



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

Signature

19/02/2026

Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C396/2024

In the matter between:

CITY OF CAPE TOWN

Applicant

And

**SOUTH AFRICAN MUNICIPAL WORKERS UNION
("SAMWU") OBO KEEGAN MANTIS**

First Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL ("SALGBC")**

Second Respondent

ORLANDO MOSES N.O.

Third Respondent

Heard: 6 November 2025

Delivered: 19 February 2026

Summary: (Review application - A court is entitled on review to determine whether an arbitrator in fact functioned as arbitrator in the way that he upon his appointment impliedly undertook to do, namely by acting honestly, duly considering all the evidence before him and having due regard to the applicable legal principles. If he does this, but reaches the wrong conclusion, so be it. But if he does not and shirks his task, he does not function as an arbitrator and reneges on the agreement under which he was appointed. His award will then be tainted and reviewable- commissioner's award unassailable, application dismissed)

JUDGMENT

MAY, AJ

Introduction

- [1] This is an opposed application to review and set aside an arbitration award in which the third respondent (the arbitrator) determined that the First Respondent's member's, Keegan Mantis (Mantis), dismissal was substantively unfair and ordered the Applicant to reinstate Mantis retrospectively from the date of dismissal on 31 October 2023, that he report for duty on 1 September 2024 and that he be paid the sum of R197 548.20 in backpay by 1 September 2024.

Background

- [2] Mantis was employed with the Applicant as a Learner Law Enforcement Officer in its Law Enforcement Department. His post was classified as high-risk, given that law enforcement officers may at any time be required to carry firearms, drive official vehicles or respond to emergencies demanding split-second decisions. In light of these operational demands, the Executive-Director: Safety and Security issued a circular in terms of which a policy was formulated where a zero-tolerance approach is taken for law enforcement officers found guilty of testing positive for being under the influence of drugs and alcohol, submitted on 8 March 2022.
- [3] The Applicant led the evidence of a Mr Wayne Dyason, a Principal Inspector and head of the Marine and Environmental Unit as its witness. He testified that the Applicant has a Substance Abuse System and Procedure which also prohibits employees from being under the influence of intoxicating substances

while on duty. The policy also aligns with the Firearms Control Act¹ which makes it an offence to handle a firearm whilst under the influence of such substances.

- [4] On 3 February 2023, Mantis was subjected to a random workplace drug test which returned positive for THC (cannabis). He was charged with misconduct for testing positive whilst on duty in breach of the Substance Abuse System and Procedure.
- [5] A disciplinary hearing followed where Mantis was found guilty and subsequently dismissed on 31 October 2023. Dissatisfied with the outcome, SAMWU on behalf of Mantis referred the matter to the Second Respondent who appointed the Third Respondent to arbitrate the dispute.

The award

- [6] At the arbitration, Mantis pleaded guilty to the charge of misconduct that he failed a random drug test on 3 February 2023. The only issue was therefore whether dismissal was an appropriate sanction for the misconduct committed.
- [7] The arbitrator assessed the evidence led and determined that even though the employer had adopted a zero-tolerance policy to employees testing positive for having alcohol or drugs in their system, the Labour Appeal Court (LAC) in *Enever v Barloworld Equipment South Africa, A Division of Barloworld South Africa (Pty) Ltd*² reiterated that the law does not allow an employer to adopt a zero-tolerance approach to all infractions, regardless of the appropriateness or proportionality of the offence and then expect the commissioner to fall in line with such an approach. He confirmed that the Court's position was that a valid benchmark for the zero-tolerance policy should be intoxication and whether the employee was impaired and could not perform his duties. He found that the employer did not lead any evidence showing that the employee was in fact

¹ Act 60 of 2000.

² (JA86/22) [2024] ZALAC 12; [2024] 6 BLLR 562 (LAC); (2024) 45 ILJ 1554 (LAC) (23 April 2024)

intoxicated or that he was in any way unable to perform his duties assigned on the particular day or any additional functions given to him.

- [8] He held further that it was common cause that the employee at the time was not required to perform any tasks which had any implication of risk, he was not required to wear a firearm at the time and also not required to drive a vehicle. The commissioner found, perhaps incorrectly in my view, that the fact that he could be asked to carry the firearm or drive the vehicle could not be considered high-risk.
- [9] The commissioner also considered that using cannabis (dagga) is not unlawful. Using cannabis could therefore not be in conflict as his duties as a law enforcement officer.
- [10] The arbitrator ultimately held that dismissal as a first offence was too harsh under the circumstances, accordingly, found that the dismissal was substantively unfair and ordered his reinstatement from 31 October 2023 by 1 September 2024 and ordered that he be paid full backpay.

