 (CC)

[7] At paragraphs 62 and 63.

LABOUR COURT

pending, then asked that it not be reported, and also breached eNatis undertakings as well as showing no remorse, the arbitrator gave decisive weight to considerations that do not displace the breakdown of trust.

[18] He appears to have conflated evidence of the fact the Department lacked other staff of sufficient competency to perform her work, and therefore continued to utilise her, with evidence that she could be trusted to perform her duties with integrity. The fact she was very capable could not diminish the gravity of her misconduct or render her more trustworthy.

[19] It is true she had testified that there was nothing wrong with the license applicant's application, so it could not be said she was soliciting a bribe in order to turn a blind eye to defects in an application. However, the license application had not yet been approved when she spoke to him, so he would not have known if he refused to loan her money whether it would affect the success of the application. Moreover, it is telling that she identified someone whose license was pending as a suitable person to approach for a loan. To continue to employ her would involve a leap of faith that she would not use her access to license applicants' details again, in circumstances where there was no way of knowing if it happened again, unless someone reported her. It is apparent the arbitrator did not appreciate the operational risk entailed by continuing to employ her. The fact that she never admitted her actions until the arbitration hearing and never showed any serious remorse, only aggravated matters.

[20] In *City of Cape Town v SALGBC*[8], *Hulett Aluminium (Pty) Ltd v Bargaining Council for the Metal Industry and Others*[9]; and *Mphigalale v Safety and Security Sectoral Bargaining Council and Others* [10] this court has made it clear that in cases involving dishonesty or corruption an employee's length of service or the fact that it is a first offence are not usually considered to be factors that outweigh the severity of the misconduct.

[21] On whether the arbitrator improperly ignored Regulation 61, there was no evidence that this was pertinently brought to his attention, so this 'omission' from the award was not an irregularity on his part that needs to be considered.

LABOUR COURT

---

[8] [2011] 5 BLLR 504 (LC)

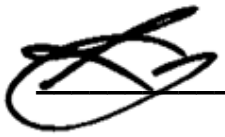
[9] (2008) 29 *ILJ* 1180 (LC

[10] (2012) 33 *ILJ* 1464 (LC)

[22] Considering the discussion above, it is difficult to see how the arbitrator could have arrived at his finding that the dismissal was substantively unfair, if he had considered factors tending to show the integrity required of someone holding Nemavhadwe's position and difficulty of the Department having to rely on a third party reporting her as a way of ensuring her future compliance. He would have appreciated that it was untenable to expect the Department to retain her in the circumstances, despite her capability and experience.

Order

1. The late filing of the review application is condoned.
2. The arbitration award issued by the Second Respondent in case number GPBC 956/2021 on 27 May 2022 is reviewed and set aside.
3. The said award is substituted with an award that the Third Respondent's dismissal by the Applicant was substantively fair.
4. No order is made as to costs



R Lagrange

Judge of the Labour Court of South Africa

LABOUR COURT

Appearances

For the Applicant:	S B Radebe
Instructed by:	State Attorney (Johannesburg)
For the Third Respondent:	P Kirstein
Instructed by:	Couzyn Hertzog & Horak