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

_______________ _______________
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

case No: JR1736/23

In the matter between:

DEPARTMENT OF ROADS AND TRANSPORT

GAUTENG PROVINCIAL GOVERNMENT **Applicant**

and

NATALIE GOVENDER **First Respondent**

GENERAL PUBLIC SERVICE SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL ('THE COUNCIL') **Second Respondent**

COMMISSIONER ELAINE MOLEKO N.O **Third Respondent**

Heard: **27 NOVEMBER 2025**

Delivered: **20 March 2026**

JUDGMENT

TSHISEVHE, AJ

<u>Introduction</u>

[1] The Applicant herein (Department of Roads and Transport, Gauteng Provincial Department) lodged an application to review the arbitration award

under case number GPBC 1729/2018 dated 24 July 2023 in terms of section 145(1)(a) of the Labour Relations Act[1] (LRA).

[2] The Applicant was ordered by the Third Respondent to reinstate the First Respondent, Natalie Govender, to her position, with effect from 1 September 2018, with a month backpay amounting to R120 400,00. The First Respondent was ordered to report for duty on 1 September 2023.

[3] The Applicant was ordered to comply with the award by 15 August 2023. This is after the dismissal of the First Respondent was found to have been substantively unfair but procedurally fair.

[4] I should hasten to state that the award is a vague and confusing in many material respects when it comes to the orders of the arbitrator.

[5] The review application is opposed by the First Respondent herein.

Material background facts

[6] The First Respondent was employed by the Applicant on 5 September 2012 as a Chief Finance Officer (CFO), whose duties included amongst others, to oversee various functions in finance, providing strategic and operational direction for the G-fleet when it comes to finance.

[7] The First Respondent as at the time of her dismissal was earning an amount of R124 764. The first Respondent was hauled before a disciplinary hearing on account of misconduct facing 10 charges of misconduct.

[8] The First Respondent was found guilty of four charges being, 4, 5, 7 and 10 and a sanction of dismissal was meted out. The Applicant herein did not pursue charge 7 at the arbitration proceedings.

[9] The charges were as follows:

9.1 'Charge 4

[1] Act 66 of 1995, as amended.

It is alleged that you, being the Chief Financial Officer: G-fleet Management, and in that capacity being charged with the responsibility to ensure the correct and accurate preparation and presentation of financial statements of the employer, have committed an act of gross misconduct, alternatively, gross negligence, in that dung 2013/2014 and 2014/2015 financial periods you failed to prepare the financial statements of the employer in accordance with the prescribed financial reporting framework which, prejudice or had the effect of potentially prejudicing the administration or efficiency of the employer.

9.2 Charge 5

It is alleged that you, being the Chief Financial Officer: G-fleet Management, and in that capacity being charged with the responsibility to ensure all full and proper financial records of all transactions of the employer are kept, have committed an act of gross misconduct, alternatively gross negligence, in that during or around 2013/2014 and 2014/2015 financial periods you failed to ensure that full and proper records of the financial affairs of the employer were kept and maintained, which conduct prejudice or had the effect of potentially prejudicing the administration or efficiency of the employer.

12.3 Charge 10

It is alleged that you, being the Chief Financial Officer: G-fleet Management, and in that capacity being charged inter alia with the responsibility to ensure compliance with all applicable legal and regulatory prescripts, have committed an act of gross misconduct, alternatively, gross negligence, in that during or around 2013/2014 and 2014/2015 financial periods you failed to safeguard and maintain the employer's assets, which conduct contravened the Public Finance Management Act, 1999 and Treasury Regulations.'

<u>Arbitration proceedings</u>

[10] The Third Respondent found that the dismissal of the First Respondent was substantively unfair on the following grounds:

10.1 That in charge 4 she was found guilty after it was alleged that she committed misconduct in that she neglected to prepare financial statements in accordance with prescribed financial reporting framework. That she failed to keep the records and contracts properly.

10.2 The arbitrator found that evidence before her, the SOP proved that it was the responsibility of Permanent Fleet and VIP/Pool Directorate to safeguard and maintain the records/ contracts of the employer.

