(1) Reportable: Yes (2) Of interest to other Judges: Yes/No (3) Revised Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No: C485/2024

In the matter between:

IMATU obo YANNICK SAULS	**Applicant**
and	
THE CITY OF CAPE TOWN	**First Respondent**
SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL (SALGBC)	**Second Respondent**
COMMISSIONER ELVISO ADAMS N.O.	**Third Respondent**

Heard: **15 October 2025**

Delivered: **22 January 2026**

Summary: Review application - off duty misconduct - sanction.

JUDGMENT

MKHATSHWA, AJ

Introduction

[1] This is an opposed review application in terms of section 145(2) of the Labour Relations Act[1]. The Applicant seeks the following order:

1.1. reviewing and setting aside the award of the Third Respondent issued under case number WCM 022408 dated 4 November 2024 and delivered on 6 November 2024 (the award).

1.2. substituting the award with a finding that the Applicant's dismissal was substantively unfair and

1.3. granting the Applicant the primary remedy of retrospective reinstatement without any loss of remuneration or benefits.

Background facts

[2] The Applicant started his employment with the First Respondent on 19 December 2019 on the Extended Public Works Programme. He occupied the position of a Learner Law Enforcement Officer, earning an annual salary of R206 075.00 per annum.

[3] He was charged with the following counts of misconduct:

> 'Charge 1 - It is alleged that on or about 30 June 2023, whilst off duty, you committed an act of gross misconduct when you got arrested at the corners of Mike Pienaar and Tienie Meyer Roads, for driving your private vehicle whilst being under the influence of alcohol.
>
> Charge 2 - It is alleged that on or about 30 June 2023, whilst off duty, you committed an act of gross misconduct when you failed to act in the best interests of the municipality when you brought the name of the City of Cape Town into disrepute when you mentioned to the SAPS member(s) during your arrest that the traffic officers who affected your arrest are doing so to one of their own.'

[1] Act 66 of 1995, as amended.

[4] Following on a disciplinary hearing, the Applicant was found guilty on both counts. He was issued with a sanction short of dismissal in respect of charge 2 (failing to act in the best interests of the municipality), and he was given a 3 days suspension without pay as a sanction. He was dismissed on 23 November 2023 in respect of charge 1 (driving his private vehicle whilst being under the influence of alcohol).

[5] He challenged the substantive fairness of his dismissal on the basis that the sanction was too harsh for an off-duty incident, coupled with the fact that another official in similar circumstances was reinstated through an arbitration award that was not taken on review by the First Respondent.

[6] The Third Respondent found that the dismissal of the Applicant was substantively fair, and he dismissed the Applicant's unfair dismissal claim.

<u>Grounds of review</u>

[7] The Applicant seeks to review the award on the following grounds:

7.1. The dismissal was too harsh on the facts in that:

7.1.1. No reasonable arbitrator could have concluded that dismissal was an appropriate sanction where the evidence showed that such conduct occurred in the Applicant's private life, after hours, off duty and in his own vehicle and in civilian clothing.

7.1.2. There was no justification for a zero-tolerance approach to be taken by the First Respondent or the Third Respondent, in respect of first-time conduct of this nature.

7.1.3. The outcome is unreasonable on account of the harshness of the sanction alone, as no reasonable arbitrator could have found that dismissal was appropriate on these facts.

7.2. Misunderstanding the legal principles for discipline for off-duty conduct in that:

7.2.1. The Third Respondent committed an error of law when he found that the First Respondent was entitled to discipline and dismiss the Applicant for conduct that took place whilst he was off duty. That there was no sufficient nexus established between the off-duty conduct and a continued employment relationship, and the

7.2.2. The Third Respondent found that there was sufficient nexus established solely by virtue of the fact that the Applicant was employed as a Learner Enforcement Officer.

