



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



Signature

13 April 2026

Date

**THE LABOUR COURT OF SOUTH AFRICA
AT CAPE TOWN**

Case no: C640/2021

In the matter between:

PHUMIZILE MELVIN SINXADI

Applicant

and

**THE COMMISSION FOR CONCILIATION,
MEDIATION & ARBITRATION**

First Respondent

F A CRAFFORD N.O.

Second Respondent

DE STRAADT BOERDERY (PTY) LTD

Third Respondent

Heard: 29 April 2025

Delivered: 13 April 2026

Summary: (Review – Unopposed – dismissal for misconduct – failure to ensure compliance with safety rule governing employees on a tractor – disobeying a direct and general instruction on visiting a local clinic just for a check-up during Covid Level 5 lockdown)

JUDGMENT

LAGRANGE, J

Nature of the application

- [1] This application was previously removed from the roll to permit the applicant, Mr P Sinxadi ('Sinxadi') to amend the citation of the employer.
- [2] This is an unopposed review application of an arbitration award in which the arbitrator found that the applicant's dismissal for misconduct was substantively and procedurally fair. The application was not opposed because the employer party believed the review application had no prospects of success.
- [3] The applicant had been dismissed by the employer ('De Straadt') after it found him guilty of three charges, namely (a) inciting fellow employees (b) gross negligence relating to health and safety and (c) acting in breach of COVID regulations limiting movement. The arbitrator dismissed the first charge but upheld the remaining ones.

Brief background

- [4] For the sake of context a brief outline of events which led to Sinxadi's dismissal, which emerges from the evidence, is necessary.
- [5] Sinxadi was employed as a team leader in the employer's farming operation.
- [6] The first charge concerned telling employees they were not earning enough and encouraging them to approach management for an increase. The company wrongly believed this amounted to incitement.
- [7] The second charge concerned an injury suffered by another employee was sitting on a trailer being towed by a tractor Sinxadi was driving. As a result

of her injury she had to undergo physiotherapy and take time off. The employer argued that he did not take proper care when setting the tractor in motion that anyone on it was safe before moving off.

- [8] The third charge concerned him going to a medical clinic some 35 kms away during Covid level 5 regulations (the so-called 'hard lock-down'). To assist staff, De Straadt had arranged for medication to be delivered to them on the farm. This was because clinic visits were being limited except in cases of emergency. Sinxadi himself had explained the procedure to staff, but contrary to the communication he had made had left the farm to go to the clinic, in circumstances where his scheduled visit was just a routine follow up consultation. The human resource manager denied having been informed about him making a request to go the clinic, which he made to a junior manager. The junior manager testified that he told Sinxadi he could not go. There was nothing to suggest he was seriously ill and the farm was very busy as it was harvest time.
- [9] Sinxadi said he had been told to attend the clinic if he did not feel well and he had phoned the clinic, which had given him permission to visit on 1 April 2020, despite the lockdown. At the clinic he was advised he had a blood pressure issue and told to return two days later and see a nursing sister at another farm.
- [10] On the question of the injury suffered by the employee who had been on the tractor, he said he told staff daily to stay off the tractor when it was moving but it was a rule that was widely ignored. He could not understand how the employee could have been injured as the tractor moved slowly.
- [11] He claimed he had not been given enough opportunity at his disciplinary hearing to ask questions or obtain representation and the minute of the hearing, which indicated otherwise was not true.
- [12] A former general worker who testified for Sinxadi said that the normal practice when a tractor was to move was for the driver to wait for everyone to get off or to hoot, but in practice workers often stayed on the trailer despite the fact they were not supposed to be there.

