



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

Signature

Date

THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JA99/2024

In the matter between:

THULANI DLADLA

First Appellant

THABANG MOGASWA

Second Appellant

PHENYO HLONGWANE

Third Appellant

TSHILOLO MAGADANI

Fourth Appellant

TSHEPISO MABUSELA

Fifth Appellant

and

MOTOR INDUSTRIES BARGAINING COUNCIL

First Respondent

DISPUTE RESOLUTION CENTRE

DIALE NTSOANE N.O

Second Respondent

FELTEX AUTOMOTIVE (PTY) LTD

Third Respondent

HEARD: 19 August 2025

DELIVERED: This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Labour Appeal Court website, and released to SAFLII. The date and time for hand-down is deemed to be on 26 January 2026.

JUDGMENT

MAHALELO, ADJP

Introduction

- [1] This is an appeal against the whole of the judgment and order of the Labour Court delivered on 4 July 2024 in which it dismissed an application to review and set aside an arbitration award issued by the third respondent (Commissioner) under the auspices of the Motor Industries Bargaining Council (MIBCO). The appellants were charged with two counts of misconduct and pursuant to an internal disciplinary enquiry convened in accordance with the third respondent's disciplinary procedure, were found guilty and dismissed.
- [2] At the arbitration, the Commissioner found that the dismissal of the appellants was substantively fair, which decision was upheld on review.
- [3] Aggrieved by the outcome of the arbitration proceedings and the Labour Court's order, the appellants now seek an order from this Court setting aside the order of the Labour Court and substituting it with an order that their dismissal was substantively unfair and reinstating them with retrospective effect. The appellants also seek the costs of the review and this appeal. The third respondent seeks the dismissal of the appeal with costs.

Factual Background

- [4] The material facts are largely common cause. The appellants were employed in the third respondent's Grammar Line department which produced headrests for BMW motor vehicles. In early 2018, BMW cancelled the relevant order, leading the third respondent to contemplate the closure of the Grammar department and potential retrenchments. Notices in terms of section 189(3) of

the Labour Relations Act¹ (LRA) were issued, and consultations were held with the National Union of Metalworkers of South Africa (NUMSA), the appellants' union.

- [5] By 7 March 2018, the consultations had yielded a positive outcome. The third respondent decided against retrenchments and instead undertook to absorb all affected employees, including the appellants, into other departments, notably the Fehrer Department, on their existing terms and conditions. A list confirming this was sent out to NUMSA, who undertook to communicate the outcome to its members. The affected employees were to receive on-the-job training in their new roles.
- [6] On the morning of 12 March 2018, the appellants, along with two other colleagues, congregated in the respondent's canteen. When asked why they were in the canteen by their supervisor Mr Ntladi, they replied that they were waiting for their union organizer Mr Mike Futshane to discuss the possible retrenchments. Management being unaware of any scheduled meeting, confirmed to them that Grammar Line employees were being trained in the other areas of the factory. The appellants replied that they could not return to work because they were waiting for their union organizer. Management instructed them to report to their workstations. The appellants had not indicated that they were off duty. They refused, insisting they would not move until they had met with Mr Futshane.
- [7] The third respondent issued two written ultimatums. The first, issued before 11:15, demanded that the employees return to work by 11:15, warning them that they are participating in an "illegal strike." The second, issued before 12:00, repeated the instruction to return to work and added that employees not back at work would be asked to leave the premises immediately or will be escorted out of the premises.
- [8] The appellants did not comply with either ultimatum. They were subsequently suspended from duty and charged with two acts of misconduct:

¹ Act 66 of 1995, as amended.

“Charge 1: “Partaking in riotous behaviour in that on Monday 12 March 2018 you took part in an unauthorized meeting on company premises”.

Charge 2: Failure to obey a lawful instruction and insubordination, in that on 12 March 2018, despite being issued by ultimatums you did not return to duty at Fehrer Roslyn.”

- [9] Following a disciplinary enquiry, the appellants were found guilty on both charges and were dismissed. An internal appeal was unsuccessful. Their unfair dismissal dispute referred to MIBCO culminated in the Commissioner's award, which found their dismissal to be substantively fair.
- [10] Aggrieved by the Commissioner's award the appellants launched a review application to set aside the award. They contended before the review court that the award did not fall within the band of reasonableness as the Commissioner misconstrued the nature of charge 2 and further, the Commissioner materially erred in finding the appellants guilty on a proper construction of that charge as well as erred in finding the appellants guilty on charge 1. The appellants' defence at arbitration was that they were not rostered to work and thus they did not need to return to their workstations. The Labour Court rejected the appellants' defence on the basis that the appellants were to adhere to the instructions regardless of being rostered or not and concluded that from the evidence presented, the probabilities favoured the version that the appellants were rostered. The Labour Court dismissed the review application, leading to this appeal.

