



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: D391/2021

In the matter between:

RAM TRANSPORT SOUTH AFRICA

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE
ROAD, FREIGHT AND LOGISTICS INDUSTRY**

First Respondent

COMMISSIONER W. STEPHENS N.O.

Second Respondent

MTWU obo K.R. MKHIZE

Third Respondent

Heard: 3 February 2026

Delivered: 26 March 2026

JUDGMENT

PHAKEDI, AJ

Introduction

[1] The Applicant approached the Court in terms of section 145 of the Labour Relations Act¹ (the LRA), seeking to review and set aside the arbitration award (the award) issued by the second respondent under case number

¹ Act 66 of 1995, as amended.

RBRFBC56249 dated 29 April 2021. The Applicant filed its review application on 23 June 2021 and indicated that it received the award on 5 May 2021.

- [2] The Applicant only filed the record of arbitration on 21 February 2023, subsequent to its successful application to compel the First Respondent to file the record on 10 June 2022. The Third Respondent filed his answering affidavit on 8 March 2023 and took an issue with the late delivery of the record. However, this preliminary point was abandoned by Counsel during arguments, having conceded that the 60-day period prescribed for the filing of the record lapsed on 23 February 2023.

Background facts

- [3] The Third Respondent was employed by the Applicant on 1 December 2011 as a crew member or driver's assistant. His core function was to deliver parcels to clients of the Applicant in the company of a driver whose function was to drive the vehicle to various destinations. He had been employed for a long time, and he knew what was expected of him in carrying out his duties.
- [4] On or about 23 May 2019, and following an investigation, he received a notice to attend a disciplinary hearing with the following charges:

'Gross Negligence or alternatively failure to follow Standard Operating Delivery Procedure.

- (a) In that on the 22nd May 2019 you were given a clear instruction by your Manager Angus Allegan to facilitate a confirmed delivery with waybill number PLAT05-01658622 for a client Miss Zanele Mabuza at [place of delivery] and you verbally refused to execute the delivery in the presence of your colleague.

Bringing the name of the Company into disrepute.

- (a) In that your deliberate conduct as mentioned above resulted to service failure which has the adverse effect of compromising the trust relationship and Client Service Agreement.'

- [5] The Applicant was found guilty and subsequently dismissed on 11 June 2019. He then referred an unfair dismissal dispute to the National Bargaining Council for the Road, Freight and Logistics Industry (NBCRFLI).

Arbitration proceedings and the award

- [6] The Second Respondent was appointed to determine whether the dismissal of the Applicant was procedurally and substantively fair. At the end of the proceedings, he found that the dismissal was preceded by a fair procedure. However, the sanction of dismissal was too harsh, and he awarded compensation for five months. His award is the subject of these proceedings.
- [7] The Applicant's first witness was Mr Matshoba, the senior Human Resources Manager, who chaired the disciplinary hearing. He testified that the charges emanated from the Third Respondent's refusal to deliver the Platinum Life Package to a customer after it had not been successfully delivered on the previous occasion.
- [8] He testified that at approximately 18h40, on 22 May 2019 Mr Allagan, the Branch Manager, gave a lawful instruction to the Third Respondent and his crew member, Mr Memela to deliver the parcel to the client. However, the Third Respondent refused to carry out the instruction indicating that it was late. Mr Allagan then offered to escort them but the Third Respondent persisted with his refusal as a result the package was not delivered and it was once again logged as a service failure.
- [9] He testified that the hearing commenced on 23 May and the parties agreed that they would resume on 5 June 2019. The Applicant then complained about the virtual hearing, and he adjourned it to 11 June. On this day, all parties were present except the Third Respondent.
- [10] The representative of the Third Respondent called to enquire about his whereabouts and he indicated that he could not attend the hearing because his salary had not been paid. Mr Matshoba then offered to despatch the company vehicle to fetch him and bring him to the hearing, and he declined the offer, stating that the company can do whatever it wants, and he ended the call. He

then found the Third Respondent guilty on the basis of the Disciplinary Code, which prescribes a final written warning for gross negligence and a dismissal for bringing the company name into disrepute.

