



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

Signature

30 March 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C472/2022

In the matter between:

KYLE JORDAN

Applicant

and

THE GENERAL PUBLIC SERVICE BARGAINING

COUNCIL

First Respondent

KHUDUGA TLALE NO

Second Respondent

THE OFFICE OF THE CHIEF JUSTICE

Third Respondent

Heard: 16 October 2025

Delivered: 30 March 2026

Summary: A review application to set aside an arbitration award which dismissed an alleged constructive dismissal claim. The award is correct, hence the application fails.

JUDGMENT

GANDIDZE, J

Introduction

- [1] The applicant, Kyle Jordan (Jordan), resigned from his employment with the Office of the Chief Justice (OCJ) on 31 December 2020 and claimed he had been constructively dismissed. In an arbitration award dated 2 August 2022 in case number GPBC159/2021, Commissioner Tlale, appointed by the General Public Service Sector Bargaining Council (the Bargaining Council) to arbitrate the dispute, dismissed that claim. These proceedings seek to review and set aside that arbitration award, and substituting it with an order that Jordan was constructively dismissed and awarding him compensation equivalent to the remaining term of his fixed-term contract of employment, calculated from 1 January 2021 to 30 April 2022, including the December 2020 salary that was not paid, as well as accrued leave days that were unpaid.
- [2] Whether the application was unopposed is a preliminary issue that will be addressed next.

The late filing of the answering affidavit

- [3] The OCJ filed its answering affidavit in the review application on 25 September 2025, although it should have been filed within ten days of the Notice in terms of Rule 7A(8)(b)¹, which was filed in February 2023. In terms of clause 11.4.2 of the Practice Manual of the Labour Court of South Africa² (Practice Manual), when an opposing or replying affidavit is filed late, it is not necessary to apply for condonation. However, the party served with the late affidavit may object to the late filing within 10 days, failing which the right to object lapses. Rule 36(2) and (3) of the Rules Regulating the Conduct of the Proceedings of the Labour Court³ (Labour Court Rules) contains a similar provision.
- [4] The heads of argument filed on behalf of Jordan state that a Notice of Objection to the late filing of the answering affidavit was filed. The Court was

¹ The old Labour Court Rules, which applied when the review application was instituted, and were repealed with effect from 16 July 2024.

² Effective from 1 April 2013 until 16 July 2024, when it was repealed.

³ GN 4775, G. 50608 of 3 May 2024.

not directed to the specific page where the Notice of Objection could be found. Instead, the Court identified a letter from Jordan's attorneys addressed to the State Attorney for the OCJ, expressing shock that the answering affidavit was filed nearly three years after the deadline and without a condonation application, and reserving Jordan's rights. A letter is not a Notice of Objection. If such a Notice had been filed, it would have been included among the Notices filed in the matter. Since no Notice of Objection was filed within the 10-day period required, Jordan's right to object to the late filing of the answering affidavit lapsed. The answering affidavit is properly before the Court.

The background facts⁴

- [5] Jordan was employed by the OCJ as a Law Researcher for the Supreme Court of Appeal (SCA) on a fixed-term contract set to expire on 30 April 2022. During that period, he was also undertaking a Doctorate in Law at Stellenbosch University. He resigned from his position with the OCJ on 31 December 2020, effective immediately.
- [6] The events leading to the resignation include the President of the Republic declaring a State of Disaster in March 2020 due to the COVID-19 pandemic. Consequently, during alert level (AL) 5, all staff members not designated as essential services were required to work from home. The OCJ permitted all the Law Researchers to work remotely during this period.
- [7] In June 2020, Regulations in terms of the Disaster Management Act⁵ (DMA) were published⁶, outlining the measures employers had to implement to safeguard the health and safety of workers.
- [8] On 18 August 2020, the country shifted to AL2. Workers were advised to stay at home and, where feasible, continue working remotely. In response to this

⁴ In the supplementary pre-arbitration minute, the parties agreed that all the correspondence exchanged by the parties between 31 August 2020 to 21 October 2020, and on 11 December 2020 was admitted.

⁵ Act 57 of 2002.

⁶ GN R639 in GG 43400.

development, the OCJ issued Circular 15 of 2020, which addressed the management of officials under Alert Level 2. The relevant provisions of the Circular are reproduced hereunder.

‘2.2 In terms of the OCJ COVID-19: Evolving institutional working arrangements, 80% of staff should be reporting for duty and 20% should work from home. This does not mean that the same staff will have to be part of the 80% and others remain working from home as part of the 20%. The rotational principle should still apply.

2.3 Managers must ensure that all staff are now requested to report for duty. The implementation of rotational work to continue with service delivery and to achieve social distancing is however still recommended.

2.5 The rotation of employees will also assist them not to lose touch with the work environment, culture and ethics.

2.7 Vulnerable employees should be permitted to work from home where the nature of their duties and circumstances permit.⁷

2.8.8.5 Consider remote working if the officials duties allow for that and the official is enabled including access to equipment and internet.’

[9] Jordan’s supervisor, Ms Annamika Premasagar (Premasagar), sent the Circular to all the Law Researchers via email on 31 August 2020 at 05:29, informing them that they needed to report for duty from the following day, 1 September 2020, and that those unable to report could discuss leave with her. The email also mentioned that they would receive further briefings on office arrangements after the manager's meeting.

[10] Jordan responded to this e-mail on the morning of 1 September 2022, stating that he had read the email, with much surprise and, inter alia, that :

⁷ Guidelines were provided on who are vulnerable employees.

10.1 *'I am not comfortable to return to the SCA at this stage to perform my duties. In my view, obliging the Law Researchers to return to work is inappropriate and also unlawful.'*

10.2 The Regulations stated that *'All persons who are able to work from home must do so'*, and that this applied to him as someone capable of working from home, as he had done since March 2020. This Regulation implied that he had a choice or discretion to decide whether to continue working from home or return to the workplace.

10.3 The Regulation stating that *'However, persons will be permitted to perform any other type of work outside the home, and to travel to and from work and for work purposes'* meant that individuals are entitled to return to the workplace, and that employers could not force employees to return.

10.4 He believes it is definitely unwise and possibly selfish for him to go back to work, as it will force him into unnecessary contact with others, increasing the risk of catching or spreading the virus. s.

