



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No: C105/2020

In the matter between:

SHAMIM ABRAHAMS

Applicant

and

EDUCATION LABOUR RELATIONS COUNCIL

First Respondent

COMMISSIONER SINGH-BHOOPCHAND

Second Respondent

WESTERN CAPE EDUCATION DEPARTMENT

Third Respondent

Heard: 13 November 2025

Delivered: 27 January 2026

Summary: Arbitration award of second respondent reviewed and set aside.
Replaced with order that finding and sanction of the chairperson of the disciplinary hearing, held by third respondent, constituted an unfair labour practice.

JUDGMENT

DANIELS J

Introduction

- [1] The applicant was an educator, teaching mathematics at Princeton High School (“Princeton”) employed by the third respondent (the “employer”) from 2000.
- [2] On or about 2 November 2017, after a disciplinary process, the applicant was found guilty of misconduct¹ for which he was given a final written warning, coupled with three month’s suspension without pay. Following an unsuccessful appeal, the applicant challenged the finding and sanction as an alleged unfair labour practice before the first respondent. The dispute was heard by the second respondent (hereafter the “commissioner”).
- [3] On 2 March 2020, the commissioner issued an arbitration award, under case number PSES282-18/19WC (the “award”) in which she dismissed the claim. This application is brought to review and set aside the award.

¹ The applicant was found guilty of the following charges, in brief, that he:

- (1) assaulted Learner A by pulling him from his chair by his collar and/or grabbing his arm, and/or throwing him out of the class, and/or throwing his bag out of the class;
- (2) displayed or demonstrated disrespectful, abusive or insolent behaviour by saying to Learner A “you must fucken stay there” and/or “you don’t fucken listen”;
- (3) deprived Learner A of his right to an education for a period of one week.

Review proceedings

- [4] The third respondent accepts that the commissioner committed a gross irregularity in the proceedings by relying on evidence from Learner A, despite his failure to avail himself for further cross examination.
- [5] Section 138(2) of the Labour Relations Act No. 66 of 1995 provides that a party is, subject to the discretion of the commissioner, entitled to question the witnesses of the other party. In my view, the applicant was unfairly deprived of a proper opportunity to complete the cross examination of an important witness. This constituted a gross irregularity in the proceedings. In the circumstances, the applicant was deprived of his rights to a fair trial of the issues² and the award falls to be reviewed and set aside on this basis alone.
- [6] This application was enrolled on several occasions since its inception. Of importance, on 25 July 2023, Nkutha-Nkontwana J (as she then was) ordered that this court must determine afresh based on the evidence at the internal hearing and arbitration whether the applicant was correctly found guilty of misconduct and, if so, whether the sanction was fair.
- [7] Key portions of the testimony presented at the disciplinary hearing were not recorded. The parties attempted to reconstruct such evidence, but this was far from successful. Details of the questions and answers of key witnesses is unavailable. This relates to the testimony led on 16 March 2017, 20 June 2017 and 25 July 2017 when the following individuals testified: Learner A, Mr Eugene Frantz (a fellow educator) and Mr Shamim Abrahams (the applicant).

² *CUSA v Tao Ying Metal Industries and others* (2008) 29 ILJ 2461 (CC) at para 76