- [11] The second witness of the Applicant was Mr A. Allagan, who testified that he was the Branch Manager. He was notified by Platinum Life that a delivery was not completed, and because he did not want to lose a client, he called Memela and informed him about the outstanding delivery. When Memela informed him that the Third Respondent was refusing to deliver the parcel, he then offered to escort them in order to complete the delivery. When he called Memela the second time, he heard an argument between him and the Third Respondent and Memela advised him that the Third Respondent was refusing to complete the delivery, and he advised them to return to the depot, and he followed the normal disciplinary measures. He then informed the Agent to call the client and inform him/her that the parcel would be delivered the following day.
- [12] The third witness was Mr S. Msweli, who testified that his job was to monitor the non-delivery of goods. On the day of the incident, he noticed that the parcel was not delivered, and he contacted Memela to enquire as to why the parcel was not delivered. Initially Memela had told him that the parcel would be delivered; however, he later changed his mind and told him that it was late and they were scared to deliver at night. He then informed him that they must wait for Mr Allagan who was on his way to escort them. However, upon him sharing this information with them, an argument ensued between the Third Respondent and Memela, and he then escalated the issue to Mr Allagan.
- [13] The last witness was Mr B. Memela, who testified that he was employed as a Driver and was on shift on the day the Platinum Life Product parcel was scheduled for delivery. He confirmed that the parcel was not delivered.
- [14] Mr Allagan offered to escort them so that the delivery could be executed on that day; however, this did not occur as the Applicant informed him that he could not deliver the parcel at night as it was late. He confirmed that he did not refuse to take instructions from Mr Allagan. He further confirmed that

when Mr Msweli called him about the delivery, he told him that it was dark. However, shortly thereafter, he received a call from Mr Allagan who offered to escort them, and he was prepared to do the delivery if there was going to be an escort.

- [15] The Third Respondent testified in his own case and stated that he was dismissed for a missed collection, not delivery. He was not a party to the conversations between his crew member Memela and Mr Msweli and Allagan. He then called Mr Allagan using the hand-held scanner to enquire about his whereabouts. He was surprised to see Memela driving to the depot, and he enquired as to why he was leaving the place where Allagan had said he would find them, but Memela told him that Allagan said they must return to the depot. The following day, Mr Allagan enquired from him as to why he refused to do the delivery, and he was confused, as he knew nothing about the Platinum Life parcel delivery. He was asked to write a statement about what happened, and he did not. He was then placed on suspension and requested to attend a disciplinary hearing. However, Memela was not charged.
- [16] The second witness for the Third Respondent was Mr C. Ngqulunga, who testified that he was a shop steward and represented the Third Respondent during the internal hearing. He confirmed that the hearing proceeded on the first day, and on the second day, the chairperson was not present, and the hearing was then postponed to another date. On this date, the Third Respondent was not present as he had not been paid his salary. He, however, confirmed that he was present on all three occasions. He further confirmed that the Third Respondent was dismissed for a failed delivery and not collection. He further confirmed that the instruction to complete the delivery was lawful and in line with the Standard Operating Procedures. He further confirmed that the Company did offer to transport the Third Respondent so that he could attend the hearing, and he refused the offer.
- [17] At the close of proceedings and having heard evidence from the parties, the Commissioner found that a sanction of dismissal was too harsh and ordered the Applicant to pay the Third Respondent compensation. The Applicant is not

happy with the findings of the Commissioner and is challenging the award on the grounds stated hereunder.

Applicant's grounds for review

- [18] The Applicant contended that the Second Respondent's conclusion that a sanction of dismissal was too harsh is unreasonable and he exceeded his powers, committed a gross irregularity and/or misconduct in relation to his duties as a Commissioner in that he failed to consider that the instruction given to the Third Respondent was lawful, his conduct indicated a pattern of defiance and refusal to take reasonable instructions, he was guilty of the charges levelled against him, discipline was applied consistently, he was deceitful, he failed to show remorse and the penalty guidelines were set out in the Applicant's disciplinary code.
- [19] The Applicant further submitted that the Second Respondent acted unreasonably, committed material errors and clearly misdirected himself pertaining to the issues he was required to decide and the evidence presented.
- [20] It was submitted further that the Second Respondent exceeded his powers and acted in an *ultra vires* manner when he substituted a sanction of dismissal with compensation. He failed to properly, justifiably, reasonably determine and assess the evidence submitted by the parties.
- [21] The Third Respondent opposes the review application on this basis that the Second Respondent allowed the parties a full opportunity to present their cases and he correctly followed the authorities prior to substituting the harsh sanction of dismissal with compensation. The Third Respondent seeks for the review application to be dismissed with costs.

Principles applicable in review applications

- [22] The debate on the right to review an arbitration award on process-related grounds as opposed to result-related grounds was finally settled by the Labour Appeal Court (LAC) in *Gold Fields Mining South Africa (Pty) Ltd (Kloof*

*Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others*². The applicant in this matter is seeking to review and set aside the award on result-related grounds. He is aggrieved that the Commissioner failed to apply his mind to the evidence and arrived at an unreasonable outcome.

