



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable  
Case no: JR377/23

In the matter between:

**TWO RIVERS PLATINUM (PTY) LIMITED**

**Applicant**

and

**ASSOCIATION OF MINeworkERS AND  
CONSTRUCTION UNION (AMCU) OBO THABO MECWI**

**First Respondent**

**HERALD NTALE-MATSEPE N.O.**

**Second Respondent**

**COMMISSION FOR CONCILIATION, MEDIATION  
AND ARBITRATION**

**Third Respondent**

**Heard: 11 September 2025**

**Delivered: 10 December 2025**

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**JUDGMENT**

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**RAJAH, AJ**

## Introduction

- [1] This is a review application brought in terms of section 145 of the Labour Relations Act<sup>1</sup> (LRA). The applicant seeks to review and set aside the arbitration award issued by the second respondent under case number LP7385-22 on 30 January 2023.

## Factual background

- [2] The first respondent, Mr Thabo Mecwi, represented by the Association of Mineworkers and Construction Union (AMCU), was employed by the applicant as an electrician at the mine's main shaft.
- [3] He was dismissed on 12 August 2022, having been employed by the applicant since 14 April 2010. On 23 June 2022, the charge related to an incident on 23 June 2022, where he clocked in but failed to proceed to his workplace. He was found guilty and dismissed for gross insubordination or insolence.
- [4] He then referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). The second respondent, acting as commissioner, issued an arbitration award on 29 January 2023.
- [5] The applicant now seeks to review and set aside that award. In particular, the applicant requests this Court to substitute the arbitration award with a finding that the dismissal of Mr Mecwi was fair. In the alternative, the applicant seeks an order remitting the dispute to the CCMA for a hearing *de novo*. No order as to costs is sought.
- [6] The commissioner and the CCMA abide by the decision of this Court.

## Grounds for review

- [7] The grounds for review are set out in paragraphs 24 to 42 of the founding affidavit, which highlight four areas. In summary, the applicant contends as set out below.

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<sup>1</sup> Act 66 of 1995, as amended.

- [8] First, the commissioner failed to apply his mind to the material facts before him. In particular, he disregarded the testimony of Mr Mmadi, who instructed Mr Mecwi to proceed underground after he had finished eating, as they had to follow up on deviations.
- [9] In his analysis of the evidence, the commissioner further failed to consider Mr Mmadi's challenge to Mr Mecwi's version. While Mr Mecwi testified that he did not attend to his workplace underground because he was not feeling well, the commissioner failed to resolve this contradiction.
- [10] That the commissioner went so far as to ask Mr Mecwi's representative to provide a version as to whether Mr Mecwi was medically fit or not, thereby straying beyond his role as arbitrator.
- [11] That although the commissioner was aware that Mr Mecwi had received a medical certificate indicating that he was fit to work, he nevertheless accepted the employee's explanation without subjecting it to scrutiny. The applicant contends that this constituted a material misdirection, especially given that the medical evidence was said to be unchallenged.
- [12] That the commissioner committed a material error of fact, which rendered the proceedings irregular. It was never testified by Mr Nalane, the charge hand, that Mr Mecwi was instructed not to go underground. In essence, the commissioner failed to address why Mr Mecwi had disregarded the instruction of his supervisor.
- [13] The applicant further submits that Mr Nalane was not the only person entitled to give instructions to Mr Mecwi, and that this fact was disregarded by the commissioner in his analysis.
- [14] That the commissioner failed to properly assess the probabilities of the respective versions and to identify contradictory testimony given by Mr Mecwi. Despite Mr Mecwi's admission that he had his radio in his possession at all times and was available to work if required, the commissioner chose to ignore this aspect of the evidence.