10.5 *'Instead, I choose to carry on working from home for the time being'*⁸, and

10.6 *'I would prefer not to return to the workplace at this point, a choice that the Regulations allow all such persons to exercise. It is safer for me; it is safer for everybody...'*

[11] All Law Researchers returned to the office on 1 September 2020, except for Jordan and Ms Bomela.⁹ The latter took leave on 1 September 2020 and returned to the office from 2 September 2020 onwards. Jordan did not return to the office at all, until he resigned in December 2020.

[12] Premsagar responded to Jordan's email on 2 September 2020, raising concerns about its tone and content, which she considered insubordinate, highly disrespectful, threatening, and aggressive. She stated that the instruction to report for duty was clear and unambiguous, and that

⁸ He explains that he had obtained the equipment he needed, that he was consistently delivering, there had been increased productivity as he did not have to travel, and can start working earlier than the normal starting time.

⁹ She was returning from maternity leave.

parameters, precautions, and measures would be discussed. She also mentioned that Jordan did not fall within the vulnerable category of employees permitted to work from home. The email concluded by informing Jordan that failure to comply would be regarded as insubordination and dealt with in accordance with the department's policies.

[13] On 4 September 2020, Jordan sent Premasagar a weekly report of the matters he had worked on the previous week, and she expressed her thanks.

[14] In a five-page, normally spaced response, Jordan wrote to Premasagar on 7 September 2020 and copied Ms Martin (Premasagar's manager and the Court Manager), the then Judge President of the SCA, and President Mandisa Maya. Among other things, Jordan informed Premasagar that his concerns, as outlined in his email of 1 September 2020, had not been addressed, that Premasagar had not challenged his interpretation of the AL2 Regulations, that the 80% of staff who should be reporting for duty are those unable to work from home, that employees were not consulted before issuing the instruction to return to work, that the instruction was unreasonable, that the matter had not been referred to a compliance officer, and that he would not return to the workplace. He also recorded this:

'To be sure, I am not saying that Circular 15 of 2020 is unlawful. The point I am making is simply that the AL2 Regulations implore those persons who are able to work from home to do so. It does this by making it an obligation, first and then by adding a qualification to the fact that those same persons are permitted to perform such work outside of their homes and to travel to and from work and for work purposes. It is thus an accurate illustration of President Cyril Ramaphosa's recurring plea urging everyone to remain within their homes unless it is necessary to leave- and, if possible to work from home.'

[15] Yet a further paragraph in Jordan's email reads:

'I find your response to be aggressive because, after raising valid concerns about the lawfulness of the command for Law Researchers to return to work when they are decidedly 'persons who are able to work from home', you made it very clear that you do not agree with me, but without explaining your

view. You labelled my email as highly disrespectful, aggressive and threatening without pointing to even one example of the wording or aspect of the content that informed your view in this regard. You deemed it sufficient merely to restate the command, this time including the consequences of me not adhering thereto, thus implying that the command need not be explained but must simply be (blindly) complied with. I am certainly concerned if this is the way that officials are dealt with it at the second highest court in the country. Do you not think that there is a special duty on courts, in which the judicial authority of the Republic is vested, and who routinely hand down judgments interpreting and enforcing all laws - to be an example at least to all employers all over the country, in respect of its own employment matters? Do you not think that it is appropriate- indeed welcomed- that a Law Researcher at the Supreme Court of Appeal, where laws are often amended or deemed unconstitutional in the cases it decides, raises concerns about the lawfulness of the decisions that affect them- at least where such concerns are objectively well-founded? Do you not think it would be appropriate in line with the country's decisive move from a culture of authority to a culture of justification to engage with me on the points raised in my email 1 September at least by explaining your view, that I might understand the position and voluntarily comply with the command, instead of trying to instil fear by baldly disagreeing with my interpretation and then informing me of what will happen if I do not comply with the command? How can I be told to 'comply' with the Circular, which states that 80% of employees should be reporting for duty, when merely obeying that command would be in conflict with the Circular itself because it sanctions the attendance of all (100%) officials on the same day.'

[16] After informing Premasagar that her response was threatening, Jordan wrote"

'I, therefore ask, sincerely- with no disrespect, aggression or threats thereto- that you meaningfully engage with me on this matter, in respect of all the issues raised.'

[17] The email concluded with a request that Premasagar honour the arrangement for Jordan to join the Law Researchers meeting scheduled for that day on the Teams platform.

[18] Jordan received the meeting link. During the meeting, the Law Researchers complained that Jordan was receiving preferential treatment because he was allowed to work from his home in Cape Town. Jordan explained that it was unsafe to work from the office. He believed it was unreasonable to expect employees to report to the office when the vaccine was not widely available. The Law Researchers were informed that disciplinary action would be taken against Jordan or anyone else who failed to follow the instruction to report to the office.

[19] On 9 September 2020, Martin sent an email to Jordan, questioning why she (Martin) and the President were copied on the email, contrary to proper channels, which Martin found unacceptable. Jordan was also informed that Preamsagar would deal with the matter.

[20] On the same day, Preamsagar also wrote to Jordan as follows:

‘I hereby acknowledge receipt of your email dated 7 September 2020.

I take note that you did not respond directly to the salient issues of insubordination and your current absence without permission in my letter, but opted to conflate it with irrelevant and unrelated content.

Your continued absence from this office from 1 September 2022 date is in direct contravention to the Circular and my instruction to report to the office.

The Circular is clear in respect of the 80 to 20 principle and the implementation thereof on a rotational basis. I reiterate that you are not considered an employee that is categorised as a vulnerable employee.

Thus your absence from 1 September 2020 date is regarded and will be recorded as leave without pay.

In addition to this disciplinary steps will be taken.’

[21] On 17 and 21 September 2020, Jordan sent emails to Martin requesting her to intervene and discuss his concerns, specifically regarding the lawfulness of the instruction to report for duty at the workplace. Jordan also asked for clarification on whether the records showed he was absent without leave. In

the email of 21 September 2020, Jordan mentioned that Mr Aadil Patel, the National Head of the Employment Practice at Cliffe Dekker Hofmeyr—one of ‘The Big Five’ law firms in South Africa—had responded ‘No’ to the question whether employees who can work from home can be compelled to return to the workplace during AL2.