10.3 That for the First Respondent to access such information, she relied on the two Directorates, VIP/Pool and Permanent Fleet to provide the records.

10.4 That if the two Directorates failed to maintain and keep safe those records, then the First Respondent would not be in a position to submit same to the Auditor General (AG).

10.5 As a result, it was impossible and impractical for the First Respondent to submit the records and contracts required in that financial year.

10.6 That PWC was appointed as an external service provider to assist in preparing the financial statements of 2014/15 financial years. This was done because no one was able to access the records and contacts as required by the AG.

10.7 That it was unreasonable to expect the First Respondent to look for non-existent items hence the reason to source a service provider. That the First Respondent was expected to provide documentation which could not be found internally and the MEC, HOD, CEO, COO and all Directors were in agreement that those documents are not available in their filing system in order to submit to the AG.

10.8 That the employer did not even call any official of PWC to testify during the arbitration proceedings, which would have enabled him to understand if PWC ever obtained those records, including ascertaining if the Frist Respondent was to blame. Not even the records or contracts were presented during arbitration proceedings. That it was never presented to her if the First Respondent is the one who lost the records or contracts or how she lost them.

10.9 That the Applicant herein referred to the CFO Handbook at length arguing that she was responsible for ensuring that annual financial statements are prepared and submitted in accordance with Standards of Generally Recognised Accounting Practice (GRAP), Public Finance Management Act[2] (PFMA) and Treasury Regulations. That the First Respondent was not charged for failure to submit financial statements but was charged for the fact that the financial statements submitted was not in accordance with GRAP, PFMA and Treasury Regulations, as there were no records available on the system and neither was any on the filing cabinets.

10.10 That after the PWC had furnished the G-fleet with the prepared statement, then the First Respondent passed them to the AG after the accounting officer had signed them acknowledging that it was accurate and in compliance with the financial reporting framework. That the Accounting Officer was aware that there were no records and contracts to attach to that financial statement because they had nothing to submit.

10.11 That the First Respondent never failed to prepare the financial statement but that responsibility was handed over and paid for by the employer.

10.12 That the chairperson of the hearing testified that the employee was dismissed for misconduct that occurred in 2013/14 financial year. That it was unreasonable to dismiss the employee on a finding that was already closed and the corrections were made long ago in May 2015.

10.13 That it was never disputed that the 2014/15 findings were associated with, amongst other things, insufficient appropriate audit evidence with

[2] Act 1 of 1999.

regard to the revenue from lease, trade and other receivables from exchange transactions and property plant and equipment.

10.14 That according to her findings, after assessing all the evidence, all the findings for 2014/15 financial year relates to the insufficient appropriate evidence, e.g. contracts and record, vehicles and the responsibility to keep this type of evidence vested with the VIP and Permanent Pool Directorate, sections which do not fall within the CFO.

10.15 That Chikane testified that because the system was not working, G-fleet had to do manual recalculation as far back as the past seven years in 2007/8 financial year, which required vehicle contract documentation related a period of to the First Respondent's appointment in September 2012, this evidence was never challenged.

10.16 The safeguarding of contract information and vehicle file management does not reside within the First Respondent's area of responsibility but instead that such function falls under the responsibility of the COO's units which is Permanent Fleet and VIP Pool/ Fleet. The records were kept by the COO, contracts were under the care and control of Directors Permanent Fleet and VIP Pool/ Fleet, not with the First Respondent. The Applicant never challenged this evidence save to just say that it was the First Respondent's responsibility and they produced the Handbook.

10.17 Therefore, it was implausible that the First Respondent was expected to submit the records/contracts which were nowhere to be found.

10.18 That Mr Mongwe testified that the reason why records/contracts could not be found, was as a result of striking employees who removed them and that was a period before the First Respondent was appointed at G-fleet.

10.19 Therefore, it was clear that G-fleet submitted financial statements which did not have contracts or records because they could not be found. The said records and contract' safe keeping is the duty of Permanent Fleet and VIP Pool/ Fleet directorate.