Award

- [13] The arbitrator's reasoning is set out briefly below.
- [14] He dismissed the incitement charge, though he found, contrary to Sinxadi's testimony, that he had indeed spoken to his fellow foreman about their salaries. In the absence of any evidence of them embarking on some form of unprotected industrial action his conduct did not amount to incitement. The arbitrator nonetheless found Sinxadi's denial he had spoken with them implausible and that this reflected badly on his credibility.
- [15] On the question of his visit to the clinic, the arbitrator found that if his condition was serious he could have asked for transport to the clinic and he knew that in exceptional and serious circumstances employees could go to the clinic but he did not motivate his need to go to the clinic in such terms. He also found Sinxadi did not provide any corroboration for his claim that he had obtained permission from the clinic to make the visit. His refusal to comply with his manager's instruction not to go, was an act of defiance. Moreover, it was not disputed that the clinic visit was a standard follow up appointment, not an emergency. It was understandable, in the circumstances, that the employer was concerned about his conduct especially as he had been the person who had conveyed the limitation on clinic visits to staff. The arbitrator concluded that this was indicative of his general attitude to rules and regulations which also reflected on the way he conducted himself in relation to the incident in which an employee was injured.
- [16] On the charge of gross negligence relating to the injury, the arbitrator found that the employee had been injured when Sinxadi was reversing and she was still working on the trailer. He had testified that the rule workers should disembark from the trailer was ignored in practice during the harvesting season. He noted his testimony that he claimed he told workers daily how they should behave on the trailer and get off it when it was going to move. His own witness made it clear it was the driver's responsibility to ensure everyone was off the trailer before moving it, though he later said that workers did hang on to crates when the tractor moved despite the rule

requiring them to alight. Sinxadi's manager also confirmed the rule and the driver's responsibility to see that workers complied with it.

- [17] Given that Sinxadi was a Health and Safety officer, the arbitrator found it was inexplicable that he would tolerate the practice of workers remaining on the trailer especially if he warned them daily not to. As a team leader and driver he should not have allowed the practice. Contrary to his claim that he told workers daily to disembark before the tractor moved, his other witness testified that he told them not to get off the trailer while it was moving. As to his claim there were blind spots at the back of the tractor, that was all the more reason for him to have verified nobody was on it. Given his position he should have reported the impermissible practice rather than perpetuating it and was guilty of gross negligence.
- [18] The arbitrator concluded that, in the circumstances, it was not unreasonable of De Straadt to have dismissed him. He had a duty to carry out his obligations in a responsible manner and had failed to do so. The arbitrator was plainly influenced in his assessment of the seriousness of the misconduct by the fact that Sinxadi fulfilled responsible roles as a driver, team leader and health and safety officer and yet did not comply with rules himself. It should be mentioned that even though it was not a charge, there was evidence that in the past his supervision of subordinates had been lax.
- [19] On the claim that his dismissal had been procedurally unfair, the arbitrator noted that he failed to cross examine the chairperson about the alleged irregularities and did not challenge the chairperson's testimony that Sinxadi had initially requested a representative, but on the day of the enquiry no longer required one. He also did not dispute the chairperson's testimony that he had a good command of English and Afrikaans and acted as an interpreter for the company. The arbitrator found he had been fully apprised of his rights in the notice of the enquiry. In the circumstances, he found that Sinxadi had suffered no prejudice in his disciplinary enquiry.

Grounds of review

- [20] Sinxadi's grounds of review were hard to distinguish from grounds of appeal. Nonetheless, as he is a lay person, I have assumed in his favour

that his challenges to the reasoning of the arbitrator are that the flaws he has alleged are ones that, if justified, are so serious that the arbitrator's findings could not be sustained on any reasonable basis. By taking account of them this way, Sinxadi's criticisms can be brought within a review based on reasonableness.

[21] In essence, Sinxadi's complaints as set out in his affidavit are threefold:

21.1 The arbitrator failed to take account of the delay in implementing disciplinary action between the time that the other employee was injured and the time the hearing took place. This undermined the fairness of the disciplinary process and affected the reliability of witnesses and the reliability of the outcome.

21.2 In relation to the finding of gross negligence, the arbitrator, did not pay attention to the practice during harvesttime of workers being allowed to remain on the tractor when it was moving.

21.3 The arbitrator failed to appreciate that it was necessary for him to visit the clinic owing to your blood pressure condition, and that the clinic gave him permission for the visit.

[22] At the hearing, Sinxadi raised other criticisms of the award, but the court explained to him that he was confined to the grounds of review he had pleaded and could not raise fresh ones in court.

[23] In relation to the first ground Sinxadi could not provide concrete evidence in the record to explain how he had been prejudiced by the delay between the accident at work on 19 February and the date of his enquiry scheduled for 8 May but only proceeding on 27 May 2020. The human resource manager said that the enquiry into this charge was delayed by the harvest season, which runs from January to May, and it could not afford to have a team leader off work during that time.

