



(1) Reportable: NO
(2) Of interest to other Judges: NO



Signature

20/02/2026

Date

**THE LABOUR COURT OF SOUTH AFRICA
AT CAPE TOWN**

Case no: C 279/2024

In the matter between:

FEZILE HLANGANA

Applicant

and

**SOUTH AFRICAN LOCAL
BARGAINING COUNCIL**

First Respondent

FRANCOIS VAN DER MERWE N.O

Second Respondent

CITY OF CAPE TOWN

Third Respondent

Heard: 17 February 2026

Delivered: 20 February 2026

Summary: (Review – Misconduct – Dismissal for dishonesty in promotion interview – Award upholding dismissal one that a reasonable arbitrator could arrive at)

JUDGMENT

LAGRANGE, JNature of the application

- [1] This is an application to review an arbitration award which dismissed the applicant's claim that his dismissal was substantively and procedurally unfair.
- [2] The applicant's dismissal arose from a single incident which occurred in the course of an interview for promotion to the post of professional officer in development management. The job was Head of Communications for the department that dealt with all land use and building plans in the city (concerning about 900,000 properties). The interview was conducted using Skype.
- [3] The applicant was successful and was appointed in the post from 1 June 2022. Some months later in March 2023 he faced two charges. Firstly, he was accused of being dishonest by misrepresenting to the interview panel when he was asked if he had ever been convicted of any departmental/disciplinary action or was currently facing any departmental disciplinary action by answering "no" to the question despite knowing that he had been sanctioned for previous disciplinary action in his career at the city. Secondly, he was alleged to have committed gross misconduct in the form of misrepresentation by not declaring or disclosing his previous disciplinary record to the respondent.
- [4] The disciplinary action only came about when the director of the development management department learned of his previous disciplinary history, when seeking a view on his performance in his previous post, because she was not satisfied with his current performance. She testified that if his previous disciplinary history had been known at the time he was interviewed, he would not have been in contention for the post. Four people in the development management department had been dismissed during the previous year for dishonesty, and she was not prepared to take the risk of him working in the department.

- [5] The crux of the case turned on whether the applicant had given the answer he did, not because he had any intention to misrepresent his disciplinary history but because for one reason or another he effectively only answered the second part of the question, concerning whether he was currently facing disciplinary action at the time of the interview.

Aspects of the evidence

- [6] When the applicant's representative outlined the basis of his defence, he emphasised the two-part nature of the question and that the employer failed to clarify which part of the question the applicant was answering. When the applicant answered 'no' he was not being dishonest because he was not facing any disciplinary hearing at the time. A great deal of the cross-examination of the HR manager, who had posed the question in the interview, was spent trying to get the latter to admit that when the applicant 'no' in relation to the second part of the question, he was not lying because he was not facing in the disciplinary proceedings at the time of the interview.
- [7] At some stage during the laborious to and fro between the applicant's representative and the HR manager the applicant's representative announced an intention to bring a language expert to clarify that it was a two-part question. The Commissioner, rightly in my view, made it clear he would not entertain evidence of the matter because in essence the issue was simply that it was one question consisting of two parts to which the applicant gave one answer. In any event, the applicant's representative was content for the hearing to proceed, without pressing the issue, on the basis that the Commissioner agreed that it was a question with two parts.
- [8] Right at the end of the HR manager's cross-examination, it was then put to him that the applicant only became aware of the first part of the question when he saw it afterwards in writing and, at the time of being questioned, his mind was focused on the issue of whether he was facing disciplinary proceedings at the time of the interview.
- [9] Apart from saying that he only became aware of the first part of the question when he was charged with misconduct, the applicant argued that,

as far as he was concerned, he had already been sanctioned for his previous misconduct which was now 'null and void'. Part of his prior disciplinary record consisted of two separate acts of misconduct in which he had been found guilty of plagiarism. In any event, as an internal candidate for the post his disciplinary record would have been known. It must be mentioned that the applicant never actually said he felt he did not need to answer the first part of the question because the employer knew of his prior record.