10.20 That the First Respondent was dismissed for failure to safeguard the Applicant's assets. The so-called assets are said to be contracts. According to the arbitrator's findings, contracts are not assets as defined in the Asset Management policy because they do not have value.

10.21 According to witnesses testimony such as Mr Chikane, the contract's price do not have a cost price of more than R500 or 5000, therefore they cannot be assets.

10.22 That in terms of section 38 of the PFMA, the person that must safeguard the assets of the Applicant herein is the Accounting Officer and there is no delegation in writing from the HOD to the First Respondent.

10.23 That the CFO Handbook makes provision of a list of the responsibilities of the CFO and issues raised were that she failed to carry out her duties as outlined in the CFO Handbook.

10.24 The recalculation exercise was done as a result of the systematic malfunctions and even Senior Officials were, aware as a result, the Applicant cannot be blamed.

10.25 That the First Respondent adhered to her job responsibilities but was failed by the non-availability and non-existence of the supporting documents which were missing long before she was employed.

10.26 Further that it was not part of her responsibilities to safeguard and ensure safe keeping of the lease agreement entered into by other directorates, who are supposed to safeguard same as it is their duties.

<u>Grounds for review</u>

[11] The Applicant raised several grounds of review and the salient ones are summarised below as follows:

11.1 That the award is unreasonable based on the totality of evidence before the arbitrator especially evidence of the Applicant's witnesses that explains why the First Respondent should be held responsible for failing to prepare the financial statements in terms of the relevant financial reporting framework and she had a duty to safeguard Applicant's assets, not other directorates, in compliance with the PFMA and Treasury regulations.

11.2 That the First Respondent was bound by the CFO handbook and section 45 of the PFMA.

11.3 That the contracts/records constitute assets as defined in the Departmental assets Management Policy.

11.4 That the Third Respondent ignored the evidence of her own witnesses from National Treasury, who testified that the First Respondent is bound by the provisions of the CFO Handbook, PFMA, and National Treasury Regulations.

11.5 That the Third Respondent found that it was the duty of other Directorates to ensure that full and proper records are kept as well as being maintained whereas those were the functions of the First Respondent.

11.6 That the fact that the Applicant appointed external service providers to ensure that financial statements are prepared in line with the relevant framework, it does not excuse her from discharging her duties as a CFO.

11.7 That the arbitrator concurred that contracts contained valuable information of the Applicant, therefore, it became her duties to ensure that they are safeguarded and the internal records are maintained.

11.8 As a result of the above, the Applicant submits that the award is unreasonable.

11.9 That the Third Respondent misconducted herself in relation to her duties as an arbitrator.

11.10 That the Third Respondent committed gross irregularities and exceeded her powers when she ruled that the First Respondent should report for work on 1 September 2023, while on the other hand, the Applicant was ordered to comply with the Award by 15 August 2023.

11.11 That the award does not say anything about the period in between the compliance and the reporting by the First Respondent.

11.12 That the arbitrator committed gross irregularity and/or exceeded her powers as a commissioner when she ordered the reinstatement from 1 September 2023 with a backpay of one month.

11.13 That from the reading of the award, it is not clear if the First Respondent is reinstated with retrospective effect from 1 September 2023 and one month backpay constitute a compensation.

<u>The Issue to be decided</u>

[12] I am required to determine if the finding of the arbitrator that the dismissal of the First Respondent was substantively unfair is a reasonable one.

[13] If I find that it was unreasonable, I am required to interfere with such a decision and substitute it with an appropriate one, otherwise, it will mark the end of the matter.

<u>Test for review</u>

[14] The test that the Labour Court is required to apply in a review of an arbitrator's award is to determine whether the decision reached by the commissioner is one that a reasonable decision maker could not reach within the totality of evidence at his disposal.

[15] In order for me to make a determination regarding the fairness of the dismissal, I must first be satisfied that the decision of the arbitrator is outside the band of reasonableness if not, the application stands to be dismissed.

