



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

TDM 2026-05-11
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 2610/19

In the matter between:

ALMAR INVESTMENTS (PTY) LTD

Applicant

and

FRANCE GLADNESS MATSEMELA

First Respondent

COMMISSION FOR CONCILIATION,

Second Respondent

MEDIATION AND ARBITRATION

FOSTER MALULEKE N.O.

First Respondent

Heard: 22 January 2026

Delivered: 11 May 2026

JUDGMENT

BRITZ, AJ

Introduction

- [1] This is a review application in terms of section 145 of the Labour Relations Act¹ (LRA) to set aside an arbitration award issued by the Third Respondent under case number NWFB 1733/19.
- [2] The sole issue is whether the commissioner committed a reviewable irregularity which rendered the outcome unreasonable.

Attendance

- [3] The Applicant was represented by Mr. Henk Wissing. The First Respondent did not attend. Proof of transmission of the hearing link to the address utilised in the pleadings was furnished.
- [4] The Court is satisfied that the First Respondent had proper notice and that the matter may proceed in their absence.

The review test

- [5] The test is whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach. In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*² it was held:

‘Is the decision reached by the commissioner one that a reasonable decision-maker could not reach?’

- [6] In *Herholdt v Nedbank Ltd*³ the Supreme Court of Appeal held:

‘For a defect in the conduct of the proceedings to amount to a gross irregularity... the arbitrator must have misconceived the nature of the enquiry or arrived at an unreasonable result.’

- [7] The Labour Appeal Court in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v CCMA and others*⁴ stated that what is required is to:

¹ Act 66 of 1995, as amended.

² [2007] 12 BLLR 1097 (CC) at para 110.

³ 2013 (6) SA 224 (SCA) at para 25.

⁴ (2014) 35 ILJ 943 (LAC) at para 15.

‘consider the totality of the evidence and then decide whether the decision by the arbitrator is one that a reasonable decision-maker could make.’

[8] It is further established that:

‘A decision-maker must consider all the relevant facts... If he or she fails to do so, the decision is liable to be set aside on review.’⁵

Material facts

[9] The First Respondent was employed in a supervisory capacity and bore responsibility for ensuring that operational processes were completed. It was common cause that:

9.1 both pits required cleaning;

9.2 only one was cleaned; and

9.3 the second was left incomplete.

[10] The First Respondent admitted that the work was not completed and attributed this to time constraints.⁶ The objective evidence established that the required tasks could be completed within approximately three hours and 10 minutes in an 8-hour shift.

[11] The evidence further established that failure to complete the process affected production and operational continuity.

Evaluation

Failure to consider material evidence

[12] The commissioner failed to engage with:

12.1 the First Respondent's admissions;⁷

12.2 the objective time evidence;⁸ and

⁵ *CUSA v Tao Ying Metal Industries and Others* (2008) 29 ILJ 2461 (CC) at para 68.

⁶ Record pages 22 – 23.

⁷ Record pages 22 – 23.

12.3 the operational consequences of the failure.⁹

[13] This constitutes a failure to consider material evidence. In *Gold Fields*¹⁰ the Labour Appeal Court cautioned that:

‘The review court must ascertain whether the arbitrator considered the principal issue before him... evaluated the facts presented... and came to a conclusion that is reasonable.’

[14] The commissioner did not do so.

Misconception of the enquiry

[15] The commissioner accepted that operational difficulties justified the failure. This reflects a misdirection.

[16] The enquiry was whether the First Respondent discharged their duties. In *Herholdt* it was held that a gross irregularity arises where: ‘*the arbitrator must have misconceived the nature of the enquiry...*’¹¹

[17] This is precisely what occurred.

Outcome unreasonableness

[18] The uncontested facts are that; (a) the work was not completed;¹² (b) sufficient time existed;¹³ and (c) the First Respondent was responsible for ensuring completion.¹⁴

[19] On these facts, the conclusion that dismissal was substantively unfair falls outside the band of reasonableness.

Substitution

⁸ Record pages 59 – 50.

⁹ Record pages 16 – 18.

¹⁰ *Gold Fields*, supra at para 20.

¹¹ *Herholdt*, supra at para 25.

¹² Record pages 84 – 86.

¹³ Record pages 96 – 97.

¹⁴ Record pages 13 – 14.

[20] The Court must determine whether to remit or substitute. In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and another*¹⁵ the Constitutional Court held:

‘A court must be satisfied that it G would be just and equitable to grant an order of substitution ... and whether the Court is in as good a position as the administrator to make the decision...’

[21] The record is complete. The dispute turns on evaluation, not credibility.

[22] Remittal would serve no purpose and would prolong a matter that has been pending since 2019, therefore substitution is appropriate.

Procedural fairness

[23] The record reflects that the First Respondent was afforded an opportunity to be heard. No procedural irregularity was established.

Conclusion

[24] The commissioner failed to consider material evidence and misconceived the enquiry. The outcome is unreasonable.

[25] In the result the following order is made:

Order

¹⁵ *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* 2015 (5) SA 245 (CC) at paras 35 and 47.

1. The arbitration award issued by the Third Respondent under case number NWFB 1733/19 is reviewed and set aside.
2. It is substituted with the following: 'The dismissal of the employee was substantively and procedurally fair.'
3. There is no order as to costs.

C. Britz

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Mr. Wissing of Henk Wissing Attorneys

For the Respondent : No appearance

LABOUR COURT