- [15] In addition, Mr Nalane testified that Mr Mmadi reprimanded Mr Mecwi for not reporting that he had completed his medical review. This evidence, the applicant contends, should have been considered by the commissioner. Mr Mecwi's version on this issue was inconsistent with his other testimony.
- [16] In essence, the applicant argues that there were several conflicting contradictions in the testimony which the commissioner failed to recognise or weigh properly, and that this failure materially affected the reasonableness of the award.
- [17] The applicant takes issue with the commissioner's acceptance of the version of the second witness, who was the direct report of the supervisor. By contrast, the testimony of the first witness was not corroborated by anyone on the issue that there were tasks allocated to the applicant.
- [18] The applicant submits that the commissioner's approach was contradictory: while he accepted the second witness's version, he simultaneously stated that he could not take such evidence at face value.
- [19] The applicant further argues that the commissioner speculatively preferred the version that Mr Mecwi had not assumed that Mr Mmadi had given him the relevant instruction. On this basis, the commissioner concluded that he could find no fault with the employee's conduct under the circumstances. The applicant contends that this reasoning amounted to pure speculation, unsupported by the evidence, and therefore constituted an irregularity.

#### Applicable legal principles

- [20] Section 188 of the LRA provides that a dismissal is unfair if the employer fails to prove that the reason for dismissal is a fair reason related to the employee's conduct or capacity, or based on the employer's operational requirements, and that the dismissal was effected in accordance with a fair procedure.
- [21] In review proceedings under section 145 of the LRA, the Court does not enquire into the correctness of the commissioner's decision but into its

reasonableness. The test, as formulated in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*,<sup>2</sup> is whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach on the material before him.

### Evaluation

- [22] From the facts, it can be deduced from the evidence of the second witness, Mr Patrick Nalani, that the commissioner considered aspects of his testimony in the arbitration award. The employee, Mr Mecwi, Mr Nalani, acting as charge hand, assisted the foreman, and they knew their line of instructions well.
- [23] The record shows that there was communication between Mr Nalani, in his capacity as charge hand, and Mr Mecwi regarding the latter's whereabouts on the day in question. This aspect of the evidence forms part of the Court's overall assessment of whether the commissioner's findings were reasonable, as explained below.

### Oral submissions

- [24] This Court had the benefit of hearing argument from Mr Van As, who appeared for the applicant, and Mr Cook, who appeared for the first respondent. Both counsel relied on their comprehensive heads of argument, which they referred to in oral submissions.
- [25] In essence, Mr Van As submitted that there was no merit in the commissioner's decision. The central issue, he argued, was that the employee had failed to report underground where he was required to be. Counsel further contended that the employee's conduct gave the impression of belittling his supervisors and loitering rather than attending to his duties as an electrician.
- [26] Mr Cook, on the other hand, emphasised that there was no work to be performed at the time in question. He pointed out that witnesses had testified to the effect that no instruction had been given to the employee to proceed

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<sup>2</sup> [2007] 12 BLLR 1097 (CC).

underground. Counsel urged the Court to bear in mind that arbitration proceedings are not conducted by lawyers, and that the commissioner's approach must be assessed holistically rather than technically.

- [27] Mr Cook further submitted that the commissioner properly considered that the employee had been performing other functions, and that this Court, sitting as a review court, ought not to interfere with the commissioner's factual findings. In reply, Mr Van As maintained that the employee was not paid to do union work but to perform his duties as an electrician, and that, at the very least, he should have sought out work to do.

### Conclusion

- [28] Having considered these submissions in the context of the record and the award, I am not persuaded that the applicant has demonstrated reviewable irregularities sufficient to vitiate the commissioner's award. None of the grounds advanced establish that the commissioner's decision is one that a reasonable decision-maker could not have reached.

- [29] In the result, the review application must fail.

- [30] In the premises, the following order is made:

### Order

1. The application to review and set aside the arbitration award issued under case number LP7385-22 is dismissed.
2. There is no order as to costs.

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S Rajah

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: AJ Van As

Instructed by: Cliffe Dekker Hofmeyr Inc

For the First Respondent: AL Cook

Instructed by: LDA Incorporated

LABOUR COURT