[16] The Constitutional Court settled the issue of test for review of an arbitration award in the case of *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[3] (*Sidumo*). The court held that the test on review is whether the decision reached by the Commissioner is one that a reasonable decision maker could not reach in relation to the evidence before him or her.[4]

[17] The test to be applied is one that recognises and reinforces the distinction between a review and an appeal. This court is entitled to intervene if and only if the arbitrator's decision is one that falls outside of a band of decisions to which a reasonable decision-maker could come to on the available material before him. The *locus classicus* remains *Head of Department of Education v Mofokeng and others*[5] (*Mofokeng*), where the Labour Appeal Court (LAC) said the following:

> 'The failure by an arbitrator to apply his or her mind to issues which are material to the determination of a case will usually be an irregularity.'

[18] However, the Supreme Court of Appeal *in Herholdt v Nedbank (Congress of the South African Trade Unions as amicus curiae)*[6] (*Herholdt*) summarised the review test as follows:

> '…[T]he position regarding the review of CCMA awards is this: A review of a CCMA award is permissible if the defect in the cusa v proceedings falls within one of the grounds in s 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)(a)(ii), the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is

[3] 2008 (2) SA 24 (CC) at para 110.
[4] In *CUSA v Tao Ying Metal Industries and others* [2009] 1 BLLR 1 (CC) (*Tao Ying*) at paras 76 and 134, the Constitutional Court held that it is now axiomatic that a commissioner of the CCMA (or an arbitrator of a bargaining council) is required to apply his or her mind to the issues before him or her and that failure to do so may result in the ensuing award being reviewed and set aside. The irregularity must however result in an unreasonable outcome or misconception of the true enquiry resulting in no fair trial of the issues. See also *Sidumo* (id fn 3).
[5] [2015] 1 BLLR 50 (LAC) at para 30.
[6] 2013 (6) SA 224 (SCA) at para 25.

one that a reasonable arbitrator could not reach on all the material that was before the arbitrator.'

[19] In a further explication of the review test, the LAC in *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA and Others*[7] held that in assessing whether the result of an award is unreasonable, the reviewing court should not adopt a piecemeal approach, and must further enquire whether:

> '…(i) In terms of his or her duty to deal with the matter with the minimum of legal formalities, did the process that the arbitrator employed give the parties a full opportunity to have their say in respect of the dispute? (ii) Did the arbitrator identify the dispute he or she was required to arbitrate? (This may in certain cases only become clear after both parties have led their evidence) (iii) Did the arbitrator understand the nature of the dispute he or she was required to arbitrate? (iv) Did he or she deal with the substantial merits of the dispute? (v) Is the arbitrator's decision one that another decision-maker could reasonably have arrived at based on the evidence?'

[20] In the case of *Mofokeng*[8], the court further held that:

> '[32] …Mere errors of fact or law may not be enough to vitiate the award. Something more is required. To repeat: flaws in the reasoning of the arbitrator, evidenced in the failure to apply the mind, reliance on irrelevant considerations or the ignoring of material factors etc. must be assessed with the purpose of establishing whether the arbitrator has undertaken the wrong enquiry, undertaken the enquiry in the wrong manner or arrived at an unreasonable result. Lapses in lawfulness, latent or patent irregularities and instances of dialectical unreasonableness should be of such an order (singularly or cumulatively) as to result in a misconceived inquiry or a decision which no reasonable decision-maker could reach on all the material that was before him or her.
>
> [33] Irregularities or errors in relation to the facts or issues, therefore, may or may not produce an unreasonable outcome or provide a compelling indication that the arbitrator misconceived the inquiry. In the final

[7] [2014] 1 BLLR 20 (LAC) at para 20.
[8] *Mofokeng* (Id fn 5) at paras 32 – 33.

> analysis, it will depend on the materiality of the error or irregularity and its relation to the result. Whether the irregularity or error is material must be assessed and determined with reference to the distorting effect it may or may not have had upon the arbitrator's conception of the inquiry, the delimitation of the issues to be determined and the ultimate outcome. If but for an error or irregularity a different outcome would have resulted, it will *ex hypothesis* be material to the determination of the dispute. A material error of this order would point to at least a *prima facie* unreasonable result. The reviewing judge must then have regard to the general nature of the decision in issue; the range of relevant factors informing the decision; the nature of the competing interests impacted upon by the decision; and then ask whether a reasonable equilibrium has been struck in accordance with the objects of the LRA. Provided the right question was asked and answered by the arbitrator, a wrong answer will not necessarily be unreasonable...'