Grounds of review and evaluation

- [11] Applicant contends that, the award is reviewable on the basis that the Commissioner committed misconduct in relation to his duties and/or committed a gross irregularity in the conduct of the arbitration proceedings. Applicant asserts that the arbitrator committed a gross irregularity in the conduct of his assessment of the evidence, which led to findings that are unsustainable and irregular.
- [12] Applicant argues that the arbitrator ignored material evidence placed before him. Applicant alleges that the parties accepted that the offence is dismissible as a first offence and that the arbitrator's role was to decide whether the sanction imposed was fairly imposed, that it was not a factor whether the

employee was required to perform a hazardous task at the time but that he could be called upon to do so when a need arises, that no tangible evidence was led to support a claim of inconsistency and no evidence was led that the employee used cannabis in his private time as opposed to having done so on duty. As a result, the arbitrator's decision is not one that another reasonable decision-maker could reach.

[13] The Court must ask:

- 13.1 In terms of his or her duty to deal with the matter with the minimum of legal formalities, did the process that the arbitrator employed give the parties a full opportunity to have their say in respect of the dispute?
- 13.2 Did the arbitrator identify the dispute he was required to arbitrate (this may in certain cases only become clear after both parties have led their evidence)?
- 13.3 Did the arbitrator understand the nature of the dispute he or she was required to arbitrate?
- 13.4 Did he or she deal with the substantial merits of the dispute? and
- 13.5 Is the arbitrator's decision one that another decision-maker could reasonably have arrived at based on the evidence?³

[14] Our courts have repeatedly stated that in order to maintain the distinction between review and appeal, an award of an arbitrator will only be set aside if both the reasons and the result are unreasonable. In determining whether the result of an arbitrator's award is unreasonable, the Labour Court must broadly evaluate the merits of the dispute and consider whether, if the arbitrator's reasoning is found to be unreasonable, the result is, nevertheless, capable of justification for reasons other than those given by the arbitrator. The result will, however, be unreasonable if it is entirely disconnected with the evidence,

³ *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v CCMA and Others* (2014) 35 ILJ 943 (LAC) at para 20.

unsupported by any evidence and involves speculation by the arbitrator.⁴ An award will no doubt be considered to be reasonable when there is a material connection between the evidence and the result or, put differently, when the result is reasonably supported by some evidence.

Application

[15] There is no doubt that both parties had the chance to have their say in relation to the matter, the arbitrator correctly identified the dispute as determining whether the sanction of dismissal was too harsh and the arbitrator understood the nature of the dispute clearly, as is apparent from the award, The applicant challenges the fact and disputes that the arbitrator dealt with the substantial merits of the dispute and accordingly challenges that the decision is not one that a reasonable decision-maker could reasonably have arrived at.

[16] In assessing sanction, as set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*⁵ the arbitrator's task was to:

“take into account the totality of circumstances. He or she will necessarily take into account the importance of the rule that had been breached. The commissioner must of course consider the reason the employer imposed the sanction of dismissal, as he or she must take into account the basis of the employee's challenge to the dismissal. There are other factors that will require consideration. For example, the harm caused by the employee's conduct, whether additional training and instruction may result in the employee not repeating the misconduct, the effect of dismissal on the employee and his or her long-service record. This is not an exhaustive list.”

[17] In *Enever* the LAC distinguished *SGB Cape Octorex (Pty) Ltd v Metal and Engineering Industries Bargaining Council and others*⁶ and *Marasi v Petroleum*,

⁴ *Herholdt v Nedbank Ltd (COSATU as amicus curiae)* [2012] 11 BLLR 1074 (SCA) at paras 12 and 13.

⁵ (2007) 28 ILJ 2405 (CC) at para 78.

⁶ (2023) 44 ILJ 179 (LAC).

*Oil and Gas Corporation of South Africa (SOC) Ltd*⁷ on the basis that in *Marasi* the employee was required to operate heavy and dangerous equipment and in *SGB* the employee smoked cannabis whilst on duty⁸.

