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

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 270/21

In the matter between:

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	**Applicant**
and	
PSA on behalf of MUKHAMBI	**First Respondent**
GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL	**Second Respondent**
COMMISIONER DP SEOPELA N.O.	**Third Respondent**

Heard: **15 January 2026**

Delivered: **23 January 2026**

JUDGMENT

H A VAN DER MERWE, AJ

[1] This is an application for the review of an arbitration award rendered by the third respondent (the commissioner) in an unfair dismissal dispute referred to the second respondent (the bargaining council) by the first respondent (the employee).

[2] The employee was employed by the applicant (the department) as an e-scheduler clerk. She was placed at the Randburg Magistrate's Court. One part of her duties was to receive payment of bail moneys on behalf of the department. Bail can be paid either by way of an electronic funds transfer (EFT) or in cash. Whether paid in cash or by EFT, when bail is paid, the employee was supposed to issue a bail receipt to the person who pays the bail. Thereafter the payment should be entered into the department's accounting system as either a payment in cash or EFT.

[3] When the employee came to capturing the payment of bail monies received by her on behalf of the department during January 2017, the cash actually in the possession of the department was R170 000 short. Even though the employee knew that the R170 000 was received by her in cash, she recorded the four payments that made up the amount of R170 000 as EFT payments. That way the cash shortage would be hidden, *albeit* only for the time being. This was the employee's own version.

[4] The most natural, probable inference to be drawn from these facts is that, absent an acceptable explanation by the employee, on a balance of probabilities, the employee took the amount of R170 000 for herself and then tried to conceal her theft by the false entries in the department's accounting system. After all, if there were an innocent explanation for the cash shortage, the employee would have had no reason to deliberately mis-record the payments as EFTs when it was, to her knowledge paid in cash.

[5] As there was no explanation from the employee, it should have been a straightforward matter to prosecute the employee's disciplinary proceedings.

[6] In the internal disciplinary proceedings, the first allegation of misconduct proffered against her was gross dishonesty, in the form of the deliberately false manner in which she recorded the four bail payments in issue as EFT

payments. The second allegation was theft. There were alternative allegations on both the first and second allegations, but those alternatives are not relevant for this application.

[7] In her initial disciplinary enquiry, the employee was found guilty of theft in the amount of R20 000 (the second allegation) and gross dishonesty (the first allegation). The amount of R170 000 was made up of three payments of R50 000 and one of R20 000. Why the internal disciplinary enquiry found her guilty of theft of only the amount of R20 000 is not obvious.

[8] In an internal appeal, the appeal tribunal found that it amounted to splitting of 'convictions' to have found the employee guilty of both theft and gross dishonesty. The initial disciplinary enquiry's finding of guilty on the allegation of theft was in the result set aside, but the finding on gross dishonesty was upheld. One would have expected the more severe transgression of theft to have been upheld, instead of the false accounting, but that matters not for present purposes.

[9] In the arbitration proceedings before the bargaining council, the commissioner based his award on the plainly wrong factual premise that the employee was found not guilty in the internal appeal proceedings on the allegation of gross dishonesty. As the employee was exonerated on the allegation of theft, so reasoned the commissioner, the employee had no case to answer.

[10] This matter offers a clear example of a reviewable arbitration award. Plainly the commissioner failed to apply his mind to facts – if he did, he would not have based his award on the erroneous factual premise that the employee was exonerated on the allegation of gross dishonesty. The award is also clearly reviewable on the test as set out in *Sidumo and another v Rustenburg Platinum Mines Ltd and others*[1], that is that no reasonable decision-maker could have found on the facts before the commissioner that the employee had no case to answer. As set out above, on her own version, absent an acceptable explanation, on a balance of probabilities, the employee is guilty of

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[1] [2007] 12 BLLR 1097 (CC) para 110. See also: *Head of Department of Education v Mofokeng and Others* (2015) 36 ILJ 2802 (LAC) at para 33.

both theft and deliberately making false entries in the department's accounting system. Whether that amounts to splitting or not is hardly the point as either transgression clearly warrants dismissal.

[11] The department has therefore made out a case for the review and setting aside of the award. The only proper finding that is available on the facts is that the employee's dismissal was substantively fair. As procedural fairness is not in issue, that is the end of the matter.

[12] Both parties were agreed that no costs order should be made.

[13] In the results the following order is made:

Order

1. The arbitration award rendered by the third respondent under the auspices of the second respondent under case number GPBC 777-18 is reviewed and set aside, to be substituted with the following:

    1.1 "*The employee party's referral is dismissed*".

2. There is no order as to costs.

H A van der Merwe

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the applicant	:	Adv S Nhlapo
Instructed by	:	State Attorney, Johannesburg (M Mdibogo)
For the first respondent	:	Adv P. Serogole
Instructed by	:	Makhoka Attorneys Inc.