



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR2733/2021

In the matter between:

JUSTICE MMAKAU

Applicant

and

**COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION**

First Respondent

FRANK NAIDOO N.O.

Second Respondent

MANTIS SECURITY (PTY) LTD

Third Respondent

Heard: 15 January 2026

Delivered: 23 January 2026

JUDGMENT

H A VAN DER MERWE, AJ

[1] This is an unopposed application for the review of an arbitration award rendered by the second respondent (the commissioner) in an unfair discrimination dispute referred to the first respondent (the CCMA) in terms of the Employment Equity Act.¹ The applicant (the employee) claimed that his

¹ Act 55 of 1998 (the EEA).

employer, the third respondent (the employer) unfairly discriminated against him based on his disability (the employee is a stutterer).

- [2] The employee was employed by the employer as a security guard. The employee was placed at the premises of a client of the employer, as is the norm in the security industry. The employee was placed in a position where he interacted with members of the public. The employee's case is that his employer moved him to another location because of his disability.
- [3] In the arbitration proceedings before the commissioner, the employer conceded that if it could be shown that the decision to move the employee from where he interacted with the public to another location was motivated by the employee's disability, a case for unfair discrimination would be made out. The issue before the commissioner was therefore a factual one – was the employee's move motivated by his disability or some other reason?
- [4] The commissioner found in his arbitration award that the employee failed to show on the evidence, that he was moved based on his disability, and as a result, the referral was dismissed. In this review application, the employee attacks the manner in which the commissioner dealt with the evidence.
- [5] A proper case is made out for the review of the award rendered by the commissioner.
- [6] It remains to consider the compensation that should be awarded to the employee in terms of section 50(2)(a) of the EEA. The employee earned a monthly salary of R6 160.00 at the time of the referral to the CCMA. The employee is entitled to just and equitable compensation for the infringement of his right not be unfairly discriminated against. Mr Carstens who appeared for the employee referred me to the judgment of *Smith v Kit Kat Group (Pty) Ltd*². In that matter, the employee concerned was discriminated against on the basis of his disability in that he was not permitted to return to work. Snyman AJ awarded the employee 24 months' remuneration as damages and six months' remuneration as compensation. Here, the employee seeks only

² (2017) 38 ILJ 483 (LC).

compensation, probably because he retained his employment. In all the circumstances, compensation equal to four months' remuneration is appropriate.

[7] In the results, the following order is made:

Order

1. The award rendered by the second respondent under the auspices of the first respondent under case number GATW 4804-21 is reviewed and set aside, to be substituted by the following: "The employee party is awarded compensation in an amount equal to four times the employee's monthly remuneration in the amount R6 160.00, that is R24 640.00".
2. There is no order as to costs.

H A van der Merwe

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv K M Carstens

Instructed by: Kietzmann Attorneys

For the Respondent: No appearance

LABOUR COURT