- [23] In a review of an arbitration award, the Labour Court is required to apply the test “*is the decision reached by the commissioner one that a reasonable decision-maker could not reach?*”³ In determining whether the result of an arbitrator’s award is unreasonable, the Labour Court must broadly evaluate the merits of the dispute and consider whether, if 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.⁴ The result will, however, be unreasonable if it is entirely disconnected from the evidence, unsupported by any evidence and involves speculation by the arbitrator.⁵
- [24] In *Head of the Department of Education v Mofokeng and Others*⁶ the LAC held that the failure by the arbitrator to apply her mind to the issue that is relevant would ordinarily constitute an irregularity, but for an award to be susceptible to being set aside, it must, in addition to the irregularity, result in the misconception of the real inquiry to be determined or the ultimate outcome must be unreasonable.
- [25] The LAC in *Health & Other Services Personnel Trade Union on behalf of Tshambi v Department of Health, KwaZulu-Natal*⁷ held that:

‘An arbitrator is required to determine the true dispute between the parties. To that end, it is necessary to establish the relevant facts and construe the category of dispute correctly. An arbitrator must make an objective finding about what is the dispute to be determined. This court in *Wardlaw v Supreme*

² [2014] 1 BLLR 20 (LAC) at 13 to 18.

³ See: *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC).

⁴ See: *National Union of Mineworkers and Another v Samancor Ltd (Tubatse Ferrochrome) and Others* [2011] 11 BLLR 1041 (SCA).

⁵ *Herholdt v Nedbank Ltd* [2013] 11 BLLR 1074 (SCA).

⁶ (2015) 36 ILJ 2802 (LAC) at para 30 to 33.

⁷ (2016) 37 (ILJ) 1839 (LAC); [2016] 7 BLLR 649 (LAC) at para 16.

Mouldings (Pty) Ltd (Wardlaw) (2007) 28 ILJ 1042 (LAC), addressed directly the question of whether the employee's characterisation of a dispute should enjoy deference and rejected that approach. Distinguishing the formalistic school of thought from that of the substantive school of thought, this court held that the latter should prevail. As a result, in *Wardlaw*, an arbitrator was held to have incorrectly assumed jurisdiction over a dispute that was about an automatically unfair dismissal, a category of dispute reserved for adjudication by the Labour Court.'

[26] The Constitutional Court disposed of the above-mentioned issue in *CUSA v Tao Ying Metal Industries and Others*⁸ and held that:

'...commissioners are required to "deal with the substantial merits of the dispute with the minimum of legal formalities". This requires commissioners to deal with the substance of a dispute between the parties. They must cut through all the claims and counter-claims and reach for the real dispute between the parties. In order to perform this task effectively, arbitrators must be allowed a significant measure of latitude in the performance of their functions. Thus, the LRA permits commissioners to "conduct the arbitration in a manner that the commissioner considers appropriate". But, in doing so, commissioners must be guided by at least three considerations. The first is that they must resolve the real dispute between the parties. Second, they must do so expeditiously. And, in resolving the labour dispute, they must act fairly to all the parties as the LRA enjoins them to do.'

[27] The Supreme Court of Appeal in *Herholdt v Nedbank Ltd and Another (Congress of SA Trade Unions as Amicus Curiae)*⁹ held as follows:

'A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. 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.'

⁸ 2009 (2) SA 204 (CC); [2009] 1 BLLR 1 (CC) at paras 65 and 66.

⁹ (2013) 34 ILJ 2795 (SCA) at para 25.

Evaluation

- [28] Item 2 of the LRA Code of Good Practice (the Code) provides that a dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure. The Second Respondent concluded that the dismissal of the Third Respondent was preceded by a fair procedure.
- [29] In dismissal cases, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was effected in accordance with a fair procedure, the dismissal is unfair.
- [30] Item 7 of the Code provides that any person who is determining whether a dismissal for misconduct is unfair should consider:
- '(a) whether or not the employee contravened a rule or standard regulating
 - conduct in, or of relevance to, the workplace; and
 - (b) if a rule or standard was contravened, whether or not -
 - (i) the rule was a valid or reasonable rule or standard;
 - (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - (iii) the rule or standard has been consistently applied by the employer; and
 - (iv) dismissal was an appropriate sanction for the contravention of the rule or standard.'
- [31] The Second Respondent correctly interpreted and applied the provisions of the Code in his analysis. He accepted that there was a breakdown in the employment relationship between the parties due to the Third Respondent's refusal to follow a reasonable and lawful instruction, thereby making himself guilty as charged. He then concluded that:

- 31.1. The Third Respondent broke a number of rules in the workplace;
- 31.2. The rules were valid and reasonable;
- 31.3. The Third Respondent was well aware of the workplace rules;
- 31.4. The rule was applied consistently and there was no need to institute disciplinary proceedings against Memela.