[21] It is important to reiterate that, irregularities or errors in relation to the facts or issues, may or may not produce an unreasonable outcome or provide a compelling indication that the arbitrator misconceived the inquiry.

[22] Perhaps somewhat at variance with the Constitutional Court in *CUSA v Tao Ying Metal Industries and others*[9] (*Tao Ying*), the Supreme Court of Appeal in *Herholdt*[10] was of the opinion that:

> '…Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable.'

[23] In the case of *Tao Ying*, the Constitutional Court seemed to take the view that a factual or legal error would be reviewable if it were material to the determination of the dispute submitted to arbitration.

[24] The Labour Appeal Court in *Mofokeng,*[11] held that:

[9] [2009] 1 BLLR 1 (CC).
[10] *Herholdt* (id fn 6) at para 25.

> 'An irregularity or error material to the determination of the dispute may constitute a misconception of the nature of the enquiry so as to lead to no fair trial of the issues, with the result that the award may be set aside on that ground alone. The arbitrator however must be shown to have diverted from the correct path in the conduct of the arbitration and as a result failed to address the question raised for determination.'

[25] It is therefore clear from the above judgements that there must be a connection between the error and the fairness of the trial which should be proven by the Applicant in an application for review, failing which the review application stands to fail.

<u>Analysis of submissions and the applicable legal framework</u>

[26] The law justifies setting aside an award on review if the decision is *"entirely disconnected with the evidence"* or is *"unsupported by any evidence"* and involves speculation by the commissioner.

[27] It is the finding of the arbitrator that the duty of maintaining and safeguarding the records/contracts was vested on the Directorates being the VIP/Pool and Permanent Fleet who had to make them available for the First Respondent to access such information, she relied on the two to provide the records.

[28] The arbitrator found that the above two Directorates failed to maintain and safeguard the records, as a result, it was impractical for the First Respondent to submit same to the Auditor General.

[29] The First Respondent was dismissed for failure to safeguard the Applicant's assets. The so-called assets are contracts or records. According to the arbitrator's findings, contracts are not assets as defined in the Asset Management Policy because they do not have value. The arbitrator further found that the First Respondent is not bound by the CFO Handbook.

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[11] Id fn 5 at para 33. See also *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA) at paras 52-78, 85-88.

[30] On the other hand, it is the Applicant's case that the First Respondent is bound by her contract of employment/performance agreement, CFO Handbook, PFMA and National Treasury Regulations.

[31] This Court was referred to the First Respondent's performance contract which sets out her duties and responsibilities. This Court's view upon a cursory look at the contract of employment/performance agreement, CFO Handbook, PFMA and National Treasury Regulations, it is apparent that the First Respondent has a duty to ensure that financial statements are prepared in accordance with the relevant prescripts.

[32] This Court was further referred to pages 71A of the bundle of evidence which page contained the First Respondent's performance agreement. The said agreement further makes it clear that asset management is part of her duties.

[33] According to the CFO Handbook, core responsibilities of the CFO are prescribed in part 2 of Chapter 5 of the Act.

[34] In terms of the CFO Handbook, PFMA, contract of employment/performance agreement and the National Treasury Regulations, it was the duties of the First Respondent to establish and maintain appropriate internal records and reporting systems in order to meet performance expectations.

[35] This Court further concurs with the Applicant's argument that section 38 of the PFMA applies to the First Respondent in that, in terms of the Gauteng organisational structure, the CFO has a duty to support the CEO and other Senior Management in the execution of the functions in terms of the PFMA.

[36] The same organizational structure as referred to by the Applicant's Counsel, further describes the duties of other Directorates such as Permanent Fleet/VIP Pool.

[37] This Court perused same in an attempt to find any ambiguity in the duties if any, with no success. All the duties are very clear and in the issues in disputes, there are no duties and/or responsibilities that overlaps where

maybe one may say, the First Respondent would have expected other parties to carry out those duties.