- [22] On 21 September 2020, the country transitioned to AL1, and on 23 September 2020, Premasagar sent an email to the Law Researchers, attaching Circular 27 of 2020, stating that they were all required to report for duty on a full-time basis from 25 September 2020 and that the rotation system was suspended.¹⁰
- [23] On 25 September 2020, Jordan sent an email to Martin, referring to the new instruction issued pursuant to Circular 27 of 2020, which required all employees to return to work. Jordan maintained that his position, that the instruction was unlawful and invalid, had not changed since he could work from home. He stated that his concerns had not been addressed and, instead, he was accused of disrespect, aggression, threatening behaviour, and insubordination. He requested Martin to *‘please engage with me, substantively, on the points raised in the emails below’*.
- [24] On the same day, Jordan also sent correspondence to Premasagar stating, *‘I have chosen to continue complying with the most recent regulations ..., and will accordingly be working from home.’* He also mentioned his email to Martin requesting her intervention.
- [25] New Regulations were issued in October 2020¹¹.
- [26] From the beginning of October 2020, Jordan was excluded from emails sent to Law Researchers and was not assigned any work by Premasagar. However, he continued to receive emails from Judges requesting his assistance with research or judgments.

¹⁰ In terms of clause 3.2 of this Circular, only those employees who were on official leave or with uncontrolled risks and vulnerabilities were exempted from reporting for duty at the workplace.

¹¹ GN R1031 in GG 43751.

[27] On 6 October 2020, Jordan submitted an application for annual leave from 9 to 30 October 2020, stating that he had been working 16-hour days over the previous three months and was under physical and mental strain. Premasagar acknowledged receipt of it.

[28] On 8 October 2020, Jordan followed up with Premasagar regarding his leave application and asked for the leave dates to be amended to 12-30 October 2020.

[29] On 8 October 2020, Martins wrote to Jordan as follows:

1. I have noted the contents of your various communications sent to your direct supervisor Mrs. Annamika Premasagar and myself with great concern and have found the tenor of your communications sent from 1 September 2020 as highly insolent, unprofessional and impudent.
2. I furthermore find your flagrant refusal to adhere to the clear guidelines contained in the relevant return to work Circulars issued by this Department as well as those issued by the Department of Public Service and Administration (DPSA) tantamounts to gross non-compliance.
3. I reject your reasons for not wanting to attend to this office due to this office posing an unnecessary risk to your health and safety as both devoid of any substance in nothing more than aspersions fabricated by you to justify continuing working from your home in Cape Town as you put it, 'as you have done successfully for the last five months.
4. Your employment contract with this Department is clear in that your place of employment is the Supreme Court of Appeal, Bloemfontein and not your home in Cape Town and your refusal to attend to this office tantamounts to gross insubordination and is in breach of the aforementioned employment contract.
5. You have been informed in writing already that your absenteeism from this office from 1 September 2020 to date is regarded as absence without permission and will be processed as unpaid leave for the full period to date.

6. Please further note that your continued absenteeism from 1 September 2022 date and the continued written confirmations from you that you refuse to return to this office tantamounts to desertion, based on the fact that you have stated expressly that you do not intend returning to the workplace despite numerous communications sent directly to you to return to work at the Supreme Court of Appeal in Bloemfontein.
7. As enumerated above, your desertion from this office is effectively a rejection of your employment contract with this Department and it is for this reason that your employment contract with this Department shall be requested to be terminated.'

[30] Jordan responded on 13 October 2020. He stated that Martin's assessment of his character was incorrect, denied the allegations of, *inter alia*, insubordination, desertion, breach of contract, and the fabrication of facts. Jordan posed several questions regarding the request to terminate his contract and denied that the OCJ could withhold or reclaim any part of his salary. He sought a response by 16 October 2022.

[31] Having received no response by 16 October 2022, Jordan sent a follow-up letter on 21 October 2020.¹²

[32] On the same day, Jordan also sent a letter to Premasagar, following up on his leave application and raising concerns about his exclusion from emails sent to Law Researchers.

[33] On 28 October 2020, Premasagar submitted a memorandum to Martin, motivating for the termination of Jordan's employment contract in terms of section 17(3)(a) of the Public Service Act¹³ (PSA). The request was escalated to the Secretary General (SG) of the OCJ.

¹² Unlike previous communications, this letter and the ones that followed were on the OCJ letterhead.

¹³ Act 103 of 1994, which provides as follows:

(3) (a)(i) An employee, other than a member of the services or an educator or a member of the Intelligence Services, who absents himself or herself from his or her official duties without permission of his or her head of department, office or institution for a period exceeding one calendar month, shall be deemed to have been dismissed from the public service on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.

- [34] On 1 December 2020, the Law Researchers collectively wrote to the Chairperson of the Researchers Committee, raising several concerns, including the unequal and preferential treatment of Jordan, as he had been allowed to work from home, and that the promised disciplinary action against him had not materialised. Other concerns involved how Premasagar had treated some of them.
- [35] On 4 December 2020, Jordan contacted Premasagar regarding his performance review, which he submitted on 6 October 2020.
- [36] On 11 December 2020, Jordan received a letter stating that his salary would be stopped effective from 1 December 2020. On the same day, Jordan responded, questioning the decision and explaining that he had been attending to his official duties from home. He did not receive any reply.
- [37] On 23 December 2020, the SG of the OCJ approved the request to end Jordan's employment contract. Jordan was not informed of the decision at the time and only learned of it after he had resigned.
- [38] On 30 December 2020, Jordan wrote to the Deputy Director and the Assistant Director of Human Resource (HR) Management, noting that he had not received a response to his letter dated 11 December 2020. He also informed them that (i) he had been performing his duties, (ii) no performance issues had been raised, (iii) he had not been given an opportunity to be heard regarding the allegations made against him by Premasagar and Martin, and (iv) no one from HR had contacted him about his situation. Additionally, he challenged the decision to stop his salary while he had been working, without warning and on short notice, which he regarded as a breach of his contract. He further recorded this:

'3. Please see to it that my salary, along with any benefits that might be applicable, is fully reinstated with effect from 1 December 2020. If this is not done by the close of business on Thursday, 31 December 2020 i.e. 17h00 on the last working day of this year, I will be approaching the relevant forum for appropriate redress.

4. It bears repeating that I continued to tender my services (as stated 1.1 above) notwithstanding the fact that I have not been remunerated.
5. Nothing in this email should be construed as a waiver or abandonment of any of my rights.'

[39] On 31 December 2020, Jordan resigned effective immediately, citing this as the reason:

'My decision is based solely on the myriad unlawful acts and omissions that I have endured in the last few months, culminating in the unlawful decision to withhold my salary, the effect of which has made continued employment intolerable.'