7.3. Taking irrelevant 'aggravating' factors into account: Alleged attempt to evade detection in that:

7.3.1. The Third Respondent misconducted himself when he held that the circumstances surrounding the Applicant's arrest had aggravated his misconduct

7.3.2. The Third Respondent embarked on a lengthy analysis of the Applicant's explanation for the reason he travelled after having two beers, how he selected the route and how he may have acted at the traffic light at a certain point.

7.3.3. He concluded that he preferred a version of the arresting officers over that of the Applicant on the probabilities.

7.3.4. The sequence of events leading up to the Applicant's arrest were not in issue before him, yet he came to the conclusion that the Applicant had apparently attempted to evade detection.

7.4. Taking irrelevant 'aggravating' factors into account: Operational Risk, the ability to drive an employer vehicle and the Applicant's ability to apply his mind to issues of criminality in that:

7.4.1. The Third Respondent held that the Applicant's having driven his own vehicle under the influence raised the possibility that it could also happen during working hours, *"despite no such incident having happened in the past*".

7.4.2. He strayed into the realms of the Applicant's general character when he held that the matter was in fact about the Applicant's ability to drive or to be sober while on duty, but rather about the Applicant being able to *"apply his mind to situations of criminality as a law enforcement officer"*.

7.4.3. He held that the Applicant's failure to acknowledge that his actions were connected to the workplace and his failure to allegedly be upfront about the sequence of events formed part of the reason why the First Respondent could not take the risk of retaining the Applicant.

7.5. Taking irrelevant 'aggravating' factors into account: Failure to admonish Officer Delport for his comment in that:

7.5.1. The Third Respondent found that when Officer Delport made the utterance about law enforcement officers arresting one of their own, the Applicant ought to have spoken up instead of making a shrugging gesture.

7.5.2. He strayed from the issue before him when he stated in his analysis that the Applicant should, in fact, have spoken up and praised the officers for arresting him and doing their job, instead of making a shrugging gesture at Delport's comment.

7.6. Finding lack of remorse as an aggravating factor, contrary to the evidence in that:

7.6.1. The Third Respondent erred when he held that the Applicant had not accepted accountability for his actions, that in fact the Applicant testified that he had learned valuable lessons from what happened.

7.7. Error in finding that reputational damage was proven in relation to Charge 1.

7.7.1. The Third Respondent found in his analysis that reputational harm was committed during the Applicant's arrest, despite the fact that the matter was not reported by the public, nor witnessed by the public, and it was not circulated in any media.

7.7.2. There was no evidence before the Third Respondent to prove that the Applicant's arrest for driving under the influence of alcohol had caused reputational harm to the First Respondent.

7.7.3. The issue of bringing the First Respondent's name into disrepute had been dealt with internally by the First Respondent in relation to charge 2.

7.7.4. The allegation of disrepute was therefore not an issue for determination before the Third Respondent.

7.8. Relying on contentions and evidence pertaining to a charge not before him for determination & misunderstanding the relevance of Delport's evidence in that:

7.8.1. The Third Respondent erred in relying on evidence that was not material to the issue before him and then also misunderstood the evidence entirely.

7.8.2. Whilst the sequence of events of the evening was mainly undisputed, there was a dispute during the arbitration whether or not the Applicant had made the comment about the arresting officers having *"arrested one of their own"* as alleged in charge 2.

7.8.3. Whilst this dispute did arise during the oral evidence, it was not in fact a material issue before the Third Respondent for determination, as he was not mandated to consider the Applicant's innocence or guilt on charge 2.

7.9. Failing to apply his mind appropriately or at all to the principle of progressive and corrective discipline in that:

7.9.1. Nowhere in his analysis does the Third Respondent consider and apply his mind properly to the concept of corrective and progressive discipline, especially considering that the Applicant was still a Learner Law Enforcement Officer at the very start of his career.

7.9.2. The Third Respondent found that because the Applicant faltered in his personal life on one occasion by driving whilst over the legal limit (which was never in dispute), there was absolutely no chance for a continued employment relationship, and that trust had been destroyed beyond repair.