[38] In this regard, the First Respondent's performance agreement makes it clear that her duties includes amongst others,

> 'assist the Accounting Officer in discharging all duties and responsibilities imposed on him as prescribed in part 2 of Chapter 5 of the PFMA to support the Accounting Officer as well as other Senior Managers of the department through the provision of timely and accurate asset management including operational information necessary for strategic decision making and for assessing/managing of overall performance of the department.'

[39] In terms of section 40 of the PFMA, the Accounting Officer is required to:

> '(a) keep full and proper records of the financial affairs of the trading entity,
>
> (b) prepare financial statements for each financial year in accordance with Generally Recognized Accounting Practice;'

[40] These are the duties to be discharged by the CFO in supporting the CEO or the Accounting Officer and therefore, there was no need for any other delegation.

[41] The arbitrator's finding that the First Respondent ought to have been delegated these duties by the Accounting Officer is not a perspicacious one which does not sagaciously arrive.

[42] If there was a need for a delegation, the arbitrator should have found that the First Respondent was not supposed to have prepared the financial statements since there is equally no 'written' delegation in those duties too.

[43] The performance agreement further states her job functions amongst others at paragraphs b, f and j as:

> 'b. establish appropriate asset management and inventory management procedure manuals including the related processes flows.

f. to ensure asset management functions of the department are executed appropriately and the maintenance of an accurate, complete and reliable fixed asset register.

j. to ensure that all systems of internal control are adequate, efficient and effective to safeguard the assets of the department.’

[44] The fact that the First Respondent was issued with a written warning in 2014 and a disclaimer 2015 for the same or similar misconduct speaks volume.

[45] The First Respondent would have raised the defenses that she raised during the arbitration proceedings.

[46] Nevertheless, in terms of the findings of the Auditor General, they could not find records/contracts due to deficiencies in the internal control and same was attributed to the First Respondent as it is her duty as per the performance agreement.

[47] The Auditor General found that there was an improper record keeping of supporting documents, which resulted in complete, relevant and accurate information not to be accessible and available to support the financial reporting.

[48] The witnesses from National Treasury called by the arbitrator also testified that it was the duty of the First Respondent to ensure that contracts/records are safeguarded. However, the arbitrator seems to have missed these pieces of evidence.

[49] Therefore, the finding of the Third Respondent that those powers were not delegated to her is unmeritorious.

[50] Furthermore, it is very strange that there is an argument whether a contract is an asset.

[51] The arbitrator found that contracts or records are not assets because they do not have value. I find this reasoning to be abhorrent in all material respects, the Departmental Assets Management Policy distinguishes between different types of assets.

[52] The Applicant referred this Court to the evidence of the First Respondent which is found on page 375 of the transcribed record of arbitration where she read page 569 of the bundle which deals with section 1 of the Departmental Asset Management Policy, the section defines key terms of the policy.

[53] Assets are defined as:

> 'assets are resources controlled by an entity as a result of past events and from which future economic benefits or service potential are expected to flow to the entities.'

[54] The Applicant further referred this Court to a Concise Oxford English Dictionary which defined 'assets' as:

> 'asset is a useful or valuable thing or person. Property owned by a person or a company regarded as having value and being available to meet debts, commitments or legacies.'

[55] It is therefore apparent that contracts or records are assets. I am in agreement with the Applicant that a contract is an asset because a contract can provide financial benefit, either now or in the future.

[56] This Court is struggling to understand as to how the arbitrator missed this point in the policy because it is very clear.

[57] The First Respondent urged this Court not to have regard to the contract of employment or performance agreement because no one testified about them in the arbitration proceedings. I am not convinced that this argument is based in law because a contract is a legal binding document. Even though I do not agree that no witness testified or referred to it, the document cannot be ignored as it is a point of law.

[58] As stated above, this Court is not persuaded by the arbitrator's decision that the CFO Handbook does not apply to the First Respondent, in that she was the only CFO and the above prescripts are legal binding documents which states that she was responsible for those duties.