Grounds of Appeal and Issues for Determination

[11] The appellants' grounds of appeal, can be distilled as follows:

- 11.1 The court *a quo* misconceived the nature of charge 2 by conflating the failure to "return to work" with a failure to "vacate the canteen," and by erroneously reversing the onus of proof regarding whether the appellants were on shift.
- 11.2 The court *a quo* erred in upholding the guilty finding on charge 1 by disregarding the Commissioner's factual finding that a meeting with Mr

Futshane was planned and by failing to consider that the appellants were unaware that the meeting was unauthorised.

11.3 In the alternative, if the appellants are found guilty, the sanction of dismissal was inappropriate for either charge.

[12] The central issues for determination in this appeal relate to the Commissioner's findings, upheld by the Labour Court, in respect of the following issues:

12.1 Whether the appellants were instructed to leave the canteen and whether the Labour Court erred in confirming the finding of guilt on Charge 2.

12.2 Whether the appellants were guilty of Charge 1.

12.3 If the appellants are found to be guilty on either charge, whether the sanction of dismissal was appropriate.

The Legal Framework for Appeals and Reviews

[13] The test on appeal is whether the court *a quo* was correct in its conclusion that the Commissioner's award was one that a reasonable decision-maker could reach. This Court must ascertain whether the review court, in assessing and upholding the Commissioner's decision, arrived at a conclusion that is correct in law.

[14] The constitutional standard of reasonableness, as set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*², remains the guiding principle. As articulated in *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA and Others*³, the reviewing court must ask: "*Is the decision reached by the commissioner one that a reasonable decision-maker could not reach?*"

² (2007) 28 ILJ 2405 (CC).

³ (2014) 35 ILJ 943 (LAC).

- [15] Furthermore, in *Head of the Department of Education v Mofokeng and Others*⁴, it was held that for a review to succeed, the irregularity or misdirection must be so material that it leads to an unreasonable outcome. Not every error of fact or law justifies setting aside an award.

Discussion

Charge 1 – Partaking in Riotous Behaviour

- [16] The first respondent's disciplinary Rules defines "riotous behaviour" to include *conducting unauthorized meetings on company property. (a meeting is a gathering of more than three people)*. Such misconduct is sanctioned at level 2. A level 2 transgression is a major transgression, wherein a penalty of, *inter alia*, dismissal with notice or summary dismissal can be imposed.
- [17] The appellants' own version is that they congregated in the third respondent's canteen while waiting for Mr Mike Futshane, however he did not arrive. The meeting included two other employees dressed in overalls who had not challenged their dismissal. This constituted a meeting as there was a gathering of more than three people in accordance with paragraph 8.10 of the third respondent's Disciplinary Rules.
- [18] The appellants denied the allegation contained in charge 1 against them. They contended that they could not have engaged in riotous behaviour because according to them, the meeting with their union organizer was arranged with management. The third respondent denied any knowledge of the meeting with the union on its premises on 12 March 2018.
- [19] The appellants were unable to provide any evidence to support any agreed meeting with the union. The appellants argued that in the award the Commissioner found that the meeting with Mr Futshane was planned, and that the court *a quo* erred in substituting this finding with its own conclusion that no meeting was scheduled with management. This argument in my view misconstrues the Commissioner's finding. The Commissioner used the word 'planned' in the context of the appellants' belief, but he unequivocally found

⁴ (2015) 36 ILJ 2802 (LAC).

that the meeting was unauthorised and that the appellants' gathering in the canteen constituted an unauthorised meeting as per the disciplinary Rules.

[20] The court *a quo* thoroughly analysed the evidence presented during arbitration and found, correctly in my view, that the probabilities heavily favoured the third respondent's version that no meeting was scheduled or authorised by management. This is so because the union had already been informed days earlier that retrenchments were off the table. The union organiser, Mr Futshane, was notably absent from both the disciplinary hearing and the arbitration to corroborate the appellants' version. The shop stewards who were on site on the day, were unaware of any meeting. The appellants' own reasons for the meeting, when considered against the whole evidence does not make sense.

