



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

Signature

16/03/2026
Date

THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Case no: PR 61/2024

In the matter between:

ALGOA BUS COMPANY (PTY) LTD

Applicant

And

**SOUTH AFRICAN ROAD PASSENGER
BARGAINING COUNCIL**

First Respondent

HENK JACOBS N.O.

Second Respondent

GERHARD GOOSEN

Third Respondent

Heard: 12 March 2026.

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be on 16 March 2026.

Summary: (Review – dismissal for gross negligence – major damage to bus gearbox following an oil service – expert report on cause of damage

uncontested – arbitrator discounting report by speculating about other causes of the damage – not advanced by employee nor put to witnesses – arbitrator avoiding the most plausible and natural inference from the evidence and preferring to speculate about other explanations to account for damage – award set aside)

JUDGMENT

LAGRANGE, J

Nature of the application

- [1] This is an opposed the review application of an arbitration award in which the arbitrator found that the dismissal of the fourth respondent ('Goosen') by the applicant ('ABC') was procedurally fair but substantively unfair.
- [2] Goosen was dismissed for gross negligence arising from internal damage caused to a bus gearbox after he had serviced the gearbox. The cost of repairing the gearbox was in the region of R 490, 000.
- [3] Goosen was a qualified service mechanic with approximately 30 years' service with the company at the time of his dismissal.

Events leading to the dismissal

- [4] The sequence of events is summarised briefly below.
- [5] It is common cause is that after servicing the gearbox with two members of his team, Goosen took the bus for a short test drive of about two kilometres within the premises of ABC. At some time during the drive, the bus stalled. Shortly thereafter he drove it to the service pit where he

parked it. Thereafter, it could not be driven because of a problem with the gearbox.

- [6] Prior to the service there had been no complaints from any drivers about the bus and it had done roughly 2000 kilometres since the last service. No problems were identified on the previous two occasions when the bus had been service. Goosen confirmed his evidence at his disciplinary enquiry that there had not been any issues raised concerning the transmission when it was brought in for service, and it was only after the service of the gearbox and the test drive that the problem arose.
- [7] A total quantity of 24 litres of oil was requisitioned from the store by Goosen for the service. When the gearbox was drained following the damage, 23 litres of oil was recovered. A critical point of contention was whether the oil was put in the gearbox before or after the test drive. Goosen testified that, after draining the oil and replacing the oil filter, the gearbox was refilled with 20 litres of oil before he took the bus on the test drive. A pneumatic pump was used to do the refilling.
- [8] After the test drive, the oil level was checked again and another three litres of oil was added to the gearbox to top it up according to Goosen.
- [9] The bus could not be driven thereafter because of a problem with the gearbox and the gearbox was sent to specialists, ZF Services (Pty) Ltd, to investigate the cause of the damage.
- [10] A 'failure report' was provided by ZF Services, together with repair quotation for approximately R 483 000. The report recorded a finding that '*... the primary failure is that the A clutch discs have overheated. This failure can cause the transmission to slip gears.*' It also recorded that '*(a)ll the clutch discs have been worn due to lack of lubrication.*' It concluded

that the possible cause of the failure was: '1. *Stall speed*. 2. *Lack of lubrication*.'

[11] The reference to "stall speed" was a reference to a stall test which is conducted on some vehicles. However, it was common cause that no stall test was conducted in this instance.

[12] The arbitrator noted in his award that the contents of the failure report from the gearbox company were not placed in dispute nor was its authenticity contested.

[13] ABC, relying on the report of the gearbox specialists on the damage done to the gearbox, contended that the gearbox had been damaged because it did not have lubricant in it when it was taken on the test drive.

[14] It is common cause that when the damaged gearbox was drained it contained 23 litres of oil which Goosen claimed had been pumped into the gearbox during the service.

[15] Immediately after Goosen arrived at the service pit after the test drive, he claimed he topped up the oil in the gearbox with four more litres of oil. As I understand it, the explanation for doing so was that the original oil put in before the test drive had been thoroughly distributed throughout the gearbox during the drive, so the oil level had dropped. There was video evidence showing members of his team boarding the vehicle immediately after he parked the bus at the service pit and going to the section of the bus when the gearbox could be accessed.

[16] Although Goosen had no alternative explanation of how the damage to the gearbox arose, he was adamant that it had been refilled with oil before he

took it on the test drive. Therefore, he reasoned that the damage could not have been caused by lack of lubrication because the gearbox had more than enough oil in it.

[17] Video footage from a bus camera showed that immediately on arriving at the service pit and switching off the engine, Goosen made a throat cutting gesture and indicated to his team who were at the service pit that the oil level needed to be checked. He denied that it appeared from the video that he seemed to want this done urgently. The oil check was normally done after the test drive.

[18] He explained that he and his two assistants spent time inside the bus around the gearbox when the oil was topped up, because they normally sat and chatted there.

The arbitrator's reasoning

[19] Accepting that the expert report identified two possible causes of the damage, but that speed stalling was ruled out, the arbitrator concluded that the only possible cause of the damage was lack of lubrication. He also noted that no mechanical problems with the bus had been reported prior to the service.