[40] Although he had resigned, Jordan continued to stay in contact with some Judges and helped with the tasks he was asked to assist with.

[41] On 29 January 2021, Jordan referred a dispute to the Bargaining Council. After failed conciliation, it was arbitrated.

The arbitration proceedings and the award

[42] Jordan testified in support of his own case. He also called Ms Sibusisiwe Ndlela (Ndlela), a fellow Law Researcher, as his witness. Ndlela testified, among other things, that it was safe at the SCA and that the Law Researchers faced challenges with what they regarded as a toxic work environment. Ndlela also resigned from her position as a Law Researcher in December 2020.

[43] Premasagar and Martin testified for the OCJ.

[44] The filed transcript does not include Jordan's or Ndlela's evidence, only that of Premasagar and Martin. The Court was informed that the review application could be decided on the record before it and that the facts were, in any event, undisputed, but the parties disagreed on their interpretation.

[45] After summarising the evidence and outlining the test for constructive dismissal, the commissioner concluded that Jordan had resigned. He found that Jordan considered the instruction to return to the office during the

pandemic, and the non-payment of his December 2025 salary, to have created intolerable conditions. After referring to case authorities dealing with intolerable working conditions for the purpose of establishing whether an employee had been constructively dismissed, the commissioner found that Jordan did not refuse to work because of the risk of exposure to COVID-19, but that he refused to return to the office as he alleged that he would be exposed to COVID-19, and hence clause 48 of the June 2020 Regulations did not apply.¹⁴

[46] The commissioner then examined whether the OCJ adhered to the Regulations before requiring employees to return to the office. He responded affirmatively, stating that a health risk assessment was conducted and the risk was rated as low to medium. The commissioner also noted that Jordan did not physically attend the office to assess whether returning was unsafe. He concluded that instructing employees to return under those circumstances was reasonable, that it was not for Jordan to decide whether to obey it, and that Jordan was informed he was not a vulnerable person. He further determined that Jordan could have returned to the office to challenge the fairness of the instruction. Therefore, the commissioner stated that resignation was not the only option, as Jordan could have also raised his concerns with the Department of Employment and Labour.

[47] Regarding the stoppage of his salary, the commissioner concluded that Jordan could have sought relief from the relevant forum rather than resigning and claiming constructive dismissal.

[48] The commissioner concluded that Jordan failed to establish the existence of a dismissal.

The grounds of review

¹⁴ The provision deals with refusal to work when there is reasonable justification to an employee or a health and safety representative that there are circumstances that pose an imminent and serious risk of exposure to COVID-10. In such a case, the employee is required to reasonably notify the employer of the refusal, and the reasons, after which a compliance officer and the health and safety committee may endeavor to resolve the issue. The provision also states that no employee may be dismissed for refusing to work as contemplated in clause 48, and that any dispute may be referred to the CCMA for arbitration.

[49] The founding affidavit sets out the grounds of review broadly, as:

49.1 The commissioner disregarded the nature and extent of the inquiry he was required to conduct, given the issues in dispute, and exceeded his powers.

49.2 Ignoring and disregarding material evidence presented by the applicant during the arbitration.

49.3 Ignoring and disregarding the argument by the applicant's representative.

49.4 Accepting and relying on material evidence that was not relevant to the inquiry.

49.5 Reaching conclusions which were not rationally connected to the material and evidence that was before him and which no reasonable arbitrator in this position would or could have arrived at.

49.6 Determining disputes based on fundamentally erroneous interpretations of the issues and disputes, therefore rendering the award materially defective.

[50] Specifically, Jordan challenges the commissioner's decision that he was not constructively dismissed, arguing that it is incorrect. He cited the case authority of *Solid Doors Pty Ltd v Commissioner T Theron and Others*¹⁵ (*Solid Doors*), which outlines the three requirements for constructive dismissal. He also cited *Pretoria for the Care of the Retarded v Loots*¹⁶ (*Loots*), arguing that it established the principle that an employee may resign if they believe the employer will never reform or abandon the pattern of creating an unbearable environment. Additionally, he pointed out that *Sanlam Life Insurance Ltd v Mogomatsi & Others*¹⁷ (*Mogomatsi*), determined that an employee does not need to prove they had no choice but to resign, only that the employer's actions made continued employment intolerable. Also citing *Mafomane v Rustenburg Platinum Mines Ltd*¹⁸ (*Mafomane*), he submitted that the test for

¹⁵ (2004) 25 ILJ 2337 (LAC).

¹⁶ (1997) 18 ILJ 981 (LAC).

¹⁷ (2023) 44 ILJ 2516 (LAC).

¹⁸ [2003] 10 BLLR 999 (LC).

whether a person cannot 'reasonably' be required to endure intolerable continued employment is an objective one.

- [51] Jordan contends that there was no communication from Premasagar to resolve the 'issues in dispute, despite the Applicant's repeated requests for clarification of Ms Premasagar's reasoning', and that there was also no communication from Martin.
- [52] The further submission was that, based on the facts, it was clear there was a significant disconnect between Jordan's supervisors and the HR department, as well as between the supervisors and the Judges who benefited from his work.
- [53] Relying on a decision of this Court in *Aquarian Lifestyle Trading (Pty) Ltd t/a Vespa South Africa v CCMA and others*¹⁹ (*Aquarian Lifestyle*), it was submitted that Premasagar and Martin could have done more to maintain the working relationship. It was contended that they could have engaged Jordan in proper consultation rather than simply ignoring his concerns, or initiated disciplinary proceedings against him rather than merely threatening him. The commissioner is said to have committed a fundamental error by finding that Jordan's supervisor's conduct could not have rendered continued employment intolerable.
- [54] The submission was also that section 17 of the PSA could not be relied upon to terminate Jordan's employment, as this was not the third respondent's case and not pleaded by the applicant.²⁰ It was also argued that HR stopped Jordan's salary even before the SG of the OCJ approved the request to terminate the contract.
- [55] The commissioner is also said to have committed the fundamental error of considering whether the OCJ complied with the COVID-19 Regulations, when this was not the issue. According to Jordan, the issue was whether the OCJ addressed his concerns fairly and appropriately before stopping his salary while he was still carrying out his duties. It was also submitted that the

¹⁹ [2024] JOL 65500 (LC).

²⁰ It is unclear what pleadings are being referred to.

commissioner's findings regarding workplace safety were irrelevant because Jordan did not resign for that reason.