[59] Based on the above, it is my finding that the Third Respondent's decision in the above matter is unreasonable based on all material evidence before her.

[60] It is this Court's finding that it was the First Respondent's duties to prepare financial statements in accordance with the relevant reporting framework and she failed to do so.

[61] The arbitrator does not seem to understand the duties of a CFO and the CFO herself knows what was expected of her, I do not believe that she does not know that the above prescripts does apply to her, since she is a Chartered Accountant. Moreover, even if she was not a Chartered Accountant as a result of her position as a CFO, she ought to have known.

[62] The CFO is there in order to give support to the HOD who is an Accounting Officer and she is a technocrat who should know better.

[63] It is therefore clear that the arbitrator's decision is unreasonable based on the total material evidence before her. The decision of the arbitrator is not only out of kilter but also out of reality and reasonableness.

[64] In determining whether the result of an arbitrator's award is unreasonable, I must broadly evaluate the merits of the dispute and consider whether the arbitrator's reasoning is found to be unreasonable, the result is nevertheless capable of justification for reasons other than those given by the arbitrator.[12]

[65] In the present instance, in my view, and after a careful perusal of the record, the arbitrator's conduct was such that he overstepped the mark. The transcribed record reflects that the commissioner ignored crucial pieces of evidence and did not conduct the arbitration hearing in a fair manner.

[66] The arbitrator did not appreciate the true nature of the enquiry.

[67] It is not a requirement that the award must be pristine, but reasonable. The award will, however, be unreasonable if it is entirely disconnected from the evidence, unsupported by any evidence and involves speculation by the

[12] See: *National Union of Mineworkers and another v Samancor Ltd (Tubatse Ferrochrome) and others* [2011] 11 BLLR 1041 (SCA).

arbitrator just like when he speculated on the duties of a CFO and applicability of financial prescripts.

[68] I am convinced that the award is entirely disconnected from the evidence before the arbitrator, as the arbitrator seems to have adopted a piecemeal approach, which has been discouraged or shunned as improper in *Gold Fields Mining* case.

[69] In relation to all the charges, the arbitrator unreasonably found the First Respondent not guilty and such a finding is not supported by any evidence but mere speculations.

[70] This Court was left dumbfounded by the arbitrator's finding that the Applicant herein should comply with this award by no later than 15 August 2023. However, the First Respondent was ordered to report for duty by 1 September 2023. What is to happen to the period in between the compliance on 15 August 2023 and 1 September? Is the First Respondent given leave of absence?

[71] It is only the arbitrator who can explain this pell-mell of an award.

[72] This Court agrees with the Applicant that the award is unreasonable in all material respects.

<u>Conclusion</u>

[73] After having considered the evidence adduced at the arbitration proceedings, the findings made by the arbitrator and the grounds for review as raised by the Applicant, I find that the arbitrator's award is unreasonable under the circumstances.

[74] This court is therefore, left with no choice but to interfere with the decision of the arbitrator.

[75] As a result of the above, the arbitrator's decision does not pass the *Sidumo* test of reasonableness and therefore stands to be reviewed.

<u>Costs</u>

[76] I have had regard to the requirements of law and fairness in line with *Zungu v Premier of the Province of KwaZulu-Natal and Others*,[13] in considering costs and am of the view that costs should only be awarded where it is warranted.

[77] The First Respondent had to challenge the review since the award was in her favour.

[78] I am of the view that a cost order is not warranted in this matter.

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

<u>Order</u>

1. The review application is hereby granted.

2. The finding of not guilty in all the charges is substituted with a finding of guilty.

3. The finding of reinstatement is replaced with that the dismissal of the First Respondent was for fair reasons.

4. There is no order made as to costs.

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N. Tshisevhe

Acting Judge of the Labour Court of South Africa

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[13] (2018) 39 ILJ 523 (CC).

Appearances:

For the Applicant: Adv Mashudu Tshivhase

Instructed by: State Attorneys (Mrs Maponya)

For the Respondent: Adv Maake

Instructed by: M Makula Attorney Inc