



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case no: C205/2024

In the matter between:

PIONEER FOODS GROCERIES PROPRIETARY LIMITED

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION & ARBITRATION**

First Respondent

MICHAEL MARAWU N.O

Second Respondent

**AGRICULTURAL FOOD AND ALLIED DEMOCRATIC
WORKERS UNION**

Third Respondent

PETER HOOP

Fourth Respondent

Heard: 5 February 2026

Delivered: 10 February 2026

JUDGMENT

JACOBS AJ

Introduction

- [1] This is an opposed review application.
- [2] The Applicant seeks an order:
 - 2.1 Reviewing and setting aside the arbitration award issued by the Second Respondent under CCMA case number WECT6641-24 on 7 May 2024;
 - 2.2 That the award be substituted with a finding that the dismissal of the Fourth Respondent was substantively fair;
 - 2.3 Alternatively, that the matter be referred back to the First Respondent for a hearing *de novo* before a commissioner other than the Second Respondent;
 - 2.4 Costs; and
 - 2.5 Further and/or alternative relief.

Context

- [3] The Fourth Respondent was employed by the Applicant in 2001. He was dismissed on 22 March 2023. At the time of his dismissal, the Fourth Respondent was employed as a production supervisor.
- [4] Ms Eloise Bredenkamp is employed by the Applicant as a process controller and reported directly to the Fourth Respondent.
- [5] On the night of 11 January 2023, the Fourth Respondent called together the entire shift, which included Ms Bredenkamp to issue work-related instructions.
- [6] During the gathering on 11 January 2023 an incident involving the Fourth Respondent and Ms Bredenkamp occurred which led to the incident being anonymously reported on the "Speak Up" reporting platform.
- [7] A notice of a pending disciplinary enquiry was issued to the Fourth Respondent on 27 February 2023, and the enquiry took place on 2 March 2023.

[8] The allegation against the Fourth Respondent was framed as:

The following allegation of Sexual Harassment have been brought against you:

1. *It is alleged that on the 11th of January 2023 at about 6:30 AM you sexually harassed a female subordinate Ms E Bredenkamp when you grabbed her arm, turned her around and hit her on her buttocks without her consent.*
2. *Your behaviour is unbecoming of PepsiCo's values.*

[9] The Applicant has an anti-harassment policy, and this Global Anti-Harassment Policy emphasises a zero-tolerance policy concerning sexual harassment.

[10] The Fourth Respondent attended a training session on the subject of sexual harassment on 9 December 2022.

[11] The chairperson of the disciplinary enquiry recommended dismissal as the appropriate sanction and the Fourth Respondent was dismissed on 22 March 2023.

[12] The Fourth Respondent referred an unfair dismissal dispute to the CCMA, and an arbitration hearing was concluded on 17 April 2024.

The arbitration award

[13] The Second Respondent (the Commissioner) issued an award on 7 May 2024 in which he ruled the dismissal of the Fourth Respondent to have been procedurally fair but substantively unfair. He ordered the reinstatement of the Fourth Respondent without back-pay and substituted the disciplinary sanction with a final warning valid for no longer than 12 months from the date of the award.

[14] The Commissioner rejected the Fourth Respondent's unlikely version of events and found Ms Bredenkamp's version more probable.

- [15] The Commissioner found mitigation in the fact that Ms Bredenkamp did not report the incident and that she had communicated with the Fourth Respondent via WhatsApp. He also finds that Ms Bredenkamp had poked the Fourth Respondent, which caused him to react in the spur of the moment.
- [16] The Commissioner found that the Fourth Respondent as Production Supervisor should have known better.
- [17] Ultimately, the Commissioner concludes that the Fourth Respondent's conduct constituted sexual harassment, as alleged.
- [18] The Commissioner however finds the sanction of dismissal to be too severe and rules that a final written warning was more appropriate.

The grounds for review

- [19] The Applicant listed three grounds for review. These were stated by the Applicants as:
- 19.1 The unreasonable findings on "provocation" and failure to conduct a credibility assessment;
- 19.2 Unreasonable findings on sanction; and
- 19.3 Failure to consider full conspectus of the evidence.