[24] It is true that the arbitrator did not specifically deal with the delay between the accident and the disciplinary action in his award. However, none of the witnesses claimed their recollection suffered as a result of the delay. In any event, the main issue in dispute was about Sinxadi's liability for acting negligently. Apart from Sinxadi himself, who was obviously present when

the accident occurred, only one witness actually saw how Sinxadi's spouse was injured and that witness was not uncertain about her testimony. The Occupational Health & Safety Act report and the eyewitness's evidence both claimed that Sinxadi's wife was injured when she was climbing off the tractor while it was in motion, even though the precise mechanics of how her arm got injured were somewhat different. In any event, the key issue concerned Sinxadi's responsibilities as a driver of the tractor towards workers on the vehicle. The main points in contention were about what were the rules regarding workers being on the tractor or trailer, which are issues not affected by the limitations of an eyewitness's recollection. There was nothing before the arbitrator to show that Sinxadi's ability to advance his defence was negatively affected by the delay, so even if the arbitrator had considered it, there is no reason to suppose it would have affected his findings on this charge.

- [25] In relation to the practice of allowing workers to remain on tractors or trailers when in motion in harvest time, Sinxadi's own testimony was that the practice was in breach of the rule that they should not be on the vehicle when in motion. The employer argued that as a team leader and more particularly, a Health and Safety officer, he should not have permitted such a practice. The eyewitness to the accident testified that normally there would be some kind of noise to alert workers that the tractor was going to move and workers were told they should not get off the tractor while it was in motion, but that they should hang onto the crates on the vehicle. Sinxadi's other witness testified that the driver of the tractor was supposed to look behind him to see that there was no person on the tractor before moving off. The driver was supposed to wait until everyone was off and if they were not, to sound the hooter. He also testified that workers would cling to the crates and that, in practice, the rule of getting off the vehicle was not followed.
- [26] The arbitrator did pay attention to the evidence that the rule about not remaining on the vehicle was not followed in practice. He concluded that Sinxadi should not have set the vehicle in motion before all the staff had disembarked from it and that as a Health and Safety officer he should not have permitted the practice of allowing anyone to remain on it while in

motion. It is clear from his analysis that, in any event, whether there was a practice or not, the driver was supposed to ensure nobody was on the vehicle. Even the testimony of one of Sinxadi's own witnesses was that the driver should have done this, despite the practice that workers would hang on to the crates. The arbitrator's findings on Sinxadi's responsibility for breaching the safety rule, cannot be faulted on the evidence, even if in practice the rule was flouted. Moreover, notwithstanding the prevalence of the practice was, that could not have absolved Sinxadi of his responsibility to ascertain that it was safe to move off, which necessitated him checking on the status of anyone who might be on the vehicle at the time. It was never part of his defence that he had done so.

- [27] Turning to the third ground, Sinxadi had attended the clinic contrary to his immediate manager's direct instruction that he could not, and the general instruction to the effect that employees should not go to the clinic except in emergencies. The HR manager had testified that the Primary Health Care manager in Witzenberg, wrote to it specifically stating that clinic visits for chronic conditions should not be made. This was not disputed by Sinxadi.
- [28] Sinxadi claimed the nurse at the clinic had confirmed that he had to go to the clinic, but no document was produced to corroborate that he needed urgent treatment for a serious medical condition. He also did not call the nurse as a witness to confirm his hearsay evidence. The available evidence all tends to support the version that it was a routine blood pressure check up and that the employer had arranged to have the chronic medication of all the employees, including Sinxadi, delivered at the farm premises. He never claimed he did not receive any chronic medication. On the evidence available it was quite tenable for the arbitrator to conclude that the clinic visit was only for a check-up, that he disobeyed a direct instruction from his manager not to go to the clinic visit and the general instruction which Sinxadi had himself conveyed to the other employees on behalf of the company.
- [29] In passing, it should be mentioned that when the review application was argued, Sinxadi contended that the arbitrator had no evidence that there was a prohibition against visiting the rural clinic during the hard lock-down period. However, this was not a pleaded ground of review, and it had not

even been his case that the instruction he had conveyed to workers not to visit the clinic except in serious circumstances was not a valid one. As it was not even raised with the arbitrator, there was no reason why the arbitrator had to address it.

[30] In conclusion, I am satisfied that on the evidence before the arbitrator, it cannot be said that the material findings in his award were ones that no reasonable arbitrator could have reached. The issue is not whether he was absolutely correct, but whether his finding were tenable ones on what was before him.

Order

In the circumstances, it is ordered that:

1. The review application is dismissed.
2. No order is made as to costs.



R Lagrange
Judge of the Labour Court of South Africa.

Appearances:

For the Applicant:

In person