Material facts

Evidence at the disciplinary hearing

- [8] Mrs J Swanepoel, the grandmother of Learner A, testified that she was his guardian after his mother passed away. Mrs Swanepoel admitted that Learner A was not a model student. She instructed Learner A to apologize to the applicant for swearing him. Learner A denied swearing but nevertheless did apologize. Learner A was under treatment for ADHD³ and depression. He was suspended at some point for non-attendance of classes (“bunking”). He had been put in detention by teachers other than the applicant. She testified that the applicant labelled Learner A as a ‘problem child’. She attended Princeton on several occasions to speak to the applicant, but the applicant had little or no time for her. Learner A informed her that the applicant had forcibly removed him from the class, swore him and told him not to return.
- [9] Learner A testified. He commenced at Princeton during 2015. He used to bunk classes during grade 8, including the maths classes of the applicant. During September 2015, he was suspended for bunking. An incident occurred during which a stone was thrown at the applicant. The applicant accused Learner A, but he denied any involvement. During the first or second term of 2015, during class, one of the learners threw a piece of paper at the applicant. The applicant believed that Learner A had done so and told him to leave the room. Learner A testified that he walked out of the classroom⁴ while the applicant took his school bag threw it out, saying ‘*get the fuck out*’. Later, after Learner A was urged to read the charge sheet, he changed his testimony, saying the applicant pulled him from his chair by his collar.⁵

³ ADHD refers to ‘attention deficit and hyperactivity disorder’

⁴ Transcript 24 October 2016, p118 (line 18) to p119 (line 12)

⁵ Transcript 24 October 2016, p128 (line 12) to p129 (line 4)

- [10] Learner A testified that he had stopped bunking but later admitted that this was not truthful.
- [11] Mr Eugene Frantz, another educator at Princeton who teaches grade 9, and was engaged as head of department, testified. His classroom was next to the applicant's. He testified that he found Learner A outside the applicant's classroom on occasion but could not recall him being there for an entire week. When he found Learner A outside, he accommodated him in his own class. He did not witness the applicant forcibly expelling Learner A or swearing him. Mr Frantz could not recall if he approached the applicant about Learner A being outside his class.
- [12] Mr Shamim Abrahams ("Mr Abrahams") pleaded not guilty to all three charges. He testified that Learner A was disruptive, dysfunctional, and disrespectful. Mr Abrahams testified that he did not swear at Learner A nor did he physically expel him from class. He did not know of Learner A's medical condition. He testified that Mr Franz did approach him about Learner A being outside his class. When Learner A bunked, he could be found idling close to the classroom where there was a convenient place to do so.

Arbitration proceedings

- [13] Learner B, a fellow learner from grade 8, testified. He was in the same maths class as Learner A. Learner A was seated in the back row, could not hear and moved to sit in the front row. This annoyed Mr Abrahams who instructed Learner A to move to the back. When Learner A refused to comply, Mr Abrahams took Learner A by the jacket, or the arm, and threw him out the class. Thereafter Mr Abrahams threw out his school bag. Learner A attempted to come back into the class, but Mr Abrahams refused to permit this saying "*you are fucking stupid*" and "*you are a nuisance*". Mr Abrahams told Learner A that he should stay out of his

class for the entire week and only return with his grandmother during the following week. He agreed that Learner A was disruptive at times. He testified that there were other learners, including himself, who smoked in the classroom. Learner B attempted to present hearsay evidence that his father had been threatened by Mr Abrahams. During cross, Learner B testified that Mr Abrahams had pulled Learner A to the door and, when his jacket was released, Learner A fell. This was not foreshadowed in his evidence in chief. It was put to Learner B that learners were seated (by Mr Abrahams) alphabetically to ensure discipline. Learner B denied this. However, despite his denial, Learner B seemed to accept that he was not seated close to his friends. He also testified that he wished to be seated at the front but was not allowed to do so.

- [14] Learner A testified that he was seated at the back but moved to the front because there was too much noise. While at the front, Mr Abrahams told him that he “... *must just go fokken sit at the back*”.⁶ According to the witness, Mr Abrahams “*took me by my shirt collar, so he threw me out, dragged me, or he took me by my shirt’s collar, so he threw me out of the class.*” Mr Abrahams said to him that he must just “*fok out of his class and I must go fokken sit there by my...*”
- [15] Learner A did not corroborate the evidence of Learner B that he fell. In addition, Learner A did not corroborate the version of Learner B that Mr Abrahams said to him “*you are fucking stupid*” and “*you are a nuisance*”.
- [16] The proceedings adjourned on 7 February 2019, while Learner A was under cross. On 12 March 2019, when proceedings reconvened, Learner A was not present. When the commissioner enquired from Mr Abrahams if he had completed his cross examination, Mr Abrahams responded that he was far from done. Despite this, the commissioner proceeded to swear in Mr Abrahams and hear his testimony.