Evaluation

- [20] The Commissioner had found, correctly in the court's view, that Ms Bredenkamp's version of the incident, was preferred to the improbable version offered by the Fourth Respondent.
- [21] The Commissioner then finds that the Fourth Respondent had acted unintentionally and spontaneously in reaction to being poked by Ms Bredenkamp.
- [22] Reference was made to "poking" during the disciplinary enquiry. The allegation that the Fourth Respondent was provoked by Ms Bredenkamp poking him was not put to Ms Bredenkamp during cross-examination. It was not put to the other eyewitness to the incident, Ms Paauwmeester either. There was no evidence

before the Commissioner to reasonably accept that the Fourth Respondent was thus provoked.

[23] It seems unlikely that the act of grabbing someone by the hand, spinning her around and slapping her on the buttocks, can be performed unintentionally. The finding that the Fourth Respondent was provoked and acted instinctively was unreasonable.

[24] The Commissioner found that the Fourth Respondent's actions toward Ms Bredenkamp did constitute sexual harassment, as alleged. He however rules that dismissal was too severe and substitutes the employer's imposed sanction with a final written warning. He also denies the Fourth Respondent back-pay of approximately 13 months salary.

[25] In *Woolworths (Pty) Ltd v SACCAWU*,¹ the LAC ruled that:

'The task of an arbitrator, as expounded in Sidumo is to determine whether the sanction imposed by the employer is fair and not to impose a sanction afresh'.

[26] A valid and fair reason for the sanction is required. Dismissal will not be unfair when a valid reason seriously damages management's trust or confidence.

[27] The Commissioner justifies his interference with the sanction imposed by the employer because of the Fourth Respondent's length of service and his view that Ms Bredenkamp had provoked the Fourth Respondent by poking him.

[28] The Commissioner's finding does not acknowledge the fact that the Applicant has a very strict anti-harassment policy, that there is a zero-tolerance attitude toward harassment in the workplace, that the incident took place in front of a number of co-workers, that the incident was regarded as shocking to all concerned and that the Fourth Respondent persists in his stance that he did nothing wrong. The power disparity between the Fourth Respondent and Ms Bredenkamp as his subordinate, was also not considered.

[29] A perpetrator of sexual harassment who sees no wrong in his conduct and

¹ (JA38/15) [2016] ZALAC 84 at [25]

refuses to accept responsibility places himself in a position where dismissal becomes the only suitable sanction.²

[30] Sanctioning is not meant to be a punishment. It is meant to be a sensible operational response to a situation.³ Enterprises have a right to take sensible operational decisions in the best interests of the business. The dismissal of a senior employee who perpetrates sexual harassment in full view of a number of subordinates and then fails to see the wrong in his conduct is an operationally sound decision.

[31] In *Schwartz v Sasol Polymers and Others*,⁴ the LAC confirmed that employees, including managers cannot expect to remain employed, even when they have long service, when they behave badly by breaching rules and seriously damaging or destroying the relationship of trust and confidence.

[32] For the reasons outlined above, I am of the view that the decision of the arbitrator is not one that a reasonable decision-maker could, on the material on record, arrive at.

[33] In the result, the following order is made:

Order

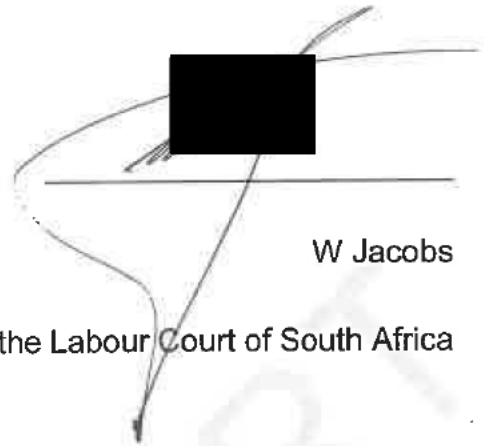
1. The arbitration award issued by the Second Respondent under CCMA case number WECT6641-24 on 7 May 2024 is reviewed and set aside.
2. The award is substituted with the following order:
 - a. The dismissal of Peter Hoop was procedurally and substantively fair.

² *Department of Labour v General Public Service Sectoral Bargaining Council and Others* (PA3/08) [2010] ZALAC 1; (2010) 31 ILJ 1313 (LAC)

³ See eg: *PSA OBO Rae v General Public Services Sectoral Bargaining Council and Others* (JR755/14) [2017] ZALCJHB 410

⁴ (JA46/2014) [2015] ZALAC 58; (2017) 38 ILJ 915 (LAC)

3. There is no order as to costs.



W Jacobs

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: - J Jorge of Thomas Wilks Inc

For the Fourth Respondent: - Mr M Similane of AFADWU