



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No. C413/24

In the matter between:

SAMWU o.b.o. R. WILLIAMS

Applicant

and

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY

First Respondent

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

Second Respondent

EDWARDS, G N.O.

Third Respondent

Heard: 11 February 2026

Delivered: 19 February 2026

Labour law - Review of arbitration award – Misconduct - Alleged breach of workplace rule – Failure to report incident – Commissioner's duties – Material errors – failure to consider existence and reasonableness of rule, and appropriateness of sanction – Award unreasonable and set aside.

JUDGMENT

MAKHURA, JIntroduction

- [1] The South African Municipal Workers' Union (SAMWU or union) acts in these proceedings on behalf of its member, Ryan Williams (Williams or individual applicant). Collectively, they are referred to as the applicant. They seek to review and set aside an arbitration award in which the third respondent commissioner dismissed Williams' unfair dismissal claim. The first respondent opposes the application.

Material facts and evidence

- [2] Williams was employed as Senior Superintendent: High Voltage Overheads with over 25 years of service at the time of dismissal, having held his position since 2021.

- [3] On 28 July 2022, the first respondent charged Williams with six allegations of misconduct, which included gross dereliction of duties, victimisation and causing a disharmonious workplace. On 22 June 2023, following a disciplinary hearing that started in August 2022, Williams was dismissed for one allegation of gross dereliction of duties, which was:

'You misconducted yourself in the gross dereliction of your duties as a Senior Superintendent on the 2 March 2021 whereby you failed to address and report the matter to your line manager when Mr Avontuur and Mr Malibo informed you that Mr Roberts had removed copper from Acacia HV Yard and transported the said copper off the City of Cape Town property by means of his personal vehicle.'

- [4] Following his dismissal, the applicant referred an unfair dismissal dispute to the second respondent (SALGBC), challenging the dismissal on substance and procedure. Williams also sought to be reinstated.
- [5] At arbitration, the first respondent called three witnesses, namely Vernon Avontuur (Avontuur) and Jacob Malibo (Malibo), who were employed as a

handyman and special workman respectively. These two employees reported to Michael Roberts (Roberts), who was employed as an artisan. The third witness was Raphael Swinny (Swinny), employed as Manager: High Voltage Circuit/Overhead Lines/Underground Cables and Williams' line manager.

- [6] On 24 February 2021, Avontuur and Malibo accompanied Roberts to Acacia Park, where Roberts instructed them to strip copper cables from a substation. After they removed the cables, they loaded them onto the first respondent's bakkie and later drove to the Ndabeni Overheads depot. Once there, they transferred the copper from the bakkie into Roberts' private vehicle. According to their testimony, Roberts told them he would take the copper to the first respondent's reclamation centre.
- [7] Avontuur was not at work on Thursday, 25 February 2021, but reported for duty on Friday, 26 February 2021. Roberts slipped an envelope containing R500.00 into Avontuur's arm before going to look for Malibo. Roberts later instructed both Malibo and Avontuur to follow him to his residential place. At his residential place, Avontuur enquired from Roberts what the money was for. Roberts explained that it was for the copper removed on 24 February 2021, which he had sold to a friend. Upon hearing this, Avontuur returned the money to Roberts.
- [8] On 26 February 2021, Avontuur and Malibo decided that they needed to report the theft. They approached Williams on 2 March 2021 and relayed the incident to him in his office, in the presence of Roberts. According to Avontuur, Williams did not appear surprised when hearing their account.
- [9] Williams, so Avontuur testified, told all three employees that they would face disciplinary action and could potentially lose their jobs. Avontuur further testified that this response left him devastated because he had expected Williams, as a manager, to be someone they could trust and confide in. He testified:

'I felt devastated because here my colleague and I are coming to what is supposed to be a trustworthy person, a manager, where you can put your trust

in. Whenever something happens on site, you can go to somebody at least, where you can go and rely on that person and tell that person what actually happened. But, at the end this person that you are supposed to be trusting is telling you, you are going to lose your job for doing something right and I was so devastated and heartbroken just to hear what a managerial person is telling you at the end of the day.'