7.10. Misconduct/error when considering the relevance of the arbitration outcome in a similar case, in that:

7.10.1. The Third Respondent acknowledged that there was a similar case in 2019 where a Law Enforcement Officer employed by the First Respondent had been dismissed for driving whilst under the influence of alcohol whilst off-duty.

7.10.2. Whilst the employee concerned had been dismissed by the First Respondent, the arbitrator in that case held that it was unfair to have disciplined and dismissed him for conduct perpetrated outside of the employment relationship.

7.10.3. The employee concerned was reinstated by the Second Respondent, and the First Respondent accepted the order of reinstatement.

7.11. Misidentifying the true issue before him in that:

7.11.1. The Third Respondent was tasked to determine whether it was appropriate to have dismissed the Applicant for driving whilst under the influence of alcohol, off duty, in civilian clothing, in his own vehicle and where he did not have a criminal record.

7.11.2. The Third Respondent departed from the crisp issue before him, expressing a clear desire to hear about the events of the night the Applicant was arrested, despite the Applicant not being dismissed for any conduct around the arrest.

7.12. Suggesting to the First Respondent what arguments it could make on trust in that:

7.12.1. The Third Respondent dictated that the arresting officer should be called to testify, when she could do nothing more than add aggravating fodder to the proceedings that fell outside of the reasons for the Applicant's dismissal.

7.12.2. Any reliance on evidence pertaining to charge 2 i.e., the alleged engagements with South African Police Service (SAPS) officials, was not before the Third Respondent and ought not to have been used by him in the arbitration in any form.

7.13. Failure to make any adverse finding on the lack of corroboration by the Employer, where corroboration was possible in that:

7.13.1. How it came to be that the Applicant caught the attention of the arresting officers was not a material issue in dispute before the Third Respondent.

7.13.2. The Third Respondent's final outcome relied heavily on the Applicant's behaviour before arrest, the interactions with the arresting officers and the Applicant's conduct at SAPS as justifications for finding against the Applicant.

7.13.3. The Third Respondent's finding that the Applicant had attempted to avoid detection was one of the primary aggravating factors in his mind that led him to find that the Applicant could never be trusted by the First Respondent.

7.14. Failure to make any adverse credibility or reliability findings against Makaka in that:

7.14.1. In addition to Makaka's evidence not being corroborated by any witness, tracker report or dashcam footage, her evidence in relation to what the Applicant said at the SAPS was also contradicted by the evidence of Delport.

7.14.2. The Third Respondent did not mention the fact that Delport's evidence stood in stark contrast to the picture Makaka had attempted to create about the Applicant allegedly telling everyone that Makaka was arresting one of their own.

7.14.3. The version of Makaka that the Applicant reversed, despite there being no vehicle in front of the Third Respondent, is improbable, yet the Third Respondent preferred her version over the Applicant's, thus leading to the conclusion that the Applicant had attempted to avoid detection.

7.15. Concluding that the Applicant's alleged "attempt to avoid detection" was an aggravating factor justifying dismissal in that:

7.15.1. Questions about what road the Applicant was pulled off in or whether he was going straight over Voortrekker, or had made the turn into Voortrekker were not material issues in dispute before the Third Respondent, yet he turned them into a major issue, he stated that: *"the failure to be upfront with the truth and the sequence of events"* meant that the Applicant was too much of an operational risk.

7.15.2. Had he not incorrectly considered this an aggravating factor that damaged the employment relationship, he would not have concluded that the Applicant's dismissal was appropriate.

7.16. Relying on the Applicant's 10-28 comment as an aggravating factor and failing to resolve the dispute about the *"one of them"* comment during the arrest in that:

7.16.1. The Third Respondent found that it is reasonable to infer that the Applicant had told officers that they could do a 10-28 so that they would know the Applicant was one of them to solicit a different approach. He also states that the Applicant *"asked the officers to breach their legal duties"*.