[56] The heads of argument filed on behalf of Jordan also state the following:

‘69. But most importantly, the non-payment and/or refusal by the Third Respondent in December 2022 pay the applicant’s salary- coupled with the total lack of any communication by the Applicant’s supervisors in the HR department- made the applicant’s continued employment intolerable.

70. It is submitted that the Third Respondent was not performing its most important reciprocal obligation in terms of the employment contract, that is, to pay the salary of the applicant and therefore, in fact, committed a breach of contract that went to the root of the employment relationship and the continuation thereof.’

[57] For the submission that non-payment of a salary makes continued employment intolerable, reliance was placed on *Eagleton and others v You Asked Services (Pty) Ltd*²¹ (*Eagleton*). A related submission was that the commissioner placed the burden on Jordan to resolve the salary stoppage, when the law did not impose such an obligation on an employee, and that *Eagleton* found that an employee can choose to resign if their salary is not paid.

[58] Ultimately, it was submitted that the commissioner ought to have found that Jordan was constructively dismissed, and that the dismissal was substantively and procedurally unfair due to the material breach of the employment contract, thus the award is reviewable.

Legal principles

[59] The Labour Relations Act²² (LRA), defines what constitutes a dismissal, and where the onus lies in dismissal cases.

[60] Dismissal is defined as, inter alia:

²¹ (2009) 30 ILJ 320 (LC).

²² Act 66 of 1995, as amended.

‘186 Meaning of dismissal and unfair labour practice

(1) 'Dismissal' means that-

(e) an *employee* terminated employment with or without notice because the employer made continued employment intolerable for the *employee*;

[61] As regards onus, the LRA states as follows:

‘192 Onus in dismissal disputes

(1) In any proceedings concerning any dismissal, the employee must establish the existence of the dismissal.

(2) If the existence of the dismissal is established, the employer must prove that the dismissal is fair.’

[62] When a dispute over a dismissal arises, the Bargaining Council (or the CCMA) must determine whether a dismissal occurred. This is because, unless there was a dismissal, the Bargaining Council lacks jurisdiction to arbitrate the dispute. The Bargaining Council makes the finding that it has jurisdiction for convenience, and, on review, this Court determines, *de novo*, whether the Bargaining Council’s finding was correct.²³ Therefore, on review, the Court considers all the material presented to the commissioner at the Bargaining Council and decides *de novo* whether a dismissal occurred.

[63] Where an employee resigns voluntarily, there is no dismissal, and in such cases, the Bargaining Council would lack jurisdiction to determine that dispute.

[64] However, if an employee resigns involuntarily because the employer has made continued employment intolerable, this counts as a dismissal. In such cases, the employee must demonstrate that the employer has rendered continued employment intolerable. If the employee fails to do so, the conclusion must be that there was no dismissal. Conversely, if the employee proves that the employer has made continued employment intolerable, then a dismissal has occurred.

²³ SA Rugby Players Association & Others v SA Rugby (Pty) Ltd & Others (2008) 29 ILJ 2218 (LAC) para 39 and 40.

[65] In *Maleka v Boyce N.O and Others*²⁴ (*Maleka*), the Constitutional Court outlined the review test in constructive dismissal matters as follows:

[55] The question on review therefore is whether, objectively speaking, the employee was constructively dismissed. A finding that an employee has been constructively dismissed is a matter of fact and the test to be applied, as correctly held by the Labour Court in this matter, is an objective one that is concerned with correctness and not reasonableness, because the question “whether an employee has been dismissed” rests on the jurisdiction of the CCMA.’

[66] To establish whether an employee was constructively dismissed, three conditions must be met. The first is that the employee must have terminated the employment. The second is that employment was terminated because the employee found ongoing employment intolerable. The third is that the employer made continued employment intolerable. In *Solid Doors*, the Labour Appeal Court confirmed that all three conditions must be present for a successful claim of constructive dismissal.

[67] In *Strategic Liquor Services v Mvumbi NO & Others*²⁵ (*Strategic Liquours*), it was stated that an employee need not prove that they had no choice but to resign, only that the employer’s conduct was such that an employee could not reasonably be expected to cope with it.

[68] In *Loots*, the Court stated that continued employment becomes intolerable if an employee still wants to work, but the situation becomes so unbearable that they can no longer do so and believe the employer will never reform.

[69] Intolerable means beyond that which can be tolerated, or endured, or insufferable, too great to bear, not to be put up with, and beyond the limits of intolerance. (See *Solidarity on Behalf of van Tonder v Armaments Corporation of SA (Soc) Ltd & Others*²⁶ (*Solidarity obo Van Tonder*)).

²⁴ (CCT 175/23) [2026] ZACC 7 (24 February 2026).

²⁵ (2009) 30 ILJ 1526 (CC) at para 4 and *Murray v Minister of Defence* (2008) 29 ILJ 1369 (SCA); [2008] 3 All SA 66 (SCA); at paras 12 and 67.

²⁶ (2019) 40 ILJ 1539 (LAC).

[70] In *Maleka*²⁷, the Court also referred to conduct by the employer that constitutes the last straw or breaks the camel's back. This describes conduct that causes an employee to decide they cannot continue working beyond that point. Whether an employee's situation has reached this point must be assessed objectively, not based on the employee's personal views. In *Maleka*, the Court stated that the threshold is high:

'[74] This is to avoid an unhealthy situation in a workplace where employees, who have become disgruntled and dissatisfied for flimsy reasons, would simply walk out and thereafter claim a constructive dismissal.'

[71] An employer can be considered to have constructively dismissed an employee only if it is responsible for the situation the employee finds intolerable. In *Loots*, the Court stated the following:

'The enquiry then becomes whether the appellant, without reasonable and proper cause conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. It is not necessary to show that the employer intended any repudiation of the contract; the court's function is to look at the employers conduct as a whole and to determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.' (My underlining)

Analysis

[72] It is not disputed that Jordan resigned. The next question is whether he resigned due to intolerable working conditions, and if so, whether the OCJ is culpable or responsible for those conditions.

[73] Jordan states that he resigned because of '*the myriad of unlawful acts and omissions that he had to endure, culminating in the unlawful decision to withhold his salary,*' which rendered continued employment intolerable. Therefore, the question is whether, objectively, Jordan was subjected to a myriad of unlawful acts, culminating in the stoppage of his salary, and whether this rendered continued employment intolerable.

²⁷ Para 104.