- [18] The consideration was whether the employee concerned was stoned (intoxicated) at work and thus impaired. In *Enever*, the court held that⁹:

“Although no medical evidence was led, the Respondent conceded that, unlike alcohol, cannabis stays in the blood system for longer than is the case with alcohol. This underscores the point that a mere positive test for cannabis does not address the sobriety of the user or indicate whether they are impaired from carrying out their duties. A further consideration, as pointed out above, is that the Appellant does not operate or work with any heavy or dangerous machinery. Her job is plainly an office desk job. I do not accept that because the Respondent has a generally dangerous workplace the rule is justified or that, that is an inherent requirement of the job.”

- [19] The arbitrator similarly concluded that there was no evidence led that that the employee acted in any manner which showed that he was unable to perform his duties at the time that the test was taken. He considered the arguments by the employee that dismissal remains a measure of last resort and all circumstances should be considered before a decision is made to dismiss. Also, that there is no reason to believe that the employee will repeat the misconduct.

- [20] In the Court's view, the arbitrator was acutely aware of his duties. He assessed the evidence before him in its totality; he considered the zero-tolerance policy as against the law as it was and considered the evidence against it to determine whether dismissal was appropriate as in the *SGB* matter or whether the facts are similar to those in *Enever*.

⁷ [2023] 10 BLLR 1043 (LC); (2023) 44 ILJ 2261 (LC).

⁸ *Enever* (id fn 3) at para 43.

⁹ *Enever* (id fn 3) at para 44.

[21] As indicated earlier, the arbitrator may have incorrectly found that the risk was no longer high. This however is not sufficient.

[22] In *Stock Civils Engineering (Pty) Ltd v RIP NO and another*¹⁰, the Court, after articulating the test for review based on misconduct says this:

'In my view the following principles emerge: A court is entitled on review to determine whether an arbitrator in fact functioned as arbitrator in the way that he upon his appointment impliedly undertook to do, namely by acting honestly, duly considering all the evidence before him and having due regard to the applicable legal principles. If he does this, but reaches the wrong conclusion, so be it. But if he does not and shirks his task, he does not function as an arbitrator and reneges on the agreement under which he was appointed. His award will then be tainted and reviewable. It is equally implicit in the agreement under which an arbitrator is appointed that he is fully cognizant with the extent of a limits to any discretion or powers he may have. If he is not and such ignorance impacts upon his award, he has not functioned properly, and his award will be reviewable. An error of law or fact may be evidence of the above in given circumstances but may in others merely be part of the incorrect reasoning leading to an incorrect result. In short, material malfunctioning is reviewable, a wrong result per se not (unless it evidences malfunctioning). If the malfunctioning is in relation to his duties, that would be misconduct by the arbitrator as it would be a breach of the implied terms of his appointment.'

[23] Nothing in the pleadings or arguments suggests that the Arbitrator engaged in improper conduct or acted with any malfeasance or dishonesty. There was no material malfunctioning. The award is in the circumstances unassailable.

[24] The arbitrator's outcome therefore is not one a reasonable decision-maker could not reach. The findings by the arbitrator are not divorced from the material before him and he did not misconceive what was required of him.

¹⁰ (2002) 23 ILJ 358 (LAC) at para 52.

Conclusion

- [25] It follows therefore that the application should be dismissed. The parties will still be in an employment relationship and therefore the most appropriate order as to costs is that both parties remain responsible for their own costs.
- [26] The effect of the application meant an interruption of the period for the employee to report for duty as well as a provision for backpay. This must be remedied. I propose therefore ordering that the employee reports for duty on 2 March 2026 and ordering that he be paid backpay calculated from 31 October 2023 to 2 March 2026, calculated as R 553 153.24 (R19 754.83 x 28 months).

Order

1. The application for review is dismissed.
2. Each party will pay their own costs.
3. Mr Keegan Mantis must report for duty on 2 March 2026.
4. The Applicant must pay Mr Mantis his full backpay for the period 31 October 2023 to 2 March 2026 calculated at R553 135.24 (five hundred and fifty-three thousand one hundred and thirty-five rands and twenty-four cents) by 31 March 2026.



C May

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant	:	Adv. S Khoza
Instructed by	:	Mamatela Inc. Cape Town
For the first respondent	:	Mr E Geldenhuys of Macgregor Erasmus Attorneys Inc, Cape Town