



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: D 31/2021

In the matter between:

PHUMALANI DUBE

Applicant

and

SASKO SHAKASKRAAL BAKERY

A DIVISION OF PIONEER FOODS GROUP LIMITED

Respondent

Heard: 24, 25, 26 November 2025

Delivered: 18 February 2026

JUDGMENT

WHITCHER J

- [1] This referral concerns whether the applicant's dismissal by the respondent for participating in an unprotected strike and for gross insubordination and/or gross insolence was substantively unfair.

Common cause facts: pretrial minute

- [2] The respondent mass produces a perishable product that requires delivery on the same day and an uninterrupted 24-hour operation. It therefore operates on a three-shift system, the first of which commences at 06h00 on Monday morning, and the last of which ends at 06h00 on Saturday morning. On weekends, a 12-hour shift is in operation running from 06h00 on the Saturday

and the last of which ends at 06h00 the following Monday morning. The applicant was employed as an oven-feeder operator.

- [3] On 27 June 2020, the respondent's bakery manager, Mr Aupa Mofokeng received a letter of demand *via* the shopstewards. It was purportedly endorsed by 240 employees. The applicant is one of the signatories.
- [4] The demand called for the removal within 48 hours of the Safety Manager, the HOD of Dispatch, the HR Manager, the Chief Operations Manager and the General Manager. The petition alleged in general and vague terms that workers are treated like slaves and managers use vulgar language when they address workers.
- [5] Mofokeng met with the shopstewards to obtain context in relation to the grievance, but they told him to address the workers directly. Management therefore contacted their union, AFADWU. The applicant was a member of AFADWU.
- [6] On 1 July 2020, management met with an official from AFADWU. It was agreed that the employees would use the respondent's grievance procedure to lodge specific alleged grievances, and the forms for that were provided. That was not done.
- [7] Instead, on Thursday, 2 July 2020 at 03:00, about 60 employees embarked on an unprotected strike and gathered in the canteen. These employees would have ordinarily ended their shifts at 06h00.
- [8] The respondent repeatedly instructed the employees in the canteen to return to work, but they did not heed the ultimatums. Instead, they moved to and gathered in the yard/parking area of the premises, where they were again instructed to return to work. The striking employees eventually dispersed at about 08h30/08h40.
- [9] Fifty-three employees were issued with final written warnings for participating in the unprotected strike. The applicant and the shopstewards, however, were issued with separate notices to attend disciplinary hearings where in addition

to the charge of participating in an unprotected strike, they were charged with further allegations of misconduct.

The applicant's conduct

[10] The applicant was charged with participating in an unprotected strike and gross insubordination and/or gross insolence.

[11] It was undisputed that the applicant, who was due to commence his shift at 06h00, joined the striking employees in the canteen after he arrived at work. The exact time he did so¹ and how he ended up there is immaterial in the wider scheme of things, as will become apparent.

[12] The applicant may not have instigated, and participated in the decision at 3am to embark on the strike, however, the evidence of Mr Mofokeng and the HR Manager, Mr Lebohang Letsoha, backed in part by the CCTV footage viewed in court established that he actively acted in furtherance of the strike, actively associated himself with the purpose of the strike - in fact more so than most of the strikers – and, in the process acted in a disrespectful and insolent manner to management who came to address the strikers in the canteen.

[13] In this regard, the said evidence established that:

13.1 When Mr Mofokeng returned to the canteen at 7am with Mr Letsoha to address the strikers, the applicant was in the canteen with the strikers.

13.2 When Mofokeng and Letsoha entered the canteen, the employees sang and danced but they eventually settled down for management to address them. The applicant, however, continued singing and dancing, moving around them; chanting “They must leave the place” and “All must go” – clearly echoing the demand in the petition. At one stage he stated: “Go back to Lesotho”, an obvious reference to Mr Letsoha.

¹ The charge does not suggest this at all and the evidence of the respondent's witness, Dladha that he saw the applicant at 4am in the plant was unreliable.

13.3 While Mr Mofokeng was addressing the employees, the applicant positioned himself next to the shopstewards saying: "Tell them they must go".

13.4 Crucially, the applicant himself revealed that he asked Mr Mofokeng how far management had gone with the grievance and in reply to Mofokeng's response, he addressed Mr Mofokeng as follows: "you are not trusted – you are a liar".

13.5 Under cross-examination, the applicant denied he had made pointing gestures at Mr Mofokeng and Mr Letsoha while he was dancing. He implausibly claimed that it was part of the dance.

13.6 The applicant joined the strikers in the yard after they left the canteen, and here he also was not a passive spectator but continued his show of support for the strike by singing and dancing.

[14] Mr Mofokeng and Mr Letsoha testified that as management they felt disrespected in front of the employees. They reasonably submitted that even where parties have a workplace dispute, there is no need to address management in a disrespectful and insulting manner. While the law allows for a degree of flexibility and "relaxed" rules regarding respect during collective bargaining, this does not permit insolence even from a shop steward. This court has held that the right to represent employees does not give representatives free reign to behave rudely and insolently. In *Msunduzi Municipality v Hoskins*, the dismissal of a representative for being rude, sarcastic, and insulting to a manager was upheld as the conduct was deemed to have broken the trust relationship.

[15] For all the reasons set out above, the dismissal of the applicant was substantively fair, and the referral is dismissed with no order as to costs.

B Whitcher

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Norton Rose Fulbright South Africa Inc

For the Respondent:

Ngubelanga Attorneys Inc

LABOUR COURT