- [10] He also asserted that it was up to the interview panel to have asked a follow up question if they wanted him to deal with previous disciplinary hearings, which he would obviously have answered truthfully because his record could be checked. He viewed the question as having two severable portions and he had answered the second part, which is the part that registered with him.
- [11] The applicant was confronted with a version he had presented at the internal disciplinary enquiry that poor Skype connectivity during the interview had caused him not to hear the first part of the question at all. At the arbitration he no longer disputed that the whole question had been asked but that it was only the second part which resonated with him, or which was the part he heard.
- [12] He claimed it was only when he saw the whole question in writing, when he received the disciplinary charges that he became aware of the first part too.

The award

- [13] The arbitrator concluded that the applicant's defence did not have a ring of truth about it. He characterised the defence as either the applicant did not understand the question properly, or only heard the second part of the question or only answered the last part of the question. The arbitrator held that the applicant was well educated in and came from a communications background so he should reasonably have understood the question and stated a clear unconditional 'yes' or conditional 'no'. The evidence showed that at the time he was earning just under R 500,000 a year.

- [14] The arbitrator noted that his defence that he did not hear the second part of the question was an uncorroborated defence that was only offered “at the last moment” and was not put to any of the employer’s witnesses.
- [15] The arbitrator considered that the question was phrased in plain language, even if it comprised two elements, and the answer clearly could have materially influenced the outcome of the interview. Given this, the arbitrator was of the view that it was more probable that he decided not to tell the whole truth about his disciplinary record.
- [16] The arbitrator noted that the employer had a zero- tolerance policy when it came to dishonest misconduct and that the remorse shown by the applicant at the arbitration hearing came too late. In argument it was contended there was no evidence for the existence of the policy, but the third respondent points out that the evidence of the applicant’s departmental manager on it was not challenged at any stage.
- [17] The arbitrator held that employees needed to be bona fides and honest in their dealings with the employer’s and that trust and confidence was fundamental to the employment relationship. It was not part of the applicant’s case that he was unaware of this but rather that he did not break it.
- [18] The debate about the two-part nature of the question that arbitrator regarded as an artificial semantic issue. The question was not unclear. He concluded that the applicant had simply not been truthful when he answered the question. His reasons for dismissing the applicant’s defense was that he found that his contention that he did not either understand the question properly or that he only heard the last part always only answering the last part did not have a ring of truth. He set out the considerations that brought him to this conclusion.
- [19] In summary, they may be expressed as follows. The applicant was a professional officer involved in communication work who ought to have understood the question. There was no duty on the employer to probe his answer to the question nor was it reasonably required. The applicant had shown no hesitation in answering the question and did not ask for any

clarity before answering. Given his response, there was no reason the interviewing panel would have sought clarity from him. His explanation that he only heard the second part of the question was not put to any of the employer's witnesses. Given that an answer to the whole of the question would have materially influenced his candidacy it was more probable that this was the reason he did not answer fully.

Grounds of review

- [20] At the hearing, the applicant's counsel, *Ms Myburgh*, clarified the grounds of review which were being pursued.
- [21] The applicant abandoned his ground of review that was premised on the arbitrator supposedly not appreciating that he might not have heard the whole question because of a poor Skype connection. It appears this had been a contention in the disciplinary enquiry only. The associated claim that an expert witness ought to have been allowed to testify on this also fell away.
- [22] It was argued that the arbitrator had committed a reviewable error in not permitting the applicant to call a linguistic expert to elucidate on his failure.
- [23] Secondly, it was contended the arbitrator failed to properly consider the appropriateness of the sanction of dismissal, which was disproportionate to the misconduct complained of. A number of issues revealing flaws in the arbitrator's analysis were linked to this. He relied on a supposed "zero tolerance" policy without evidence of such a policy. He failed to weigh the severity of the alleged dishonesty which was not gross dishonesty. The alleged dishonesty was minor and non-prejudicial to the employer. No financial loss, no reputational damage, or loss of public trust was entailed by his appointment. Had it not been for his manager being dissatisfied about his performance in his new post, his alleged misrepresentation in his interview would never have come to light and when it did, it was seized on as a pretext to dismiss him instead of trying to rectify his performance. In any event, the arbitrator ignored the evidence that he had worked for nine months in the new position without incident.