[21] The finding by the Labour Court that the meeting was unauthorised is unassailable. Mr Ntladi who was employed by the third respondent as its production manager with the appellants reporting to him, confirmed that no permission was given for a union meeting on the 12 March 2018. He explained that the normal process to arrange a meeting with the third respondent was that the union organizer would request a meeting and that the time would be agreed upon with the third respondent. He insisted that no meeting was requested and the appellants failed to provide any evidence of this request.

[22] An unauthorised gathering of more than three employees on company premises during working hours, for the purpose of defying management instructions as the appellants did, comfortably falls within the definition of "*riotous behaviour*" as defined by the third respondent's disciplinary Rules. The word 'riotous' is not used in the disciplinary code in the sense of a violent disturbance of the peace; it is accorded a specific definition, one to which the Commissioner had proper regard and which he applied. The purpose of such a rule is to maintain order and discipline in the workplace.

[23] The appellants' defence that they were unaware that the meeting was unauthorised is not a complete defence. As employees, and particularly as

union members, they reasonably ought to have known the proper channels for arranging union meetings. Their professed ignorance does not absolve them of the objective fact that the meeting was unauthorised.

- [24] In my view, the court *a quo* did not misconceive the nature of the inquiry or the evidence in relation to Charge 1. Its confirmation of the guilty finding was rational and reasonable.

Charge 2 – Failure to obey a lawful instruction and insubordination

- [25] The appellants' primary contention here is that charge 2 was narrowly framed as a failure to return to duty at Fehrer Rosslyn. They argued that the court *a quo* and the Commissioner impermissibly widened the charge to include failure to vacate the canteen or leave the premises, which were separate and distinct acts not alleged in the charge sheet.
- [26] I find this argument to be unduly technical and without merit. It was not disputed that the Grammar Line where the appellants were employed had shut permanently on 19 February 2018. Those employed in the Grammar Line had been redeployed to other areas of the third respondent. Mr Van Rensburg's evidence was that the shop steward Costa (Collen) had informed him that the appellants did not want to continue working. The appellants were issued with two written ultimatums to return to work which they ignored. The ultimatums were issued after discussions with Costa. The evidence is clear that the instruction to return to work was the functional equivalent of an instruction to leave the canteen and report to their designated workstations. The canteen was not their place of work. The second ultimatum made this even more explicit by stating that failure to return to work would result in them being required to leave the premises. Of the 13 employees employed on the Grammar Line only seven, including the appellants did not attend their allocated workstations on 12 March 2018 and gathered in the canteen. Under cross examination Mr van Rensburg indicated that he had been chased away from the meeting on three different occasions.

[27] The appellants alleged that they were unable to comply with the ultimatums as they had not been allocated a place to work. This was denied by the third respondent and is inconsistent with other employees being allocated different duties on the day. At the disciplinary inquiry, the third respondent explained that the appellants had been allocated to the ITU shift where they were undergoing on the job training. At the disciplinary inquiry the appellants did not argue that they could not return to work as they were not rostered for work. This was raised for the first time at arbitration.

[28] Even on 12 March 2018 none of the appellants informed anyone including their own shop stewards and management that they were not rostered for work. This is confirmed by Mr Ntladi that the appellants informed him that they were waiting Mr Futshane and that they were not going to return to their workstations until that happened. They did not mention to him that they were not rostered for work.

[29] The charge against the appellants included a failure to comply with an instruction and insubordination. The appellants were instructed to return to their workstations or leave the premises but refused to do so, instead they chased away members of management who tried to engage with them. This conduct confirms the refusal to obey a lawful instruction by chasing away management and constitutes insubordination. The appellants defied both the spirit and the letter of the instruction by remaining in the canteen.

[22] Regarding the appellants' argument that the Labour Court and the Commissioner impermissibly widened the charge to include failure to vacate the canteen or leave the premises, which were separate and distinct acts not alleged in the charge sheet, the legal principles in *EOH Abantu*⁵ are directly applicable and dispositive. This Court held:

'[15] ... courts and arbitrators must not adopt too formalistic or technical an approach. It normally will be sufficient if the employee has adequate notice and information to ascertain what act of misconduct he is

⁵ *EOH Abantu(Pty) Ltd v Commission For Conciliation, Mediation and Arbitration and Another* 2008 7 BLLR 651 (LC), (2008) 29 ILJ 2588 (LC).)

alleged to have committed. The categorisation by the employer of the alleged misconduct is of less importance.

...

[17] ... there is no requirement that competent verdicts on disciplinary charges should be mentioned in the charge sheet... Prejudice is absent if the record shows that had the employee been alerted to the possibility of a competent verdict on a disciplinary charge he would not have conducted his defence any differently or would not have had any other defence.'

