



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

Signature

20 March 2026  
Date

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

Case no: C347/2023

In the matter between:

**ZINGISA MQULWANA**

**Applicant**

And

**COMMISSION FOR CONCILIATION, MEDIATION**

**AND ARBITRATION**

**First Respondent**

**N E SAMUAL**

**Second Respondent**

**WEBHELP SA OUTSOURCING (PTY) LTD**

**Third Respondent**

Heard: 19 March 2026

Delivered: 20 March 2026

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**JUDGMENT**

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**LAGRANGE, J**

Introduction

- [1] This is an opposed application to review and set aside an arbitration award in which the arbitrator found that the dismissal of the applicant by the third respondent was procedurally and substantively unfair. I am not going to repeat what is in the arbitration award, which concerns a relatively straightforward dismissal for misconduct.

#### Outline of evidence

- [2] Below is a summary of what appears from the record of the arbitration hearing.
- [3] The applicant was dismissed for not advising his direct line manager that he would be absent from work on 21 April 2021. On 19 April, the applicant had suffered a nosebleed at work and was referred to a nurse at the company. He subsequently consulted a doctor.
- [4] The following day, 20 April, he came to work and advised the operations manager that he had been booked off by a doctor. He did not advise the operations manager how many days he was booked off for even though he had been booked off until 22 April. He also did not give the manager a copy of the medical certificate he received. He returned to work on 22 April.
- [5] He did not contact his line manager, but the line manager was advised by the operations manager that he had been booked off. On 21 April his line manager attempted to contact him by messaging him and phoning him without success. The line manager did not know he was also 'booked off' for that day. The applicant did not have a cellphone because of it being stolen, so he could not have received the communications from his line manager.
- [6] Even though he had no phone the applicant resided with family who did have cell phones. The applicant testified that he did not feel it was necessary to ask family to help him contact work because he had already notified the operations manager and he was still off sick. He also claims he did not have the number of his line manager but did not dispute that his line manager had told him to record the cell phone number which appeared in his electronic signature on his emails.

#### Key findings of the arbitrator

- [7] The arbitrator found that the applicant should have provided a copy of his certificate to management on 20 April so they would know how long he was booked off for. He also failed to contact anyone on 21 April to notify them he would be absent, quite apart from not contacting his line manager. Accordingly, he was guilty of breaching the rule requiring him to contact his manager when he was absent from work. There was no dispute the applicant was not aware of this rule.
- [8] The arbitrator found that his dismissal was substantively fair considering that he had been issued with three previous warnings of increasing seriousness for failing to communicate with his line manager when he was absent from work. The fact that he was ill did not relieve him of that obligation. Procedural fairness was not in issue in the matter.

#### The review application

- [9] The applicant drafted his review application himself. His application essentially repeats arguments he had advanced to the arbitrator, which he now raised in the form of an appeal. At the hearing of the review application, he was asked to provide more clarity why he believed the award was so unreasonable it should be set aside.
- [10] What the applicant emphasised was that he believed he had been dismissed and disciplined previously just because he had fallen ill and the employer knew he was ill. However, as the respondent pointed out, the purpose of the employer's rule about contacting his line manager when he is absent, is to let the manager know he is going to be absent on the day in question and that getting a medical certificate on a later date does not solve the problem of knowing whether he is coming to work or not at the time. Elaborating on his attack on the award, the applicant suggested that in fact he had been unfairly discriminated against on grounds of illness.
- [11] The first point that needs to be made, is that there is no evidence the applicant had expressly claimed at the arbitration that he was unfairly discriminated against on grounds of illness. It was rather in more general terms he had suggested it was not fair to discipline him for failing to notify his line manager when the reason for his absence from work was illness.

Effectively, his defence at the arbitration hearing was that as long as he could produce a medical certificate when he returned to work, it should not have mattered if he had not contacted his line manager to advise him he would not be at work.

[12] Even on the most generous interpretation of the applicant's grounds of review, he did not establish why the arbitrator's analysis of the evidence was so flawed that no reasonable arbitrator could have reached the same conclusion as the arbitrator.

[13] Apart from the fact that the applicant himself has not raised any proper ground of review, on the face of the evidence before the arbitrator and on considering the arbitrator's reasoning it cannot be said that the factual findings and the arbitrator's decision on the appropriateness of the sanction of dismissal are ones that no reasonable arbitrator could have reached on what was before him<sup>1</sup>.

[14] Accordingly, the review application must fail.

#### 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**

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<sup>1</sup> This is the standard laid down by the Constitutional Court in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC) ; (2007) 28 ILJ 2405 (CC) at paragraph 110, for reviewing an arbitration award based on alleged flaws in an arbitrator's reasoning: "... (S)ection 145 is now suffused by the constitutional standard of reasonableness. That standard is the one explained in *Bato Star*: Is the decision reached by the commissioner one that a reasonable decision-maker could not reach?" (emphasis added).

Appearances:

For the Applicant: --- In Person

For the Respondent: --- Bosman CJ

Instructed by: --- Abrahams and Gross Inc.

LABOUR COURT