7.16.2. The Applicant admitted that he used the term 10-28, meaning that the arresting officers could verify that the vehicle belonged to him, but he denied telling them that he was one of them during the arrest.

[8] The above grounds are summarised into four main arguments in the Applicant's heads of argument as follows:

8.1. No sufficiently close nexus to justify discipline and dismissal for off-duty conduct.

8.2. Reputational damage is not the reason for dismissal and not proven - wrong issue considered.

8.3. Misconduct/errors in evaluating evidence impacting the trust relationship.

8.4. Dismissal too harsh on the facts – failure to consider corrective sanctions and progressive discipline.

<u>Award</u>

[9] The Third Respondent identified the issue that he needed to decide as follows: *"I must decide whether the applicant's dismissal was substantively fair"*.

[10] In the initial stages of the award, the Third Respondent seems to understand the issue that he needed to decide, as he clearly records that the dismissal was in respect of charge 1. He also makes it clear that the Applicant challenges the substantive fairness of his dismissal on the basis that the sanction was too harsh for an off-duty incident, coupled with the fact that another official in similar

circumstances was reinstated through an arbitration award that was not taken on review by the First Respondent.

[11] Simply put, the two legs of his enquiry were the harshness of the sanction of dismissal and the fact that another official in similar circumstances was reinstated through an arbitration that the First Respondent never challenged.

[12] At no stage in the initial stages of the award does the Third Respondent venture into the details of charge 2. Advisably so.

[13] It is in the analysis by the Third Respondent of the evidence that things started taking a rather weird turn. He makes the statement that the fact that the Applicant successfully submitted representations for conversion away from the implications of the provisions of the Criminal Procedure Act did not mean that he did not drive under the influence of alcohol, which was conduct of a criminal nature and serious. This finding runs counter to the understanding that this factor should serve as mitigation in deciding on the appropriate sanction that the First Respondent ought to have considered. It cannot be dismissed in a flippant fashion as an irrelevance.

[14] The Third Respondent makes the point that the First Respondent is a local authority who correctly argued that policing of the National Road Traffic Act and its by-laws were part of its general service delivery obligations to the public and local residents. Further, that Traffic Officers, Law Enforcement Officers and Metro Police Services are viewed by the public as one and the same, in the enforcement of laws. The laws that applied to its employees while on duty must apply equally to members of the public and to fellow employees when they fell foul of it. Two issues arise from the above finding. The Applicant was processed criminally for his driving under the influence of alcohol. He was granted a conversion, and he completed a National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) course. That is as far as the criminal justice system dealt with him, and accordingly, he should be regarded as having paid his dues to society for his criminal conduct. Secondly, and more troubling, is the fact that the Third Respondent refers to laws that applied to the First Respondent's employees while on and off duty. If that reference is to the

country's laws, then that part has already been addressed by the conversion program that the Applicant underwent. But if the reference is to internal rules that the Applicant ought to have adhered to, then the Third Respondent ought to have stated which laws those are. For instance, the Third Respondent does not say, and he does not find that the First Respondent has a policy that deals with this type of off-duty misconduct. In that case, the issue would have been put to bed once and for all, whether or not the Applicant ought to have been disciplined in the first place and most importantly, what kind of sanction would have been appropriate had he been found guilty in accordance with the First Respondent's policy.

[15] The Third Respondent makes the troubling finding that the fact that Delport made the utterances of the First Respondent, *"arresting one of their own"*, is proof that the First Respondent's reputation was indeed tarnished and at risk. Again, two issues arise from the above finding. Firstly, accepting that it is Delport who made the utterance, as argued on behalf of the Applicant, it supports the Applicant's version that he never made such an utterance. A point that the Third Respondent misses completely. Secondly, the issue of the tarnishing of the reputation of the First Respondent is a charge 2 matter and not charge 1. Charge 2 was not part of the issue(s) that the Third Respondent was required to decide.