⁶ Transcript for 7 February 2019, p8 lines 3 – 4. This version differed from that of Learner B.

- [17] Mr Abrahams testified that he had been an educator at Princeton since 2000 but permanently appointed during 2005. When the commissioner stated that he had a clean disciplinary record, Mr Abrahams immediately clarified that this was incorrect.
- [18] During Mr Abrahams' testimony, the commissioner repeatedly intervened to question the relevance of certain evidence (despite the absence of any objection from the employer's representative) and to direct Mr Abrahams to provide his evidence in a chronological sequence. This led to many clashes, after which Mr Abrahams took the view that the commissioner was not impartial.⁷ When Mr Abrahams attempted to testify about the manner that the evidence at the disciplinary deviated from arbitration, the commissioner attempted to stop him by advising that arbitration was a hearing *de novo*. This led Mr Abrahams to request that the commissioner recuse herself.⁸ On occasion, Mr Abrahams was forced to clarify that he was new to legal proceedings, and it was a learning curve for him.
- [19] Mr Abrahams denied the content of the charges against him and stated that they were a fabrication. He denied that he used foul language in the classroom. Mr Abrahams testified that the week referred to in the charges where he allegedly expelled Learner A could possibly be the same time when Learner A bunked class. He testified that, to his recollection, Learner A never bunked for the whole week, but he had, on occasion, bunked for up to three days in a single week. He testified that the reason he does not expel learners from class is that this would be disruptive to the other teachers and classes. Mr Abrahams testified that, if he had put Learner A out for an entire week, Mr Frantz would have reported the issue to the principal. He could not have grabbed Learner A by the collar because, according to the employer's witnesses, he was wearing his jacket, and it would not have been possible to do so. He testified that

⁷ Indeed, Mr Abrahams did apply for the recusal of the commissioner. The commissioner considered the issue and made a formal ruling rejecting the application for her recusal.

⁸ Transcript 12 March 2019, p70

Learner A was not seated at the back, but he was seated in the third row from the front.⁹

- [20] On occasion, during his testimony, Mr Abrahams lamented the fact that he could not complete his cross examination of Learner A.¹⁰

Review of the arbitration award

- [21] As previously mentioned, the award falls to be reviewed and set aside based on the gross procedural irregularity alone. The irregularity taints the findings by the commissioner, including her findings on the credibility of witnesses. The earlier order of this court indicates that this court would consider all the evidence, including that at the disciplinary hearing, and consider if the finding that no unfair labour practice was committed, was a reasonable outcome.

Evaluation of the underlying dispute

- [22] In this matter, the court is confronted with two mutually irreconcilable versions, and evidence of Learner A who was not fully cross examined.
- [23] When a court is faced with two mutually destructive versions it must have regard to issues of credibility of the witnesses, their reliability and the probabilities.¹¹ Credibility will take into consideration inter alia candour and demeanour, bias whether latent and blatant, contradictions in the testimony, contradictions with what was pleaded or put, contradictions with established facts, and the probability or improbability of his version. Reliability will depend inter alia on the opportunities the witness had to

⁹ Transcript 12 March 2019, p71

¹⁰ Transcript 12 March 2019, pp52 – 54; transcript 24 January 2020, p7

¹¹ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA)

observe the events and the quality, integrity and independence of his recall.

[24] In *National Employers' General Insurance Co Ltd v Jagers*¹² it was held that:

“In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.”

(own emphasis)

[25] In my view, on the totality of the circumstances, the applicant's version is, on a preponderance of probabilities, true and acceptable. In reaching this conclusion, I have also taken into consideration the credibility of the witnesses. There is nothing in the credibility of the witnesses which upsets my conclusion.

