THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 699/23

In the matter between:

EUROPCAR SOUTH AFRICA, A [illegible] TORS GROUP LIMITED — **Applicant**

and

THE COMMISISON FOR CONCILIAION MEDIATION AND ARBITRATION (CCMA) — **1st Respondent**

BULENI BUSAKWE N.O– — **2nd Respondent**

PUMEZA GLENN-POSWA — **3rd Respondent**

Heard: **9 September 2025**

Delivered: **10 December 2025**

JUDGMENT

RAJAH, AJ

Introduction

[1] This is an application in terms of section 157(1) read with section 145 of the Labour Relations Act[1] (LRA). The applicant, Europcar South Africa, a division of Motors Group Limited (the employer), seeks an order reviewing and setting aside an arbitration award issued under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA) on 21 April 2023 under case number ECPE4674-21.

[2] In the award, the commissioner found that the dismissal of the respondent, Ms Pumeza Glenn-Poswa (the employee), was substantively unfair.

Factual Background

[3] The applicant, Europcar South Africa, a division of Motors Holdings Limited, operates in the vehicle rental business. Its vehicles constitute revenue-generating assets at the core of its operations. A central submission by the employer is that employees may only use company vehicles with proper authorisation. Unauthorised use of such vehicles is expressly recorded in the disciplinary code as a serious offence warranting dismissal.

[4] Europcar's car division before this Court has conducted its rental operations since 17 February 2016 in the area. While vehicles could occasionally be used by employees, such use was permitted only subject to strict conditions. In the present matter, it appears from the evidence that these lines had, over time, become blurred. As will be discussed further below, this ambiguity complicates the assessment of whether the employee's conduct concretely amounted to misconduct.

[5] The employee, Pumeza Glenn-Poswa, was employed by the applicant since 2010 and had been promoted to the position of supervisor. During the COVID-19 pandemic, on 20 August 2020, he accepted an offer of alternative employment as a rental agent, effective from 1 September 2020, as an alternative to possible retrenchment.

[6] In his supervisory role, Poswa was required from time to time to utilise company vehicles, on the condition that the vehicle be returned promptly

[1] Act 66 of 1995, as amended.

thereafter. It is common cause that he was charged with misconduct and found guilty at an internal disciplinary hearing of unauthorised use of a company vehicle. The charge related to events on 10 June 2021, when he used a company vehicle without prior authorisation from his manager and for personal purposes.

[7] The evidence further showed that on the evening of 9 June 2021, while Poswa was working a late shift, a vehicle in the vicinity of his residence had broken down with a flat tyre. The following day, being an off-day for the branch, the same company vehicle required tyre repairs. The employer emphasised throughout that the vehicle in question remained a revenue-generating vehicle and should have been available for rental purposes.

<u>The award</u>

[8] At paragraph 26 of the award (bundle page 96), the commissioner held that, as a result of alternative employment offered on operational grounds, a ‘new era’ had commenced in the employment relationship.

[9] It was common cause that on 10 June 2021, the employee had used a company vehicle for personal purposes without authorisation.

[10] The commissioner could not find the employee’s conduct rendered the employment relationship intolerable, and concluded that the dismissal was substantively unfair.

[11] In mitigation, reliance was placed by the commissioner on the employee’s previously unblemished disciplinary record.

[12] At paragraph 40 of the award (bundle page 99), the commissioner held that it was *“inconceivable that the vehicle could have been used for revenue purposes”* and concluded that the employer had not suffered actual prejudice.

[13] The employer’s submission, recorded at paragraph 51 of the award (bundle page 101), was that there is a clear link between dishonesty and unauthorised use of company property, which ordinarily warrants dismissal where the rule is

clear, consistently applied, and goes to the heart of the employment relationship.

Grounds for review

[14] The employer contends that the award is unreasonable and stands to be reviewed and set aside on the following grounds:

1. The commissioner failed to appreciate the nature of the employer's business, namely that vehicles are revenue-generating assets at the core of its operations.

2. The rule prohibiting personal use of company vehicles was important, consistently applied, and its breach undermined the trust relationship.

3. There was a direct instruction for the vehicle to be returned, confirmed by messages exchanged between the parties.

4. The commissioner erred in holding that it was 'inconceivable' the vehicle could have been used for revenue purposes, disregarding evidence that vehicles remain available for bookings even if none are confirmed on a particular day.

5. The commissioner failed to engage with the employer's submission that unauthorised personal use of company vehicles is akin to dishonesty and constitutes dismissible misconduct.

6. The commissioner downplayed the gravity of the misconduct by overemphasising the employee's clean disciplinary record.

Legal framework

[15] The test for review is whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach on the material before them (*Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[2]).

[2] [2007] ZACC 22; (2007) 28 ILJ 2405 (CC).

[16] Further, in another well cited case *CUSA v Tao Ying Metal Industries and Others*[3], the Court held that commissioners are required to apply their minds to the issues properly before them. A failure to consider material submissions or evidence may render an award unreasonable.

Oral Submissions

[17] On behalf of the applicant, Mr Wessels emphasised that the rule prohibiting personal use of company vehicles must be enforced strictly, allowing for no deviation "not even by an inch". He submitted that once the boundary is blurred, it becomes impossible to determine whether unauthorised use within or beyond the province could be condoned, undermining the trust relationship.

[18] For the employee, Mr Somo argued that the commissioner had properly weighed all relevant considerations, including the employee's long service, previously unblemished record, and the circumstances under which the vehicle was used. He contended that the commissioner was entitled to conclude that dismissal, while permissible, was too harsh in the circumstances, and that the employment relationship had not irretrievably broken down.

Conclusion

[19] This court has noted the commissioner's reasoning and I am inclined to agree with it. There is no question that the rule prohibiting unauthorised use of company vehicles is important, given the nature of the employer's core business and the revenue-generating purpose of its fleet. However, in the overall circumstances, the conduct in issue does not justify the conclusion that the employment relationship had become intolerable. The true question for this Court is whether the rule was sufficiently clear and consistently applied to prohibit the employee's conduct in an unequivocal manner. While the rule may have existed in written form, the evidence suggests that, in practice, the line between permitted and prohibited use had become blurred by the conduct of both employer and employee.

[3] 2009 (2) 204 (CC); 2009 (1) BCLR 1 (CC).

[20] This Court is of the view that the commissioner's finding, namely that the dismissal was substantively unfair, is reasonable and justified on the evidence properly before him. There is accordingly no basis for this Court to interfere with the award, and the review sought must fail.

[21] In the result, the following order is made:

Order

1. The application to review and set aside the arbitration award issued under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA) on 21 April 2023 under case number ECPE467421 is dismissed.

2. The arbitration award stands.

3. There is no order as to costs.

S. Rajah

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: T Wessels

Instructed by:

For the Respondent: D Somo

Instructed by: Legal Aid