[20] He then approached analysis on the basis that he was faced with two contradictory versions and needed to assess issues of credibility and probabilities to determine the facts.

[21] He then went on to consider the evidence of the Goosen and his apprentice mechanic, Mr K Makhunga¹ ('Makhunga'). Makhunga could not

¹ Seemingly incorrectly spelled as 'Makhulga' in the award and transcript.

exactly remember what transpired and what the oil level in the gearbox was when he was instructed to check the oil after the bus returned to the service pit. The arbitrator accepted the evidence that Makhunga and Goosen had been present when the oil was poured into the gearbox. Taking further account of the fact that 23 litres of oil was drained from the gearbox after the damage had been done, and that 24 litres had been ordered from the stores, he found Goosen's version that they had filled the gearbox with oil before the test drive more probable.

- [22] The arbitrator found that the evidence of employer's witnesses who relied on the report could not go beyond what was in the report itself as they were not present when the gearbox was examined.
- [23] The arbitrator found that it was common cause that the report was accepted into the record and the contents and authenticity were not placed in dispute. Ms Human, the workshop foreman, who testified for the company confirmed that ZF Services were gearbox specialists.
- [24] He further found that the report was not conclusive because it did not exclude other possibilities, such as drivers of the bus inadvertently doing a stall test, which Human had mentioned. He concluded that without the existence of other objective facts to 'confirm' the lack of lubrication as the cause of the damage, it remained mere speculation as the explanation for the damage. For example, if the company had done an oil test to prove that the oil which was drained showed characteristics of being overheated that would have supported its version. He also noted that the engineering manager, Mr T Botha ('Botha') had testified that the broken main housing appearing in the report could have resulted in a water leak. The arbitrator inferred that this could also have been a cause of overheating.
- [25] He found that the applicant had discharged the burden of proving that oil had been put in the gearbox. He found that the probabilities in favour of

either party's version were equally balanced and accordingly the company had failed to discharge the onus.

The review

[26] Essentially, the applicant contends that the award is reviewable on the basis that the arbitrator committed a gross irregularity in his assessment of the evidence for one or more reasons

[27] ABC's primary ground of review is that the arbitrator avoided what it claims is an inescapable inference that the damage to the gearbox resulted from it having insufficient oil in it prior to the test drive.

[28] Secondly, having elicited the evidence of the video footage, the arbitrator made no mention of it whatsoever. Had he done so he would have had to consider the fact that immediately on parking the vehicle, Goosen indicated that the oil needed to be checked and he and his colleagues spent some time in the vicinity of the gearbox suggesting that they had filled it with oil at that stage.

[29] In favouring the version of Goosen and the apprentice mechanic, the arbitrator completely failed to consider that their claim to have filled the gearbox before the test could not be reconciled with what happened immediately afterwards.

[30] ABC also claims that the video evidence showed that something, which Goosen could not explain, caused him to put his head out the window a number of times and it was not disputed that he had immediately identified oil as an issue that needed to be checked when he parked the vehicle, coupled with the fact that he and his colleagues spent some time inside the next to the gearbox. The company argued that he put his head out of

the window after an audible 'kadoef' sound had been heard, which was also shortly before the bus stalled. Had the arbitrator taken this evidence into account, he would have found it to be consistent with the company's explanation of what transpired, rather than Goosen's version. Goosen claimed he had no recollection why he put his head out the window and explained the length of time spent at the gearbox was owing to him and his subordinates sitting and chatting.

- [31] Goosen argued that the ZF report, being hearsay evidence, could not carry much weight. Secondly, Makhunga's evidence corroborated G's version that the gearbox was filled with oil before the test drive corroborated each other. The expert report could not shed any light on their version because their version was not taken account of in drawing up the report. Goosen also argues that there was no evidence he had failed to exercise reasonable care or that actual loss was suffered by the company. In the circumstances, he argues that the award was not only reasonable, but correct.

Evaluation

- [32] The critical factual question the arbitrator had to decide was: What was the most probable reason for the gearbox being damaged to such an extent that the bus could not be driven after it was parked following the test drive?
- [33] The arbitrator had the report from a gearbox specialist firm providing two possible reasons for the damage. In his award, the arbitrator accepted that no stall test had been done, which left one possible cause of the damage, namely lack of lubrication.
- [34] Goosen argued that little weight could be attached to the report because it was hearsay. It is correct that the report does constitute hearsay evidence.

However, firstly it was accepted prior to the arbitration that the documents used were what they purported to be. It follows that, for the purposes of evidence, it was not in dispute that the report was issued by the firm ZF Services and that it was an analysis of the damage done to the gearbox of the bus that was brought in for service. Moreover, Human's testimony that ZF Services were gearbox experts was not contested. Additionally, the correctness of its contents were not disputed. It was never suggested to the company's witnesses that the analysis and findings were contested. It was only when Goosen was asked under cross-examination if he knew of any instance in which a report from the firm had been wrong. He disclaimed any knowledge of previous reports and said there could always be a first time a report was wrong. The arbitrator confirmed the status of the report in his award, but then struggled with the implications which flowed from it.