¹² 1984 (4) SA 437 (E)

[26] The evidence presented by the employer's witnesses, both at the disciplinary hearing¹³ and at arbitration, left much to be desired. Learner A contradicted his own evidence in material respects. For example, at the disciplinary hearing, he testified that Mr Abrahams told him to get the fuck out. At arbitration, he testified that Mr Abrahams told him to get the fuck out *and* to sit elsewhere. He could not have been told to simultaneously leave the class *and* to sit elsewhere. At the disciplinary hearing, Learner A testified that Mr Abrahams was provoked by a learner throwing a piece of paper at him. At arbitration, Learner A testified that Mr Abrahams was provoked by his refusal to move from the front of the class to the back of the class. Learner A provided no explanation for these internal and external contradictions. These differing versions could not all be true. The evidence of Learner A must be considered in context. He was a biased witness, with a clear interest in the matter. He had previously been suspended for bunking and required an explanation for future absences. Importantly, Learner A contradicted himself by initially stating that he walked out of the class but, after viewing the charges, stated that he was pulled out of his chair and forcibly expelled. In my view, the latter version was manufactured to align with the charges.

[27] As explained in paragraphs 13 to 15, Learner B did not corroborate the evidence of Learner A in material respects. In addition, Learner B did not testify that the applicant uttered the words reflected in the charges. In my view, Learner B was not an independent witness. He had an axe to grind with the applicant, with his own interests to protect. His testimony was marred by contradictions. One example bears mentioning. Initially Learner B suggested that the pupils could sit wherever they wished, and were not seated alphabetically, but then he indicated he was prohibited from moving to the front and did not sit with his friends.

¹³ The fact that the arbitration is a hearing *de novo* does not mean that the disciplinary hearing is of no relevance. It may still be used in the evaluation of the evidence tendered at arbitration. See *Ratsibvumo and another v CCMA and others* (JR239/16) [2017] ZALCJHB 397 (27 October 2017) at para 6

[28] Mr Frantz did not testify at arbitration. However, his evidence at the disciplinary hearing was telling. He did not testify that Learner A had been expelled from class or that Learner A complained that the applicant had assaulted him or sworn him. In addition, Mr Frantz did not corroborate the version of Learner A that he was outside the applicant's class for an entire week.

[29] The applicant's version that the complaints against him were fabricated are, in my view, probably true. The likelihood that an educator with almost two decades of experience behaving in the manner described, in full view of the entire class, is not high. If Mr Abrahams regularly used foul language in class, it is probable that he would have been disciplined for this. Albeit that the court did not personally witness the giving of evidence, the fact that the applicant was quick to correct the commissioner that he did not have a clean record suggests that he wished to be honest. The commissioner's finding that the applicant was contemptuous do not, in my view, stand up to scrutiny. In the main, the applicant remained respectful. He was a lay person doing his best to represent himself in a difficult situation. If anything, the commissioner lacked the requisite patience and required the applicant to understand the arbitral process in the same manner as a legal practitioner would.

Costs

[30] Neither party sought costs against the other and there is nothing in law or fairness which dictates that a cost order should be made.

Conclusion

[31] In the circumstances, for the reasons set out above, I make the following order:

- 31.1 The arbitration award, issued by the second respondent under case number PSES282-18/19WC is reviewed and set aside,
- 31.2 The third respondent committed an unfair labour practice by finding the applicant guilty of misconduct and sanctioning him with a final written warning coupled with suspension without pay for three months,
- 31.3 The third respondent is directed within 30 days to remove the final written warning from the applicant's record and to pay him the remuneration to which he would have been entitled had he not been suspended without pay for three months,
- 31.4 There is no order as to costs.

Reynaud Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:
Self-representation

For the Third Respondent:
Adv De Wet
Instructed by State Attorney