[32] He, however, found that despite the above findings, dismissal was not an appropriate sanction and his conclusions are based on the following factors:

- 32.1. He accepted that the Third Respondent's behaviour could not be condoned as it automatically rendered the employment relationship intolerable;
- 32.2. In respect of the reason for imposing a sanction of dismissal, he accepted that the disciplinary code prescribed a final written warning for the first offence and dismissal for the second offence;
- 32.3. He further accepted that the Third Respondent's actions had the potential of costing the Applicant its clients, and this was supported by the undisputed evidence that the Applicant's contract with Cell C was terminated for reasons relating to service delivery failures.
- 32.4. He further accepted that the Third Respondent was not a candidate for corrective discipline as he was dismissed for blatant misconduct.
- 32.5. He further found that the Third Respondent had missed an opportunity to show remorse for his actions in that he never admitted to his wrongdoings.

[33] In paragraph 8.24 of the award, he then concluded that:

'Taking the totality of the circumstances into account, including the fact that there was no element of dishonesty in the misconduct, I accept that corrective and progressive discipline would have had the desired effect of modifying the

Applicant's behaviour in the workplace. I therefore accept the dismissal of the Applicant to be substantively unfair.'

- [34] In terms of clause 6 of the CCMA guidelines published in line with section 115(2)(g) of the LRA10, "*the CCMA and all its Commissioners are obliged to interpret and apply the Labour Relations Act and other legislation in accordance with judicial decisions of courts that are binding on it. These include the decisions of the Constitutional Court, the Supreme Court of Appeal, Labour Appeal Court, High Court and Labour Court*". Despite having summarised the issues correctly and applying the authorities correctly, the Second Respondent arrived at a decision which no reasonable decision-maker could arrive at.
- [35] It is clear from the above that the Second Respondent did not execute his duties in line with section 138 of the LRA11 and in compliance with the CCMA guidelines. Section 138(1) of the LRA requires commissioners to arbitrate disputes in a manner they consider appropriate in order to determine them fairly and quickly with the minimum of legal formalities. The Second Respondent was wrong to substitute a sanction of dismissal when the disciplinary code prescribes penalties for misconduct.
- [36] The Labour Appeal Court in *Hosea Mushi v Exxaro Coal (Pty) Ltd*¹² held that the arbitrator must have regard to all the material before him, including the provisions of the Disciplinary Code, when it comes to the recommended sanction for the type of misconduct in question. In this matter, the Second Respondent did not consider the fact that the disciplinary code had prescribed penalties for the types of offences the Third Respondent was found guilty of.
- [37] Section 145 (4) of the LRA empowers this Court to determine the dispute in the manner it considers appropriate, or make any order it considers appropriate about the procedures to be followed to deal with the dispute once an arbitration award (or ruling) is reviewed and set aside. The Court is mindful that the current proceedings do not concern an arbitration award but a

¹⁰ Act 66 of 1995, as amended.

¹¹ Ibid.

¹² Case no: JA62/2018 at para 12.

condonation ruling. However, nothing prevents the Court from applying the provisions of section 145 (4) to this matter if the application thereof will not upset the objects of the enabling legislation, viz, the LRA.

[38] *The above view is supported by what was stated in Golden Arrow Bus Services (Pty) Ltd and Another v South African Road Passenger Bargaining Council and Others*¹³ where the Labour Court held that:

‘Where a decision is made on the basis of flawed reasoning, or an error of law, there is similarly no point to remit the matter back for determination de novo, where the facts remain the same.’

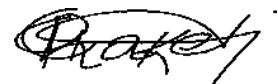
Conclusion

[39] On the issue of costs, this court comes to the conclusion that it is in the interests of the law and fairness that each party be burdened with its own costs. In the result, the following order is made:

Order

1. The arbitration award issued by the second respondent under case number RBRFBC56249 dated 29 April 2021 is reviewed and set aside.
2. The arbitration award is substituted with the following order:

‘The dismissal of Mr K R Mkhize was substantively fair.’
3. There is no order as to costs.



G C Phakedi

Acting Judge of the Labour Court of South Africa.

¹³ (2025) 46 ILJ 2452 (LC) at para 119.

Appearances:

For the Applicant: Ms E. Wessels of Du Randt Du Toit Pelser Attorneys

For the Respondent: Adv. Ledwaba

Instructed by: Matlatle Attorneys

LABOUR COURT