Unlawful acts before salary stoppage

[74] As I understand Jordan's case, the alleged numerous unlawful acts mentioned relate to the instruction to return to the office and the supposed lack of communication from Premasagar and Martin, with the stoppage of the salary as the final straw.

[75] Consequently, the first question is whether Jordan was subjected to unlawful acts, starting with the instruction to report for duty at the offices. Right from the start, I must say that Jordan's case on this is hard to follow, as he seems to waver. As I understand, he presents three mutually exclusive positions that cannot all be true at once.

[76] The first argument is that the instruction to return to work was unlawful because it breached the Regulations. He also criticises the commissioner for ruling that the instruction to report to the office was lawful, when, according to Jordan, this was not a matter the commissioner needed to decide. Furthermore, there is the argument that he did not dispute the lawfulness of the instruction to report to the office. These three arguments cannot all be true simultaneously.

[77] I start with the contention that the commissioner determined an issue that was not before him. One of the grounds of review is that the commissioner considered whether the OCJ complied with the COVID-19 Regulations, even though this was not the issue. According to Jordan, the issue was whether the OCJ addressed his concerns fairly and appropriately before ceasing his salary while he was still performing his duties. Is there merit to this contention?

[78] The referral form²⁸ records as follows:

'I have essentially been denied remuneration because of my clear decision to comply with the Regulations issued under the Disaster Management Act and continue working remotely because that is what the regulations require

²⁸ In the pre-arbitration minute, the parties agreed that the referral form was the Statement of Case.

from 'all persons were able to work from home'. The underlying reason for withholding my salary is thus unfair and unlawful.'²⁹

- [79] The pre-arbitration minute also noted that the commissioner was tasked with deciding whether the instruction for Jordan (and all Law Researchers) to return to the office was lawful.
- [80] In the heads of argument submitted on behalf of Jordan, the narrative that the instruction was unlawful is maintained. It was argued that the OCJ failed to comply with the COVID-19 Regulations. The June 2020 Regulations that are alleged to have been contravened or not adhered to are Regulations 17 (which concerns conducting a risk assessment before reopening a workplace), Regulation 18 (which sets out what is required in a risk assessment plan), Regulation 44 (dealing with ventilation), and Regulations 52 - 54 (which specify what employers are not permitted to do when an employee refuses to work out of fear of exposure to COVID-19). The October 2020 Regulations that the OCJ is alleged not to have complied with are Regulations 3–5 (covering sanitisers, disinfectants, and handwashing) and Regulations 9–10 (dealing with measures for workplaces accessible to the public and ventilation). There was also alleged non-compliance with Regulations 14(6) - (7) and 15.
- [81] If non-compliance with the Regulations was not an issue and the commissioner should not have addressed the lawfulness of the instruction to report to the Bloemfontein offices, why do the heads of argument dedicate so much time to the Regulations that were allegedly contravened? During oral argument, considerable time was also spent specifying and emphasising the Regulations that were supposedly not followed. It is because the lawfulness of the instruction to physically report for duty in Bloemfontein was significant in Jordan's case before the commissioner, who was obliged to consider whether the contention had merit. He determined that the instruction was lawful and that the Regulations had not been contravened. The Court agrees with that conclusion and sees no need to address each Regulation allegedly not

²⁹ The Annexure to the referral form makes the same argument that the instruction to physically report at the Bloemfontein offices was unlawful, given Jordan's interpretation of the COVID-19 Regulations.

complied with, except for Regulation 49, which the commissioner also considered in the award, and the Regulation regarding the 80/20% rule.

- [82] It was submitted that in his correspondence to Premsagar and Martin, Jordan had expressed his reservations about returning to work, and that Regulation 49 of the June 2020 Regulations stated as follows:

‘An employee who has refused to perform work in terms of clause 48 must , as soon as is reasonably practicable notify the employer either personally or through a health and safety representative of the refusal and the reason for the refusal. Every employer must, after consultation with the compliance officer and any health and safety committee, endeavour to resolve any issue that may arise from the exercise of the rights in terms of clause 48.’

- [83] I agree with the commissioner’s finding that this Regulation was irrelevant, since Jordan’s case was that he did not refuse to work. In fact, his situation was the opposite. His case was that he continued working until 25 December 2020, whereas the cited Regulation applied to employees who refused to work.

- [84] Circular 15 of 2020 clearly stated that 80% of employees would report to the offices, while the remaining 20% would work from home. The Circular also specified that this arrangement would be implemented on a rotational basis, which was fair. Furthermore, it included an exception for vulnerable employees. However, Jordan misinterpreted this instruction to mean he fell into the 20% category, even though he was not a vulnerable employee, which led his fellow researchers to complain that he was receiving preferential treatment. The instruction to report to the office was lawful.

- [85] As I have already established, both before the commissioner and during these proceedings, Jordan highlighted the unlawfulness of the instruction, which he argued contravened the Regulations. However, in his detailed email of 7 September 2020, part of which was reproduced in the chronology, Jordan stated that he was not disputing the lawfulness of the instruction to return to the office. In these proceedings, one of the grounds of review is that the commissioner should not have determined whether the OCJ complied with the Regulations in instructing employees to return, because the real issue was

whether Jordan had been treated fairly and whether his concerns had been properly addressed. I mention these two issues only to support the earlier observation that Jordan's case regarding the lawfulness or otherwise of the instruction to return to work is difficult to follow.

- [86] The instruction was lawful. Jordan did not comply because, in his own words, he was uncomfortable returning to the office and chose to work from home. He felt comfortable and continued working from home until the OCJ withdrew the salary, an issue discussed below. It is difficult to understand the supposed intolerable conditions that the OCJ created for Jordan, and how the OCJ was required to, and failed to, reform.
- [87] Jordan's genuine frustration with Premasagar and Martin arose from their refusal to engage with his interpretation of the Regulations. Although he knew they disagreed with his views, he wanted to hold a moot court with his seniors to hear their opinions. Premasagar and Martin were not obliged to debate or share their interpretations of the Regulations, and their lack of engagement did not amount to a failure to communicate or assist Jordan, as argued. It is incorrect to say that Premasagar failed to communicate with Jordan. He communicated, but not on the issue Jordan wished him to address. What assistance Jordan needed from them remains unclear, and why this lack of support made continued employment intolerable for him is also difficult to understand.
- [88] Relying on the decision in *Aquarian Lifestyle* to argue that Premasagar and Martin could have properly consulted Jordan rather than dismissing his concerns or could have initiated disciplinary proceedings instead of merely threatening him, does not assist Jordan's case. This is because, in *Aquarian Lifestyle*, Manewick was laid off during COVID-19. When she wrote to the company demanding, inter alia, that she be allowed to return to work, the employer proposed implementing rotational shifts and invited the employee to provide information about them. She responded with her proposals, which included payment of a retrenchment package if the company still faced financial difficulties. For a month, the employer did not respond, and she resigned, claiming constructive dismissal. The commissioner upheld the

constructive dismissal claim, and on review, this Court refused to interfere with that finding, reasoning as follows.