- [10] Avontuur testified that after Williams told them they risked losing their jobs, he and Malibo waited for about three days, this being the period Williams allegedly asked for to address with the matter, before approaching Swinny, as they felt Williams was not taking any steps to deal with the matter. However, on 3 March 2021, Avontuur requested a meeting with Swinny, and they ultimately met with him and Irwin Oostendorp (Oostendorp), the first respondent's Labour Relations Practitioner, on 4 March 2021, which was before the end of the three-day period Williams had supposedly requested.
- [11] Meanwhile, on 3 March 2021, Williams asked Aashiq Levy (Levy), employed as a clerk in his office, to arrange for documents needed for a disciplinary hearing. The next day, 4 March 2021, at 13h26, Williams sent Levy a WhatsApp reminder about the "*hearing process and associated paperwork*". A few minutes later, at 13h31, Levy emailed Gary Bradley (Bradley), an administration officer who also assisted with disciplinary matters, about the documents. At 17h15 that same day, Levy forwarded the forms to Williams, but Williams later testified that the documents were the wrong ones. Williams testified that he left work around 17h45 and phoned Swinny that evening to report the incident. According to him, Swinny told him that Avontuur and Malibo had already reported it and had been asked to submit affidavits. Swinny, however, denied this and said that Williams only spoke to him on the morning of 8 March 2021.
- [12] At 7h26 on Monday, 8 March 2021, Williams sent Swinny a WhatsApp message. The message reads that:

'morning Raphael I will ask the two gentlemen to write up affidavit at the police station.'

[13] In response, Swinny wrote:

'Morning Ryan, the incident has been reported to Irwin by the two individuals already. Due to the seriousness of the allegations, Vernon has been removed and placed at Bloemhof.'

[14] The first respondent's case, throughout the arbitration proceedings, was that Williams should have reported the incident to Swinny on 2 March 2021. The commissioner adopted this view, repeatedly stating that the charge implied Williams had a duty to report the matter immediately on that day. The first respondent went as far as suggesting that Williams intended to sweep the matter under the carpet.

[15] At the start of the arbitration, the commissioner questioned the first respondent's representative, Oostendorp, about the specific workplace rule Williams was alleged to have breached. Oostendorp's response was that there was no written policy and that the obligation to report the incident was based on "*common sense*".

[16] During the cross examination of Avontuur, Williams' representative placed on record that the applicant disputed the existence of the rule or policy that regulates the issue of reporting. He said that the first respondent did not have the policy or rule. The commissioner said:

'That's what the charge says. I don't make the rules. On the 2nd, when you heard about this, you had to report it. That is what they say.'

[17] When Williams' representative later cross-examined Swinny and wanted him to identify the specific rule the first respondent relied on to charge Williams, the commissioner intervened and ruled that this was a legal issue and should be addressed in closing arguments.

[18] Williams' case was that the disciplinary code allowed for a sanction short of dismissal or dismissal for a charge of gross dereliction of duties. He argued that, given his 25 years of clean service and the fact that he continued working for more than two years after the incident, the sanction of dismissal was too harsh. His representative cross-examined Swinny as follows:

'MR HEARNE Your testimony was that the framework in this record suggests if there's gross dereliction of duty it can either amount to sanction short of dismissal, or dismissal. That was your testimony.

MR SWINNY Correct.

MR HEARNE Ryan will testify that if he's found guilty... being his first offense, he had to be given at least a sanction short of dismissal to correct his behaviour or conduct in future, make it progressive. What is your comment on that?

MR SWINNY That was part of the disciplinary process.

MR HEARNE You also stated and testified that the relationship between yourself and Ryan, you lost faith, trust and [inaudible] because you need to act decisively. Ryan will testify, I can be trusted. I attempted to act decisively but I was stopped in the process, because I was informed that the matter is with Irwin and HR, and I could not continue with the process. Do you want to comment on that?

MR SWINNY My comment is that he had sufficient time with the seriousness of the case to act decisively and to take disciplinary action in the matter.'

The arbitration award

[19] The commissioner started his analysis by noting that the alleged misconduct occurred on 2 March 2021, meaning Williams was expected to report the incident

to Swinny on that same day. He accepted that Williams met with Avontuur, Malibo, and Roberts that afternoon and was told about the theft but did not report this to Swinny. He highlighted the dispute over whether Williams had phoned Swinny on the evening of 4 March 2021 and criticised Williams for making an after-hours call instead of reporting it earlier on 2 March 2021. He also criticised Williams for contacting Levy and Bradley about disciplinary documents but not contacting Swinny, concluding that this supported the view that Williams was trying to hide the incident.

[20] The commissioner found that:

‘... the Applicant, by virtue of his very Senior position, ought to have realised the gravity of what had been reported to [him] by Messrs Avontuur and Malibo and to have informed Swinny.

The Applicant however, notwithstanding not having had time to contact Mr Swinny however had time to try and contact Mr Bradley instead, lending credence to the version of Messrs Avontuur and Malibo that the Applicant did not want anyone to know other than the four people who had been in the room on the 2nd March 2021 and/or the Applicant was desirous to embark on a process other than having to inform his Superior, as was enjoined by the workplace rules.