[16] The next point that the Third Respondent gets wrong is the finding that the Applicant did not have a criminal record because of driving under the influence arrest on 30 June 2023. He calls this a concession made in terms of the Criminal Procedure Act after considering numerous factors. Although the Third Respondent does not mention those factors, it is a well-established principle that deviation programs apply to less serious offences. Had the criminal charge of driving under the influence of alcohol by the Applicant at the level he was caught driving at (i.e., 0.13 grams per 100ml), a more severe sentence would have been imposed on him. It was not in his case. This ought to have alerted the Third Respondent to the fact that, firstly, this was not a serious offence, but secondly that the Applicant did not end up with a criminal offence after all.

[17] A rather unusual finding is made by the Third Respondent when he states that not everybody with a driver's license is allowed to drive an official vehicle. The fact that the Applicant was caught driving under the influence of alcohol "*way over the legal limit*" raised the possibility that it could also happen during working hours, *"even though no similar incident happened in the past"*. The problem with this finding is that the Third Respondent, without any evidence comes to the conclusion that there is a possibility that the Applicant could drive under the influence of alcohol during working hours. This conclusion is baseless. What makes it worse is that the Third Respondent goes further and states that *"no similar incident happened in the past*", namely that the Applicant never drove under the influence of alcohol during working hours in the past. This is a factor that ought to have been in mitigation of the sanction against the Applicant instead of being the proverbial stick that the Third Respondent uses to beat the Applicant with in the form of aggravation of sanction. The Third Respondent goes on to find that it was reasonable of the First Respondent to doubt the Applicant's ability to act when a similar issue might occur with an erratic driver, as he himself engaged in similar behaviour when off duty. Further that the issue was not about his ability to drive or being sober while on duty, but to applying his mind to situations of criminality as a law enforcement officer while being beyond reproach himself. Having said that the Applicant has never driven under the influence of alcohol while on duty, it boggles the mind why the Third Respondent still believed that the Applicant would be unable to execute his duties when dealing with *"an erratic driver*". There is no evidence and the Third Respondent does not rely on any evidence to suggest that because the Applicant drove under the influence of alcohol while off duty, therefore he will act differently when faced with an erratic driver or situations of criminality while executing his duties.

[18] In trying to find a *nexus*, the Third Respondent concludes that in his analysis, it was clear that the First Respondent had a direct interest in the fact that the Applicant as one of its law enforcement officers were arrested by its own traffic officers for driving his vehicle on a public road under the influence of alcohol, therefore it follows, there was a causal link between the Applicant's conduct and his employment with the First Respondent as a law enforcement officer. As

shown in the preceding paragraphs, the Third Respondent made a number of glaring errors in his analysis. Therefore, his attempt at finding a *nexus* falls flat because of the incorrect analysis of the evidence. In addition, the *nexus* that he tries to find does not exist in the manner he seeks to create it. The Applicant was arrested while off duty, the fact that he occupied the position of a Learner Law Enforcement Officer does not automatically create a *nexus* between his off duty criminal offence and his employment by the First Respondent. This point is dealt with in more detail below in the analysis of the legal principles.

[19] In dealing with the question whether the Applicant's misconduct had the effect of destroying or seriously damaging the relationship of employer and employee. The Third Respondent finds that what aggravated the Applicant's misconduct was the surrounding circumstances at the time of his arrest. At this point the Third Applicant opened an avenue that was not within his remit. The circumstances of the arrest had nothing to do with whether the Applicant ought to have been dismissed. According to the submissions on behalf of the Applicant it was the Third Respondent who called for the evidence of Makaka, even though the First Respondent had indicated a lack of interest in that evidence. In this regard the Third Respondent dedicates a fair amount of time analyzing circumstances surrounding the arrest, the conduct of the Applicant during the arrest and his interactions (which were in dispute) between the Applicant and Makaka. On the basis of the evidence that the Third Respondent solicited, he concludes that such conduct had an impact on the employment relationship.