[35] The catastrophic damage occurred in a situation in which the bus, with no reported problem had been brought in for a regular gearbox service. The damage was sustained between the time it was brought in for the service and the time it was parked in the service pit after the test drive. The only intervention affecting the gearbox during that period was that the oil was drained, the filter was replaced and then, on Goosen's version, it was refilled with oil before the test drive was undertaken.

[36] A video of the test drive showed, and this was not disputed, that at a late stage in the short test drive, something caused Goosen to put his head out the window a few times and the bus stalled. The arbitrator did not deal with this.

[37] Be that as it may, the arbitrator decided that the inescapable inference of the report, to the effect that lack of lubrication caused the damage, had to be measured against the evidence of Goosen and Makhunga that the gearbox had been refilled before the test drive with more than sufficient oil

to prevent heat damage to the gearbox. The immediate difficulty this presents, which the arbitrator was obviously aware of, is that another explanation had to be found for the heat damage caused.

[38] He found support for this in the possibility that one or more drivers of the bus before it was brought in for service might have inadvertently stall tested the bus, which could have caused the damage. Alternatively, he extrapolated from Botha's evidence about the cracked housing causing a water leak, that this could have caused the dramatic overheating. These were speculative explanations of the arbitrator himself and were not advanced by Goosen.

[39] Moreover, even if I assume he had been entitled to explore alternative explanations, the arbitrator never put these to any of the company witnesses that an alternative explanation for the damage might have been inadvertent stall testing by unknown drivers, nor did he put it to Botha that the crack might have caused the damage. It was imperative that he should have done so because it was common cause that no problems had been reported with the bus before the gearbox service, and Botha did testify that the housing crack would not have caused a loss of oil.

[40] The arbitrator was required to assess the probabilities of the versions contended for by the parties on the evidence presented, not to speculate about other scenarios, which had neither been advanced, nor tested.

[41] As mentioned, Goosen's explanation for how the damage occurred was that gearbox could not have burnt out because it had been refilled by him and his team as part of the service before the test drive. The arbitrator had to weigh that up against the uncontested evidence of the specialist report which said that a lack of lubrication was the most likely cause of the heat damaged discs, once the stall test was excluded, which he accepted was the case.

[42] He ignored the fact that there had been no report of any problem with the bus, during the last 2000 odd kms it had been driven before the service. Human testified that the drivers would have picked those problems up.

[43] In *Nkomati Joint Venture v Commission for Conciliation, Mediation & Arbitration & others*² the Labour Appeal Court reaffirmed a basic principle in evaluating evidence, which it held was applicable both to judges and arbitrators:

'[10] It is a rule of logic, as was stated in R v Blom, that, when reasoning by inference, the inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn. A court is required to select that inference which is the more plausible or natural one from those that present themselves. The facts before the arbitrator proved that in his role as payroll supervisor, the employee was required to check the bonus payment spreadsheet for errors before sending it on to Mr Packery for approval. Having reviewed the spreadsheet, the employee sent it to Mr Packery. He provided no explanation as to why he had failed to identify that the formula had been changed to his benefit alone, more so when only he and Mr Packery had access to the system to change the formula.

[11] Having regard to the proved facts, the more plausible and natural inference to be drawn is that the employee acted dishonestly by tampering with the formula on the spreadsheet for his own benefit. The finding of the arbitrator to the contrary was a decision that a reasonable decision maker could not reach on the material before him and the Labour Court erred in finding differently.

(emphasis added)

[44] In this instance, the arbitrator faced with an inescapable inference that the overwhelmingly most probable cause of the sudden and major damage done to the gearbox occurred because there was not enough oil in it when

² (2018) 39 ILJ 2484 (LAC)

the bus was taken for the test drive, sought other reasons which had not been properly canvassed with witnesses, nor raised by Goosen.

[45] In so doing he came to a conclusion no reasonable arbitrator could have reached and the award falls to be set aside.

[46] It was argued that negligence was not established on the part of Goosen. The uncontested evidence was that he signed off on the job card, confirming the oil and filter had been replaced. He never disavowed responsibility for supervising the refilling of the oil, nor gave evidence to show that he took reasonable steps to verify that the gearbox did indeed have sufficient oil before driving off. It is true ABC did not give evidence that it had paid the huge repair bill, but it stands to reason it would not want to risk exposure to such a level of damage again. The fact Goosen had long service does not necessarily count as a strong mitigating factor. Under the supervision of someone with his service, something as basic as an oil change and filter replacement ought to have been a routine task performed without complication, which ABC ought to have been able to rely on being done properly.

[47] In the circumstances, it cannot be said that dismissal was not an appropriate sanction.

Order

1. The award dated 08 December 2023 and 12 February 2024 issued under case number RPNT7741 is reviewed and set aside
2. The arbitrator's finding that the Fourth Respondent's dismissal was substantively unfair is substituted with a finding that it was substantively fair.

3. No order is made as to costs.



R Lagrange
Judge of the Labour Court of South Africa.

APPEARANCES

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