[31] What is apparent from the facts is that Marnewick was not consulted by the Company during the tumultuous period in which it, like all other employers, found themselves. It acted for instance on a frolic without consultation/engagement with Marnewick, acted egregiously in misrepresenting the basis of qualification of the TERS benefit to induce a layoff agreement, failed to respond to a counter-proposal made by Marnewick in the grievance process, had another employee take on her responsibilities and in effect kept Marnewick at a distance at a time when it should have engaged her to keep her apprised of its financial position and its impact on staff which ostensibly justified its difficult position. This would have been a reasonable approach taken by the Company. Yet this is not how management conducted the business at the time.'

[89] Manewick's circumstances are not comparable to those of Jordan. It cannot be seriously argued that Premasagar and Martin's refusal to engage with Jordan's interpretation of the Regulations created an intolerable work environment for Jordan. I have already established that Premasagar and Martin (or even HR) did not have to respond to Jordan's letters, and their refusal or failure to respond was reasonable, unlike what happened with Manewick.

[90] Nor can it be claimed that the OCJ's failure to initiate disciplinary proceedings against Jordan rendered the working environment intolerable. In fact, the opposite is likely true.

[91] If Jordan genuinely thought that Premasagar and Martin were treating him unfairly, he could have lodged a grievance against them. His failure to do so indicates an acceptance that they had done nothing wrong. The objective test for constructive dismissal is simply not satisfied.

[92] In conclusion on this issue, frankly, Jordan's frustrations with Premasagar and Martin were misplaced, as they did not author the Circulars instructing employees to return to work. The decision had been made higher up, and therefore Jordan was 'barking up the wrong tree'.

Salary stoppage

[93] After Jordan refused to comply with the instruction to return to the office on 1 September 2020, he was informed that any days he failed to report for duty would be treated as unpaid leave. Despite this, his salary continued to be paid until the end of November 2020.

[94] Even if an argument could be made that the salary stoppage in December 2020 was unlawful and constituted a breach of contract, this does not mean that Jordan was constructively dismissed. In *Maleka*, the Court stated this:

[73] In my view, intolerability means something more than just conduct (on the part of the employer) or working conditions, which simply result in difficult, unpleasant or stressful situations for the employee. It would not be enough that the employer's conduct is merely rude, uncompromising or unbecoming. Likewise, "even a breach of the employment contract, deductions from salary, or unfair disciplinary actions would not per se establish intolerability". The employee would need to show that such conduct is characterised by what can objectively be construed as unendurable or agonising and he or she must show that the perpetrator is their employer. In other words, it must be clear that the employer's conduct was the cause for complaint and that it brought the employee's tolerance to a breaking point. This position is consistent with what has been followed by the labour courts since *Solidarity*.³⁰ (My underlining).

[95] In stating the above, the Constitutional Court was endorsing the approach in *HC Heat Exchangers (Pty) Ltd v Araujo and others*³⁰ (*HC Heat Exchangers*), that breach of a contract, on its own, does not make continued employment intolerable. More is required.

[96] I have reviewed the paragraph from the *Eagleton* decision, cited in Jordan's heads of argument, which he interprets as holding that an unpaid employee may terminate the contract by resigning; otherwise, they cannot claim constructive dismissal. The Court in *Eagleton* based its statement on *Coetzee*

³⁰ [2020] 3 BLLR 280 (LC).

& Another v Pitani (Pty) Ltd t/a Pitani Electrification Projects & Others (Coetzee).³¹ The relevant portion of the *Coetzee* judgment is as follows:

[50] Should an employer that contemplates dismissing employees not consult with the affected employees in terms of the duty to do so contained in s 189 of the LRA, the employer is acting in a manifestly unfair manner towards them. Should such an employer then further exacerbate matters by committing a breach of contract that goes to the root of the employment contract, it may very well be that the affected employees are being placed in an invidious position.

[51] Such employees can, of course, elect to accept the breach of contract and cancel or terminate the contract of their own accord and claim contractual damages. More important, however, is the fact that such employees may become entitled to claim constructive dismissal in terms of s 186(e) of the LRA.

[52] This subsection defines dismissal as follows (and I quote): 'an employee terminated the contract of employment with or without notice because the employer made continued employment intolerable for the employee'. It would appear that breach of contract by the employer (even when going to the root of the employment contract) may usually not be sufficient, in itself, to make continued employment 'intolerable', because the requirement of 'intolerability' appears to set a higher test than that of breach of contract per se. However, in my view, such breach would be a very important factor in assessing the intolerability of continued employment. Coupled with unfair actions of the employer, for instance, in the form of a breach of the statutory duties contained in s 189 of the LRA, circumstances may very well arise where all of these factors combined make continued employment intolerable, thereby giving rise to a claim of constructive dismissal in terms of 186(e).' (My underlining)

[97] Therefore, *Coetzee* does not establish a principle that an employee who is not paid a salary can simply resign and claim constructive dismissal. *Coetzee* echoes the Court's statement in *Maleka*, that the non-payment of salary per se does not make continued employment intolerable, and that there must be

³¹ (2000) 21 ILJ 1324 (LC).

other unfair conduct by the employer, as the test for constructive dismissal is high.

[98] The correct interpretation of *Eagleton* is that an employee who is not paid a salary and wishes to claim constructive dismissal must first resign. This is the first of the three requirements in a constructive dismissal claim. Whether the employee will succeed with the claim depends on whether the other two requirements for a constructive dismissal, as discussed earlier in the judgment, have also been satisfied.

[99] In *Albany Bakeries Ltd v Van Wyk & Others*³² (*Albany Bakeries*), the Court clarified the relationship between breaches of contract and constructive dismissal as follows:

[24] If the demotion is a repudiation which would entitle the employee to cancel the contract, but does not amount to making life intolerable, it is insufficient; if it is sufficient to make life intolerable, it is relevant.'

