



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2767/18

In the matter between:

LEHUMANEGO TR

Applicant

and

TRANSNET BARGAINING COUNCIL

First Respondent

COMMISSIONER JAY MASHIKA

Second Respondent

TRANSNET FREIGHT RAIL, NORTHERN CAPE

Third Respondent

Heard: 10 September 2025

Delivered: 10 December 2025

JUDGMENT

RAJAH, AJ

Introduction

- [1] This is an application to revive a review application together with condonation for the late filing of the applicant's replying and supplementary affidavits. The third respondent, Transnet Freight Rail, opposes both applications.
- [2] Ms Blair appeared for the applicant. Ms Makamu appeared for Transnet. At the outset, Transnet submitted that the review was not properly before Court. In the interests of justice, I elected to hear the matter.
- [3] I have also had sight of the arbitration award issued by Commissioner Mashika. Although it is unnecessary to revisit its merits in detail, it is noted that the commissioner considered arguments regarding the applicant's role in the incident, including whether responsibility ought to have been shared among the team and evidence before him.

Background facts

- [4] The applicant was employed by Transnet on 18 April 2007 as a train assistant and was subsequently promoted to the position of train driver.
- [5] On 1 June 2018 he was dismissed on charges of gross misconduct. It was alleged that he failed to ensure that a person was stationed at the leading end of the movement, thereby contravening Train Working Rule (TWR) 134, and that by propelling without someone at the leading end, he endangered his colleagues and breached TWR 4.
- [6] At the disciplinary hearing, the applicant was found guilty of misconduct. His actions were held to have constituted a serious breach of the trust relationship between the employer and employee. Clause 6.2.6.1.1 of the employer's disciplinary code was relied upon, which provides that misconduct of a serious nature may justify dismissal where it has resulted in the breakdown of the employment relationship or rendered its continuation intolerable.
- [7] The grounds of review advanced by the applicant may be summarised as follows:
 - 7.1 that the commissioner failed to have proper regard to the material evidence before him;

- 7.2 that he misconstrued and misapplied the evidence;
- 7.3 that he erred in finding that the applicant alone bore responsibility for the breach of the train working rules; and
- 7.4 that the award is not one that a reasonable commissioner could reach.

[8] The applicant further contends that the commissioner failed to give proper consideration to Rule 134(4), which envisages the establishment of a shunting team, including a member stationed at the leading end, in order for liability for any breach to be clearly established. Rule 134.1 provides that the shunter must give the correct hand signals or instructions to the driver, which, according to the applicant, creates an implicit duty upon the shunter.

[9] It is further alleged that the commissioner misdirected himself by failing to distinguish between the role of a member of a shunting team and that of an individual train driver. The applicant claims that, because the incident resulted in the untimely death of another employee, he was unfairly targeted as a scapegoat.

Relief sought

[10] The applicant seeks the following relief:

- 10.1 to review and set aside the arbitration award issued by the commissioner under case number TCR 012177B/TCB/BC/Lehumanego/TFR NCP/14207;
- 10.2 to be reinstated retrospectively from the date of dismissal;
- 10.3 to compel the third respondent to pay him loss of income from the date of dismissal to the date of reinstatement; and
- 10.4 to be awarded costs against any party opposing the application.

Condonation

- [11] The applicant provided certain explanations for the delays in prosecuting the review. It was submitted that the transcribed record was delivered some 19 days late. The supplementary affidavit was filed approximately 15 months later, and the replying affidavit 11 months thereafter. It was further argued that funding for the litigation had to be authorised by the applicant's insurers, which contributed significantly to the delay.
- [12] The test for condonation is trite. In *Melane v Santam Insurance Co Ltd*¹ the Court held that the degree of lateness, the explanation for the delay, prospects of success and importance of the case are interrelated factors which must be weighed together. This approach has been consistently affirmed by higher courts.²
- [13] While the delays were substantial, I am persuaded that they have been reasonably explained. Taking into account the nature of the review grounds and the applicant's right to have his dispute fairly adjudicated, I am satisfied that the interests of justice favour the granting of condonation.
- [14] Accordingly, the applications for condonation for the late filing of the supplementary and replying affidavits are granted.

Analysis

- [15] It is common cause that three witnesses testified for the applicant and three for Transnet during the arbitration. Of particular significance was the testimony of Mr Franz Olyn, Operations Manager, who stated that once the movement commenced the applicant automatically became a member of the shunting team and bore responsibility for ensuring that the leading end was manned.
- [16] This Court is inclined to agree with the commissioner's finding that, regardless of where Mr Meku, the deceased, walked when the incident occurred, the applicant ought to have been aware of and adhered to the applicable safety procedures. He was aware of the train working rules, and his contention that

¹ 1962 (4) SA 531 (A).

² *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others* 2000 (2) SA 837 (CC); *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited and others* 2017 (6) SA 90 (SCA).

they were not contained in a formal standard operating procedure does not absolve him of responsibility.

- [17] The evidence establishes that the applicant was aware of what was expected in relation to shunting and propelling operations. Once the train was under his control, the responsibility for ensuring compliance with safety requirements rested with him. As the commissioner observed in his award³, yard officials could not be held responsible for the movement of the train once control had passed to the driver.
- [18] I have also considered the issue around the video footage viewed by the commissioner. Although not tested through cross-examination, it fell within reasonable limits of admissibility and corroborated the applicant's conduct. The commissioner had sight of this evidence, considered it alongside the testimony presented, and reached a conclusion supported by the record.
- [19] On a conspectus of all the evidence, I am satisfied that the commissioner's award falls within the bounds of reasonableness. The applicant's dismissal was substantively fair.

Costs

- [20] On the issue of costs, the applicant sought an order against the third respondent. However, in *Zungu v Premier of KwaZulu-Natal and Others*⁴ the Constitutional Court reaffirmed that the Labour Court must exercise caution in awarding costs and should do so only where the requirements of law and fairness demand it.
- [21] In the present matter, I am not persuaded that a costs order is justified. Each party should bear its own costs.
- [22] In the result, the following order is made:

Order

³ Arbitration award at para 55.

⁴ (2018) 39 ILJ 523 (CC).

1. The applications for condonation for the late filing of the supplementary affidavit and the replying affidavit are granted.
2. The application to review and set aside the arbitration award issued by the second respondent under case number TCR 012177B/TCB/BC/Lehumanego/TFR NCP/14207 is dismissed.
3. The applicant's dismissal is confirmed as substantively fair.
4. There is no order as to costs.

S. Rajah

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant : K Blair

Instructed by : KBVS Attorneys

For the third respondent : T Makamu of Maserumule Attorneys.

LABOUR COURT