



(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 644/21

In the matter between:

MODJODJI BERNARD TEASE

Applicant

and

NOMUSA MBHELE N.O.

First Respondent

MOTOR INDUSTRY BARGAINING COUNCIL

DISPUTE RESOLUTION CENTRE

Second Respondent

MACCARTHY LTD T/A BIDVEST

MACCARTHY TOYOTA BRUMS

Third Respondent

Heard: 24 February 2026

Delivered: 30 March 2026

JUDGMENT

NAIDOO, AJ

Introduction

[1] The applicant, Mr Modjodji Bernard Tease (Modjodji), seeks to review and set aside an award dated 21 January 2021, wherein the first respondent

(arbitrator) found his dismissal substantively fair.

- [2] Modjodji's review application was filed outside the prescribed time frame. He has, however, offered a reasonable explanation for the full period of his delay, and having regard to the interest of justice, it would be appropriate for this Court to grant condonation.

Background

- [3] Modjodji was dismissed for assaulting a female co-worker, adopting a threatening attitude towards the same co-worker, and bringing the third respondent's name into disrepute.
- [4] At arbitration, Modjodji denied assaulting his co-worker and challenged the third respondent's version that his co-worker sought medical assistance after the alleged assault, opened a case of assault at the police station, as well as the version of another employee who witnessed the alleged assault.
- [5] Despite these challenges, the first respondent accepted the above evidence and found, on a balance of probabilities, that Modjodji was guilty of the charges he was dismissed for, following which, the arbitrator found his dismissal was substantively fair.

Grounds on Review

- [6] On review, Modjodji submits that the arbitrator erred in that she did not advise him of his right to;
- 6.1 Apply for legal representation at arbitration.
 - 6.2 The right to apply for a witness to be subpoenaed, and
 - 6.3 The right to request the arbitrator conduct an inspection in *loco*.
- [7] Modjodji argued that had the arbitrator explained these rights, he would have sought to subpoena a colleague, who, according to Modjodji, witnessed the events on the day and would have testified in support of his version. Additionally, Modjodji would have requested the arbitrator inspect the third

respondent's premises to assess whether or not the cameras, which, according to Modjodji, would have captured the incident and exonerated him, were inactive as alleged by the third respondent.

Analysis

- [8] Modjodji's grounds on review fall within the ambit of s145(2)(a)(ii) of the Labour Relations Act¹.
- [9] If an applicant can establish that an arbitrator conducted the process in a manner that deprived the applicant of their right to a fair hearing, that in itself would generally be sufficient to set aside the award on review, without this Court engaging in the reasonableness test.²
- [10] However, in *casu*, Modjodji's entire review application was underpinned by his version that he did not assault his co-worker. Calling a witness and requesting an inspection in *loco* would have both been undertaken to establish Modjodji's version.
- [11] In following this route, Modjodji overlooks the fact that in her award, and in relation to the second and third charges he was dismissed for, the arbitrator records the following;
- 'The Applicant did not dispute Ms Coetzer's evidence that he shouted at her, threatened and that the incident took place in the presence of customers. I find that the Respondent has proven on a balance of probabilities that the Applicant is guilty of the charges.'
- [12] Modjodji's representative confirmed that the above specific finding was not challenged on review and that the review application only addressed the first charge Modjodji was dismissed for.
- [13] For this reason, there is no need for this Court to assess and make any finding in respect of Modjodji's grounds on review. Even if this Court were to find that the arbitrator erred in failing to advise Modjodji of certain of his rights,

¹ Act 66 of 1995, as amended.

² *Baur Research CC v Commission for Conciliation, Mediation & Arbitration & others* (2014) 35 ILJ 1528 (LC).

the Court must nevertheless accept that Modjodji was guilty of the remaining charges for which he was dismissed, a finding which has not been challenged on review. To reiterate, it was never Modjodji's case in his review application that the witness he would have called or the footage he avers the third respondent is withholding, would have exonerated him in relation to the second and third charges he was dismissed for.

Order

1. The late filing of the applicant's review application is condoned.
2. The review application is dismissed.
3. There is no order as to costs.

M Naidoo

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. Justice Mmaolai

Instructed by: Mawezankogatsi Attorneys

For the Respondent: Av. Lee Masuku

Instructed by: Cliff Dekker Hofmeyer Inc

LABOUR COURT