That itself had made the Applicant guilty of Charge 1 given how the Charge had been framed, i.e. “You have misconducted yourself in the gross dereliction of your duties as a Senior Superintendent on the 2nd March 2021 and should be the end of the enquiry by the Bargaining Council in that on the version of both Parties, the Applicant had not done as was enjoined to do, i.e. to have let Mr Swinny know immediately, or at least as per Mr Swinny’s unchallenged evidence of the Applicant having been enjoined to have informed Mr Swinny immediately.’

[21] The commissioner accepted the version that Williams wanted to conceal the matter. He criticised Williams for reporting the incident six days (including weekend) after the incident was reported to him. He concluded:

'In summary then, given how the Charges had been framed, with specific reference to the misconduct having been commissioned on the 2nd March 2021, and Mr Swinny's uncontested evidence of the Applicant having been enjoined by the workplace rules to have reported the matter "immediately", the Applicant had made [himself] guilty of having breached a workplace rule in that [he] had been enjoined to report the matter on having learned [about it]. The Applicant's refuge of not having had the time to report the matter is not credible in... having had time to try and contact Mr Bradley and having contacted Mr Levy, as evidenced by Mr Levy's e-mail of the 4th March 2021 and after the fact of the Applicant having contacted Mr Swinny on the 4th March 2021, on the Applicant's own version, at 17h45.

The latter facts raise the red flag as to why the Applicant had not put in the same effort to have contacted Mr Swinny as was enjoined by the workplace rules. In the premise, the Applicant had made [himself] guilty of having breached a workplace rule, more so given the Applicant's position of Seniority.'

The review grounds

[22] The applicant contends that the award is unreasonable, that the commissioner committed gross irregularities and material errors of law and fact, and that the finding that Williams breached a workplace rule was unsubstantiated. The applicant also challenges the appropriateness of the sanction.

Evaluation

[23] The review test¹ is trite. Arbitration awards would be reviewable when the commissioner's decision is one that a reasonable decision-maker could not reach.² This principle has been repeatedly confirmed by the Constitutional Court and consistently applied in later judgments of the Labour Appeal Court (LAC) and this Court.

Breach of the workplace rule

¹ *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] ZACC 22; (2007) 28 ILJ 2405 (CC).

² *Ibid* at para 110.

- [24] The applicant's case is that there was no workplace rule. In its opening address, the first respondent's case was that it relied on a "*common-sense rule*". During cross-examination, Williams' representative made it clear that they disputed the existence of any policy or rule requiring such reporting and emphasised that no rule had been produced. The commissioner, however, treated the charge itself as if it reflected the applicable rule, and later ruled that identifying the rule was a legal issue to be addressed in argument rather than through evidence.
- [25] The commissioner did not identify or discuss any specific rule or policy in his award. Yet he concluded that Williams was guilty of breaching the workplace rule. The commissioner had seemingly accepted the existence of a supposed "*common-sense*" rule requiring Williams to report the incident immediately, without examining where such a rule came from or whether it was reasonable, alternatively, he considered the charge sheet itself to contain the rule. Since no policy or rule was presented at arbitration, the finding that Williams breached the workplace rule requiring him to report the matter on 2 March 2021 or immediately is unsustainable, untenable and irrational.
- [26] In these proceedings, the first respondent, for the first time since Williams was charged, relied on the Code of Conduct for Municipal Staff Members, contained in schedule 2 of Local Government: Municipal Systems³. Clause 9 prohibits employees from unlawfully using or benefiting from any property of the municipality. Clause 13, which the first respondent relies on, provides that:
- 'Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.'
- [27] The case has now developed to be that Williams should have reported the incident "*without delay*" in terms of the Code. Ms Daniels for the first respondent submitted that the delay of six calendar days or four working days from 2 to 8 March 2021 to report the incident to Swinny was unreasonable. This argument is

³ Act 32 of 2000.

without merit. The first respondent never relied on this Code during arbitration, depriving Williams of an opportunity to respond. Moreover, the charge against Williams never alleged that he was required to report “*immediately*” or “*without delay*”. Even assuming such an obligation existed, Williams’ overall conduct since the day the incident was reported to him was reasonable and therefore reporting the matter on 8 March 2021 per Swinny’s version was not unreasonable.

- [28] Williams was a senior superintendent, a position described by the commissioner and the first respondent, as a managerial role. After the incident was reported to him on the afternoon of 2 March 2021, he began process of initiating the disciplinary process against the three employees on 3 March 2021, as it should be expected from a person in his position. That he had the authority to initiate disciplinary process was not seriously disputed by the first respondent.
- [29] Accordingly, the commissioner’s finding that Williams broke the rule is untenable and unreasonable. Having found that Williams did not break any workplace rule, the award falls to be reviewed and set aside on this basis alone. As Williams is not guilty, meaning he should never have been dismissed, he is entitled to reinstatement with full backpay.