[26] It seems that counsel for the appellant, Mr *Wesley*, is correct in submitting that the court a quo erred, firstly, by holding that the right question to ask was whether demotion constituted a repudiation, which allowed cancellation. Secondly, the court erred in holding that, if the test was couched in those common-law terms, it constituted a dismissal, in the absence of such rendering the work relationship intolerable.'

[100] It follows that an employee who resigns solely because they have not been paid their salary will find it difficult to prove a case of constructive dismissal.

[101] Therefore, the fact that Jordan's salary was withheld, even if it constitutes a breach of contract, does not, on its own, suffice to establish constructive dismissal. The supplementary submissions made by the parties at the Court's request, which addressed whether an employer can withhold salary for

³² (2005) 26 ILJ 2142 (LAC).

misconduct, did not contribute to resolving the central legal issue, which was already settled by the case authorities cited above.

[102] The salary stoppage was caused by Jordan's refusal to return to the office, and the OCJ cannot be deemed culpable or to have acted without reasonable or proper cause, as the instruction to return to work was lawful.

[103] All Law Researchers obeyed the lawful instruction to return to work, except Jordan. His refusal to comply with an instruction applicable to all Law Researchers and the cessation of his salary cannot serve as a basis for claiming he was constructively dismissed. In *Mogomatsi*, the Court stated this:

'[44] An employee should not be allowed to rely on the fact that certain rules which apply to all employees, frustrate, irritate or do not suit him or her as the basis for a claim of constructive dismissal.'

[104] Additionally, Jordan had recourse if he believed that his salary was unlawfully terminated. In *Albany Bakeries* the Court stated this:

'[28] ...Secondly, from the very concept of intolerability one must conclude that it does not exist if there is a practical or legal solution to the allegedly oppressive conduct.'

[105] There was a legal option to challenge Jordan's salary termination. If he genuinely believed there was no lawful basis for the salary stoppage, he should have taken that route instead of resigning. Those would have been the proper procedures to contest the decision as unlawful, especially since it was made before the SG approved the request to end his salary, as Jordan points out. The decision to resign must have been informed by the realisation that the OCJ had a valid and lawful reason for stopping the salary.

[106] Also, not receiving a response to a demand to explain why the salary was stopped does not make continued employment intolerable.

Miscellaneous issues raised by Jordan

[107] The supposed disconnect between Jordan's supervisors and HR, and between his supervisors and the Judges, is irrelevant to the evaluation of

whether Jordan was constructively dismissed. If anything, the fact that Jordan continued to perform tasks assigned by the Judges after his resignation weakens his claim that continued employment had become intolerable.

[108] Another irrelevant submission by Jordan is that the OCJ could not rely on the PSA to terminate his employment. The argument is irrelevant because it was common cause that Jordan resigned, not that his employment was terminated under the PSA. It is Jordan, not the OCJ, who ended the employment relationship.

[109] Insofar as the commissioner is criticised for stating that resignation must be a measure of last resort, the most recent decision of the Constitutional Court, in *Maleka*, also held that resignation must be a measure of last resort.³³ In *Strategic Liquors*, the Constitutional Court stated that the test is not whether the employee had no choice but to resign, but rather that an employer rendered continued employment intolerable.³⁴ Whether the two decisions conflict is an issue that falls outside the scope of this judgment. For the purposes of this judgment, it suffices to state that the test applied by the commissioner finds support in several Labour Appeal Court decisions as well as *Maleka*.

Conclusion

[110] Premsagar and Martin's arguments that Jordan was disrespectful and insubordinate in his communications have merit. The overall impression is that Jordan was determined to continue resisting the instruction to return to work and 'wait and see'. When his demand that HR respond to him by 17H00 on 31 December 2020 was ignored, he threw a tantrum and resigned. This occurred despite him having stated that he would seek relief from the appropriate forum if his salary was stopped.

³³ At para 74 (majority judgment) and para 145 (minority judgment). See also *Albany Bakeries* para 27.

³⁴ Para 4, citing *Murray v Minister of Defence* [2008] ZASCA 44; (2008) 29 ILJ 1369 (SCA); [2008] 3 All SA 66 (SCA); [2008] 6 BCLR 513 (SCA) paras 12 and 67.

- [111] The OCJ did not create an intolerable working situation for Jordan. Whatever understanding Jordan had of the Regulations, or what had been said on national television by labour law experts, employees take instructions from their employers unless the instruction is shown to be unlawful. The instruction to report for duty to the offices was not unlawful.
- [112] That his salary was ultimately stopped in December 2020 did not create an intolerable working situation because, since September 2020, he was informed that his failure to report to the office would be treated as unpaid leave. He ignored the warnings, somewhat confident that the threat would not be carried out. That it took months for the salary stoppage to be implemented did not mean the threat was withdrawn. The salary stoppage would not have been a surprise because, since October 2020, Jordan had been excluded from emails and had not been assigned any work by his supervisor. That he received work from the Judges did not change the fact that Jordan's direct supervisors drew the line in the sand and ensured that Jordan faced the consequences of his actions. Jordan was the author of his own misfortune.
- [113] The OCJ had a choice in how it responded to Jordan's conduct. It was not limited to instituting disciplinary proceedings against Jordan. It could suspend the salary as it did, and as already stated above, if Jordan believed the decision was unlawful, he was not without remedy. Resigning and claiming constructive dismissal were poor decisions on his part.
- [114] Although the Court determined the matter *de novo*, there is no merit to the contentions that the commissioner's analysis of the evidence and arguments appears to have ignored relevant and material evidence placed before him, and that the award does not show a relational connection between the material presented and the conclusion reached. There is also no substance in the criticism of the commissioner's handling of the evidence, as there were no disputes of fact.
- [115] Even if the finding that there was no dismissal is incorrect, and it is found that all three requirements for constructive dismissal were satisfied, a further question must still be asked, namely whether the dismissal was fair,

substantively. On the facts of this matter, if there was a dismissal, it was for a fair reason.

Costs

[116] The parties sought costs against each other. In the Court's discretion, a costs order in accordance with the requirements of law and fairness, as provided in section 162 of the LRA, is for each party to pay its own costs.

[117] In the result, the following order is made:

Order

1. The review application is dismissed.
2. There is no order as to costs.

T. Gandidze
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate MA McChesney
Instructed by:	N Barnaschone of Barnaschone Attorneys

For the Respondent:	Advocate MJ Merabe
Instructed by:	Acting Deputy State Attorney