Failure to allow a linguistic expert to be called.

- [24] It is true the arbitrator reacted somewhat abruptly when the applicant's representative intimated he wanted to call such an expert to deal with the two-fold nature of the question and the type of answer or answers it could be expected to elicit. However, I agree that these issues did not concern abstruse grammatical constructions or elaborate use of language. They were well within the competence of the arbitrator to determine, just as they were within the capabilities of the representatives to present argument on them.

The determination of dismissal as an appropriate sanction.

- [25] It is true that evidence of a zero-tolerance policy on dishonesty was based on the evidence of the applicant's department manager's evidence, but she was not challenged on it. Moreover, she did testify on the importance of integrity in a department which dealt with all issues relating to building and property issues, which was also not challenged.
- [26] It is true that if his manager had not made enquiries about him because of her concerns about his performance, his misrepresentation might not have come to light. It may even be true that she saw charging him with misconduct as an easier way to address the problem. But the fundamental question the arbitrator had to determine was whether the employer had made out a case that warranted dismissal for dishonesty, irrespective of other motives that might have been at play. The fact that he would not have been employed in the department if his disciplinary history had been known demonstrates that his misconduct was a self-standing ground for taking disciplinary action.
- [27] On the question of the gravity of his dishonesty, it is true that no major losses or reputational damage was suffered by the City. However, it was not inconsequential. The applicant obtained appointment to a job he would not have been considered for, had his record been known to the interview panel. It also stands to reason that another candidate might have been successful. It is also not irrelevant that on two previous occasions had been found guilty of plagiarism, which is also a form of dishonesty. Even

though those acts of misconduct were not relied on to argue that nothing less than dismissal would be satisfactory, they are indicative of an inclination to act in that manner which has not been arrested.

- [28] On the question of mitigation and aggravation, it is true these were not expressly dealt with by the arbitrator in such terms. However, it is noteworthy that mitigating evidence was not elicited in the arbitration and in the written submissions made on the applicant's behalf, the entire focus was on trying to prove his innocence. In the absence of some acknowledgement of culpability, even of a lesser degree, it can be difficult to overlook the fact that dishonesty involves deliberate deception.
- [29] In fairness to the arbitrator the focus of both parties was primarily on how serious the dishonesty was. The arbitrator was also confronted with the problem that occurs repeatedly, where there is no acknowledgement of wrongdoing. In this case, the applicant was not even willing to entertain the possibility that his answer might reasonably have been construed as a denial both that he had no previous record of misconduct and was not currently facing charges of misconduct. The suggestion that it was up to the interview panel to probe his answer to determine what it did not address is extraordinary as it places the onus on the employer to extract the full answer to the question.
- [30] The main difficulty the applicant has, is to demonstrate that the arbitrator's decision lay outside the bounds of what a reasonable commissioner might conclude. In *Head of Department of Education v Mofokeng & others*¹, the LAC made it clear that even if material factors are overlooked by an arbitrator, those omissions must be of such magnitude that the arbitrator undertakes the wrong enquiry or arrives at an unreasonable result. It is up to the applicant in review proceedings to show that the irregularities committed by the arbitrator in relation to their assessment of issues or facts is such that they failed to address the questions they have to determine.

¹ (2015) 36 ILJ 2802 (LAC) at paras [30] - [33].

[31] In this case, it is just possible another arbitrator might have seen the magnitude of the applicant's dishonesty in a less serious light, but that does not mean the arbitrator's finding that it was serious enough to warrant dismissal is reviewable. It was not an untenable outcome based on the evidence before him.

[32] In light of the discussion above, I am satisfied the arbitration award is not one that no reasonable arbitrator could arrive at and the review application must fail. There is no reason to depart from the normal approach to costs in such cases.

Order

1. The review application is dismissed.
2. No order is made as to costs.



R Lagrange

Judge of the Labour Court of South Africa.

Appearances:

For the Applicant:	--- L Myburgh
Instructed by:	--- Greenberg and Associates
For the Respondent:	--- T Du Preez
Instructed by:	--- Mosdel Pama & Cox