Appropriateness of sanction

- [30] Even if Williams had in fact breached a workplace rule and that rule was reasonable, the commissioner misconstrued the enquiry and committed a material error of law. He treated the mere breach of the rule as the end of the enquiry, without considering whether the rule itself was reasonable or whether dismissal was an appropriate sanction. Had he properly assessed whether the supposed breach destroyed the trust relationship, he would have concluded that it did not, especially given the strong mitigating factors, as discussed below.
- [31] First, the commissioner’s conclusion that Williams wanted to conceal the incident is entirely unsupported by the evidence. From the moment the matter was

reported to him, Williams made it clear that the employees would face disciplinary action, and he immediately began taking steps to initiate that process. Although the first respondent may have preferred that he reported the matter to Swinny on 2 March 2021, the fact that he reported it on 8 March 2021 does not suggest any intention to hide the incident. Even if he were found to have breached a rule, dismissal would not have been inappropriate.

- [32] Second, Williams had 25 years of unblemished service and continued working for over 15 months after the incident, before he was charged. Even once he was served with the charge sheet, he remained in his position for another 11 months before being dismissed. These factors demonstrate that the trust relationship had not broken down and strongly militate against dismissal as an appropriate sanction.
- [33] Third, Williams' case was that the disciplinary code allowed for a lesser sanction to dismissal in cases of gross dereliction of duty. Given his long, clean service record and the fact that he continued working for more than two years after the incident, dismissal was disproportionate. In my view, the code required the first respondent to justify why a lesser sanction would be inadequate and why dismissal was warranted in the circumstances, something the first respondent failed to demonstrate, and the commissioner failed to apply his mind to.
- [34] Fourth, and strikingly, Avontuur and Malibo, who witnessed the theft on 24 February 2021, participated in removing the copper and only reported it several days later on 2 March 2021, were never charged with any misconduct and remain employed. This shows that, even if a reporting rule existed and was reasonable, any supposed breach by Williams could not realistically be said to have destroyed the trust relationship.
- [35] Ms Daniels submitted that the misconduct was serious and destructive of a trust relationship and therefore no evidence was necessary. For this submission, she

relied on two LAC judgments, *Hendricks v Overstrand Municipality and Another*⁴ (*Hendricks*) and *Toyota South Africa Motors (Pty) Ltd v Radebe and Others*⁵. However, those cases involved employees who had acted dishonestly or made fraudulent misrepresentations. In contrast, Williams was accused only of gross dereliction of duty for an alleged failure to report the incident “*immediately*” or “*without delay*” as per the commissioner’s award and the first respondent’s case in these proceedings. His conduct, if guilty, did not involve dishonesty, nor did it justify an inference that the trust relationship had been irreparably damaged.

Conclusion

[36] The award cannot withstand the scrutiny of this Court. The applicant has made out a case on review, and the award is liable to be reviewed and set aside. Part of the oral evidence had been reconstructed, and the parties did not raise any issue with the record. Considering the issues in this matter, the transcribed and reconstructed record, and the bundle of documents, I am satisfied that the relevant or necessary material is before the Court. This Court is therefore in as good a position as the commissioner to decide the matter. Accordingly, the award should be substituted with an order that the dismissal was substantively unfair.

[37] There was no evidence of a breakdown of the trust relationship, and reinstatement as a primary remedy must follow a finding of substantive unfairness. Further, there was no reason advanced why reinstatement should not operate retrospectively with full backpay.

[38] Having considered the requirements of law and fairness, and the well-established legal principle that costs do not follow the result, I do not believe that this is a case that warrants a costs order.

[39] In the premises, the following order is made:

⁴ [2014] ZALAC 49; (2015) 36 ILJ 163 (LAC).

⁵ [1999] ZALAC 42; (2000) 21 ILJ 340 (LAC).

Order

1. The arbitration award issued by the third respondent under case number WCM 072306 dated 19 August 2024 is reviewed and set aside.
2. The award is substituted with the following order:
 - 2.1. The dismissal of the individual applicant, Ryan Williams, by the first respondent on 23 June 2023 is declared substantively unfair.
 - 2.2. The first respondent is ordered to reinstate the individual applicant retrospectively from the date of his dismissal on the same terms and conditions of employment that existed prior to his dismissal and without any loss of benefits.
 - 2.3. The first respondent is ordered to pay the applicant backpay from the date of dismissal until the date he reports for duty within 21 days of this order.
 - 2.4. The individual applicant is ordered to report for duty on Monday, 2 March 2026 in terms of his reinstated contract of employment.'
3. There is no order as to costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr E. Geldenhuys of MacGregor Erasmus Attorneys

For the First respondent: Ms C.J.M. Daniels

Instructed by: Riley Incorporated

LABOUR COURT