[20] Regarding the issue of a previous case, the Third Respondent makes short shrift of this material evidence. He makes the finding that the previous case showed that the First Respondent consistently dealt with similar incidents, even though the arbitrator differed on the basis that a law enforcement officer also has lives outside of the employment relationship. He calls this a narrow approach. The common cause evidence pointed otherwise. A fully fledged (as opposed to a leaner) Law Enforcement Officer was arrested, while off duty, for driving under the influence of alcohol at a level (0.18 grams per 100ml) above that of the Applicant (0.13 grams per 100ml). That particular employee had

resisted arrest, and had been reinstated at an arbitration. The First Respondent did not take the decision of the arbitrator on review. The employee in question remains employed by the First Respondent. The Third Respondent failed to get the point that had the First Respondent taken the issue of being arrested while under the influence of alcohol whilst off duty as seriously as it seems to portray in the case of the Applicant, it ought to have reviewed the decision of the arbitrator and pursued whatever other legal processes to ensure that its "policy of zero" tolerance was vindicated. Instead, it pursued the Applicant with more vigour than it did the other employee, who was more drunk than the Applicant, he was senior than the Applicant and he also resisted arrest while the Applicant pleaded guilty to his criminal conduct and underwent a deviation programme. The Applicant has no criminal record.

Legal analysis

[21] The parties quoted extensively from the judgment in *Hoechst (Pty) Ltd v Chemical Workers Industrial Union & another*[2] *(Hoechst)* where the Labour Appeal Court (LAC) held that an employee may, under certain circumstances, be dismissed for off duty conduct falling beyond the provisions of a disciplinary code. The LAC opined that whether the employer may dismiss will depend on an enquiry that includes: the nature of the misconduct, the nature of the work performed by the employee, the employer's size, the nature and size of the workforce, the employer's position in the market place, the nature of the employer's business, the relationship between the employee and the victim, the impact of the misconduct on the workforce as well as on the employment relationship and the capacity of the employee to perform his or her job. It is a trite principle on this type of misconduct that a *nexus* must be shown to exist between the employee's conduct and the operational requirements of the employer's business.

[22] The above approach was illustrated in *Horn v Beesnaar NO & others*[3] *(Horn)*, where an employee assaulted a colleague on the road leading to the workplace, which was held as having a direct impact on the employment relationship and

[2] (1993) 14 ILJ 1449 (LAC).
[3] (2022) 43 ILJ 115 (LAC).

thus constituting a serious act of misconduct. In the above quoted case, the assault occurred at the mine gate, there were other employees present who witnessed the assault. The assailant knew the victim's medical condition and yet he perpetrated the assault on the victim.

[23] In the matter of *SAPS v Van der Merwe NO & others*[4] *(SAPS)* a member of SAPS was dismissed for fraud committed outside the course of his employment. The court accepted that his behaviour breached the standard of conduct required of SAPS members outside the workplace and rendered him unfit for continued employment. In the *SAPS* judgment, Molahlehi J, as he was then, was dealing with Regulation 20(z) of the SAPS regulations, and he held as follows:

> 'The regulation seeks to raise the standard of conduct of police officers outside their employment and to bring it into the employment relationship even when that conduct had nothing do with the employment issues. In my view what the regulation seeks do is to set standard of conduct outside the employment relationship. The standard set by the regulation in general that police officers would not engage in conduct or activities that:
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> 1. would ordinarily not be expected of a police officer; that is unbecoming, disgraceful and or improper in the eyes of both the State as the employer and the public.
>
> 2. undermines the confidence of the public in the police.
>
> 3. project a member as being unfit to be a police officer.'

[24] The two judgments quoted above, namely *Horn* and the *SAPS* judgment, are distinguishable from this matter. In *Horn*, the assault occurred at the gates of the employer in front of other employees, where the assailant knew of the health condition of the victim. In the *SAPS* judgment, the court was dealing with a regulation that deals with off duty misconduct.

[4] [2013] 3 BLLR 320 (LC).

