



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 2208/19

In the matter between:

THABO MOTONGOE

Applicant

and

COLAS SOUTH AFRICA (PTY) LTD

First Respondent

RONEL DE WET N.O.

Second Respondent

**NATIONAL BARGAINING COUNCIL FOR
THE CIVIL ENGINEERING INDUSTRY**

Third Respondent

Heard: 26 February 2026

Delivered: 30 March 2026

JUDGMENT

NAIDOO, AJ

Introduction

[1] The applicant, Mr Thabo Motingoe (Motingoe), seeks to review and set aside an award dated 16 August 2019, wherein the second respondent (arbitrator)

found that Motingoe failed to establish a reasonable expectation that his fixed-term contract would be renewed and therefore failed to establish a dismissal.

- [2] The first respondent, Colas South Africa (Pty) Ltd (Colas), filed an answering affidavit, however Motingoe's attorney at the time objected to the late filing of Colas' answering affidavit. This called on Colas to file a condonation application in this regard.
- [3] Colas has not filed a condonation application, nor were they represented at the hearing despite their attorney receiving the notice of set down on 12 June 2025.
- [4] The review application continued in default. Motingoe was not represented at the hearing and advised the Court that he was not in a position to continue funding his erstwhile attorney. Fortunately, for both Motingoe and the Court, his attorney did file heads of argument.

Background

- [5] In 2017, Colas retrenched Motingoe together with other employees. However, a Mr F. van Wyk informed Motingoe that his retrenchment was in error and requested that Motingoe continue to perform his normal duties.
- [6] Van Wyk further advised Motingoe that he would be placed on a fixed-term contract until the error was corrected, after which he would continue as a permanent employee.
- [7] From that day and for the reason mentioned, Motingoe entered into various fixed-term contracts with Colas. From 1 September 2018 to 28 February 2019, Motingoe continued to render services but refused to sign any further fixed-term contracts for that period, whereafter he was informed that his fixed-term contract had ended.
- [8] At proceedings before the arbitrator, Colas did not materially dispute these facts, save for the allegation made by Mr Lucas (Lucas) at arbitration that Motingoe was working under a fixed-term contract until his last contract came to an end. In this regard, Lucas testified that while Motingoe initially refused to

sign a further fixed-term contract, he was given the choice of either signing the same or leaving Colas's employ. According to Lucas, Motingoe chose to continue working for Colas.

- [9] Lucas further testified that the department Motingoe worked in had no work, and that was the reason Colas did not renew Motingoe's contract.
- [10] In rejecting Motingoe's argument that Colas breached s198B(6)(a) and (b) of the LRA, in that they neither renewed Motingoe's contract in writing nor did they included a written reason why he was placed on a fixed-term contract, as contemplated in s198B(3), the arbitrator found that the relief Motingoe sought could not obtained in a s198B claim read together with s198D.
- [11] Turning to whether Motingoe established a reasonable expectation that his contract would be renewed or that he would be offered permanent employment, the arbitrator accepted the fact that Motingoe's fixed-term contract had been renewed on various occasions between November 2017 and February 2019, and, absent any material dispute from Colas, further accepted that Motingoe was promised permanent employment by van Wyk.
- [12] Somewhat confusingly, the arbitrator thereafter finds that Motingoe's subjective expectation to enter into a new fixed-term contract or be offered permanent employment did not meet an objective threshold. The arbitrator found that Lucas' evidence in relation to the option he gave Motingoe, namely either signing a further fixed-term contract or leaving, was left unchallenged and was 'fatal' to Motingoe's claim.

Review

- [13] Much of Motingoe's review application focused on why the arbitrator erred in her finding relating to s198B.
- [14] Motingoe's last ground on review was that it was common cause that Motingoe established a reasonable expectation as required in terms of s186(1)(b)(i) or (ii), and hence the arbitrator erred in this regard.

Analysis

- [15] I find it difficult to comprehend the circumstances in which an employee claims to be a permanent employee in terms of s198B(5) of the LRA and at the same time, claims to have a reasonable expectation that their contract would be renewed or offered permanent employment. The two claims appear mutually exclusive.
- [16] The arbitrator cannot be faulted for adopting the position she did.
- [17] It is trite that assessing whether an employee was dismissed in terms of s186(1)(b) goes to the jurisdiction of the third respondent and that a challenge on an arbitrator's finding on this score attracts the correctness-based test on review and not the reasonable decision maker test.
- [18] On a generous reading of his affidavit, Motingoe has established that he had a reasonable expectation that either his contract would be renewed on the same or similar conditions, alternatively, that he would be offered permanent employment. This expectation was premised on the fact that his contract had been renewed on various occasions prior, and/or on the utterances of van Wyk advising him he would be made permanent after the error of being retrenched had been addressed.
- [19] Without being in a position to consider Colas' answering affidavit for reasons mentioned, together with the fact that there appears to be conflicting reasons in the award why Colas terminated Motingoe's employment (either because there was no work for him or for reasons relating to misconduct in that he refused to sign a further fixed-term contract), this Court is not in a position to determine whether Motingoe's dismissal was fair or not. That issue will best be ventilated at arbitration.

Order

1. The second respondent's award is set aside and replaced with a finding that the applicant was dismissed in terms of s186(1)(b) of the LRA.

2. The issue of whether the applicant's dismissal was fair or not is remitted to the third respondent to be heard *de novo* before a commissioner other than the second respondent.
3. There is no order as to costs.

M Naidoo

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In person.

For the Respondent: No appearance.

LABOUR COURT