[31] The appellants' defence was that they were not rostered to work at the time and therefore had no obligation to obey the instruction. The court *a quo* found this defence disingenuous and, in any event, held that the duty to obey a lawful instruction is not confined to an employee's specific shift times but extends to conduct on the employer's premises.

[32] The workplace standard contravened by the appellants was the duty to obey lawful and reasonable instructions. The appellants knew that congregating in the canteen during work hours, refusing to report for training, and defying management's direct instructions constituted serious misconduct. They suffered no prejudice, as the essence of the charge was fully ventilated during the proceedings.

[33] I agree with the Labour Court. The third respondent's disciplinary Rules require employees to "*obey all lawful instructions issued in the course of business by their work superiors*". The events of 12 March 2018, managing the integration of redeployed staff i.e the appellants, fell squarely within the "*course of business*." The instruction to either report for work or leave the premises was both lawful and reasonable.

- [33] The appellants' reliance on the dictum in *Exxaro Coal Mpumalanga Ltd v CCMA and Others*⁶ is apposite, but it supports the respondent's case in that the court held:

"If it is found that the instruction was lawful, the expectation is that the employee to whom such instruction was issued should have complied. It will have little, if any, to do with whether the instruction related to the employee's job description..."

- [34] The appellants' argument that the court *a quo* reversed the onus of proof is also misplaced. While the ultimate onus to prove the fairness of the dismissal rests with the employer under section 192 of the LRA, once the employer establishes a *prima facie* case of misconduct, an evidential burden shifts to the employee to provide a credible alternative version. The third respondent led evidence of the instructions given to the appellants and the appellants' unequivocal refusal to comply. The appellants' defence that they were not on shift was, as the court *a quo* correctly found, an assertion which they failed to prove. This was raised for the first time at arbitration. It was also internally inconsistent, and it was not put to management witnesses during cross-examination. In these circumstances, the court *a quo* was correct to find that the defence lacked credibility.

- [35] The appellants' conduct went beyond mere refusal, it was defiant and insubordinate. They chased away managers who attempted to reason with them. As held in *Independent Risk Distributors SA (Pty) Ltd v CCMA and Others*⁷, for insubordination to justify dismissal, it must be gross (serious, persistent and deliberate). The appellants' conduct, which persisted for over five hours despite multiple warnings, meets this description.

- [36] Consequently, the court *a quo* committed no error in upholding the Commissioner's finding of guilt on Charge 2.

Appropriateness of the Sanction of Dismissal

⁶ Unreported case JR269/11.

⁷ (JR 1906/19) [2022] ZALCJHB 282 (11 October 2022) at para 31.

- [37] The Code of Good Practice: Dismissal (Schedule 8 to the LRA) recognises gross insubordination as a permissible ground for dismissal. The question is whether dismissal was an appropriate sanction in the circumstances of this case.
- [38] The misconduct committed by the appellants was severe. The appellants engaged in a concerted act of defiance. They not only refused a lawful instruction but did so persistently over many hours, ignoring written ultimatums, and acted in a manner that directly challenged the third respondent's authority. This was not a momentary lapse in judgment, it was a sustained and collective challenge to the operational requirements of the business, occurring at a sensitive time when the third respondent was attempting to redeploy staff and avoid retrenchments.
- [39] The trust relationship was severely damaged. The third respondent could not be expected to tolerate the employees who, as a group, openly and persistently flouted its authority. The sanction of dismissal was within the band of reasonableness. The Commissioner's decision not to interfere with it, and the Labour Court's confirmation of that decision, cannot be faulted.

Conclusion

- [40] For the reasons set out above, I find that the Labour Court was correct in its conclusion that the Commissioner's award was not one that a reasonable decision-maker could not reach. The Commissioner properly applied his mind to the evidence and the law, and his findings on both guilt and sanction fall comfortably within the bounds of reasonableness. I find no reason to interfere with the order of the Labour Court, and consequently, the appeal must fail.

Costs

- [41] As to costs, considerations of fairness and the law are best served with a no order as to costs in the appeal.
- [42] The following order is made:

Order

1. The appeal is dismissed.
2. There is no order as to costs.

MB Mahalelo

Acting Deputy Judge President of the Labour Appeal Court

Van Niekerk JA and Chetty AJA concur

APPEARANCES:

For the Appellants : Mr T Ngobeni of TM Ngobeni Attorneys

For the Respondent : Mr M Maeso of Shepstone & Wylie Attorneys