[25] The judgment in *Edcon Limited v Cantamessa and Others*[5] is cited by the First Respondent in its heads of argument. The employee had posted a comment on Facebook, while on leave and from a private computer, criticising the government in racist terms. The court found that the only source for the connection (*nexus*) lies in the fact that her Facebook page indicated that she worked for Edcon. However, Edcon is a merchandiser of its various products in a competitive industry. Ms Cantamessa, as a Specialist Buyer, played a pivotal role in the acquisition of such products, including ladies' trending styles and fashion for Edcon. The success of its business depends largely on how it markets itself to the general public. Therefore, having a good name is an essential asset or quality of Edcon to the general public. In as much as Buyers of Edcon can and often remain anonymous to the general public, once their identities are exposed to the general public, it must only be in a positive and not negative environment or circumstance, otherwise such disclosure imposes a risk that the name of Edcon may be brought into disrepute. The court found that therein lay the *nexus* between the conduct of Ms Cantamessa and the relationship she had with her employer. Thus, she had to avoid being a controversial employee in the public's eyes, where she could be associated with Edcon. In short, Ms Cantamessa publicly outed herself as an employee of Edcon, and accordingly, she provided the necessary *nexus* justifying her dismissal.

[26] Returning to the considerations mentioned in the *Hoechst* judgment:

26.1. It is apparent that the criminal charge against the Applicant was not viewed as serious by the criminal justice system, hence he was admitted to a conversion program. He does not have a criminal record as a result.

26.2. It is common cause that the Applicant was a Learner Law Enforcement Officer at the early stages of his career.

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[5] [2020] 2 BLLR 186 (LC).

26.3. The issue of the size of the First Respondent was not dealt with in evidence, particularly where the Applicant was employed (in the Safety and Security Directorate).

26.4. There was "no victim" in the criminal offence that the Applicant committed.

26.5. There was no demonstrable impact on the workforce as well as on the employment relationship arising from the criminal charge against the Applicant. The incident occurred off duty, at night, the only member of the public present was the Applicant's passenger in the motor vehicle.

26.6. There was no evidence regarding the impact of the criminal charge against the Applicant on his capacity to perform his job, the evidence indicated that the Applicant was reassigned to office duties during the course of the investigation and his subsequent disciplinary hearing.

[27] Regarding the *nexus,* the Third Respondent found that there was sufficient *nexus* established solely by virtue of the fact that the Applicant was employed as a Learner Enforcement Officer. That cannot be. There ought to have been more that the Third Respondent should have found to come to this conclusion. Following a proper application of the nature of the enquiry in *Hoechst*, the Third Respondent ought to have realized that a *nexus* did not exist between the Applicant's conduct and the operational requirements of the First Respondent's business.

[28] Last but not least, the Third Respondent tried to downplay the fact that a senior colleague of the Applicant had been arrested while off duty for driving under the influence of alcohol with a higher alcohol content than that of the Applicant. He had resisted arrest. He was reinstated at an arbitration, which award the First Respondent did not challenge with a review application. It ought to have been clear to the Third Respondent how the First Respondent viewed this type of misconduct. Namely, that it accepted that it was not a dismissible offence had the contrary been true, the First Respondent would have reviewed the decision in that matter.

[29] Considering the totality of the above analysis of the facts of this case, the Third Respondent made an award that a reasonable arbitrator presented with the same set of facts and the same legal framework would not have made.

[30] In the premises, I make the following order:

<u>Order</u>

1. The arbitration award of the Third Respondent under case number WCM 022408, dated 4 November 2024 and delivered on 6 November 2024, is reviewed and set aside.

2. The award is substituted with a finding that the dismissal of the Applicant was substantively unfair.

3. The Applicant is reinstated effective from the date of his dismissal without any loss of remuneration and benefits.

4. There is no order as to costs.

[redacted]

pp. M Mkhatshwa

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms N Geldenhuys

Trade Union Official

For the 1st Respondent: Mr M Mamatela

Mamatela Attorneys Inc.