



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

TDM 2025-05-11
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1413/23

In the matter between:

OFFICE OF HEALTH STANDARDS COMPLIANCE

Applicant

and

COMMISSION FOR CONCILIATION,

First Respondent

MEDIATION AND ARBITRATION

WILLEM KOEKEMOER N.O.

Second Respondent

DIKELEDI TSHUKUDU

Third Respondent

DR ZIYANDA MGUGUDU-SELLO

Fourth Respondent

Heard: 21 January 2026

Delivered: 11 May 2026

JUDGMENT

BRITZ, AJ

Introduction

- [1] This is an application in terms of section 145 of the Labour Relations Act¹ (LRA) to review and set aside an arbitration award issued by the third respondent under the auspices of the second respondent.
- [2] The applicant seeks an order reviewing and setting aside the award on the basis that the commissioner committed material errors of law and arrived at an unreasonable outcome.
- [3] At the hearing of the matter on 21 January 2026, the Court was informed that the third respondent settled her claim. The fourth respondent did not appear. The applicant elected to proceed in the absence of the fourth respondent.
- [4] The matter accordingly proceeded as an opposed review between the applicant and the fourth respondent.

Background

- [5] The dispute before the commissioner concerned the fairness of the applicant's precautionary suspension of the fourth respondent.
- [6] It was common cause that the fourth respondent was placed on suspension with full remuneration pending an investigation into allegations of misconduct.
- [7] The commissioner found the suspension to be procedurally unfair on the basis that the fourth respondent had not been afforded an opportunity to be heard prior to being placed on suspension, ultimately concluding that the suspension was unfair.

Issues for determination

- [8] The central issue is whether the commissioner committed a reviewable irregularity by:

- 8.1 treating a precautionary suspension as if it were disciplinary in nature; and

¹ Act 66 of 1995.

8.2 concluding that a prior hearing was a peremptory requirement before such suspension could be affected.

[9] Flowing from this is whether the outcome reached by the commissioner is one that a reasonable decision-maker could not reach.

Legal framework

[10] The test on review is that established in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*² where the Constitutional Court held that the question is whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach.

[11] It is further trite that a review will succeed where the arbitrator misconceives the nature of the enquiry or arrives at an unreasonable result.³

[12] The Labour Appeal Court in *Member of the Executive Council for Education, North West Provincial Government v Gradwell*⁴ made it clear that:

“Therefore, an opportunity to make written representations showing cause why a precautionary suspension should not be implemented will ordinarily be acceptable and adequate compliance with the requirements of procedural fairness.’

[13] The Constitutional Court in *Long v South African Breweries (Pty) Ltd*⁵ confirmed that the fairness of a suspension is context-dependent and stated that:

‘the fairness of the suspension is determined by assessing first, whether there is a fair reason for suspension and secondly, whether it prejudices the employee.’

[14] The Court held further that:

² *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* (2007) 28 ILJ 2405 (CC) at para 110.

³ See: *Herholdt v Nedbank Ltd* (2013) 34 ILJ 2795 (SCA) at para 25.

⁴ *MEC for Education, North West Provincial Government v Gradwell* (2012) 33 ILJ 2033 (LAC) at para 44.

⁵ (2019) 40 ILJ 965 (CC) at para 25.

‘there is no requirement that an employee be given an opportunity to make representations. Instead, the suspension must be linked to a pending investigation and serve to protect the integrity of that ongoing process. There is an additional consideration of prejudice, though this can be ameliorated by a salary being paid during the period of suspension.’⁶

[15] The Court further emphasised that a precautionary suspension on full pay is generally permissible where there is a rational basis for it.⁷

[16] The Labour Appeal Court in *Gold Fields Mining SA (Pty) Ltd v CCMA and Others*⁸ reiterated that the reviewing court must consider whether the arbitrator properly dealt with the principal issue and arrived at a reasonable conclusion based on the totality of the evidence.

Evaluation

[17] The commissioner approached the dispute on the premise that the fourth respondent was entitled, as a matter of course, to be afforded a hearing prior to being placed on suspension. That premise is legally unsustainable.

[18] The authorities are clear that a precautionary suspension, particularly one effected on full pay, is not punitive in nature but serves as a holding operation pending investigation. The commissioner failed to appreciate this distinction and, in doing so, misconceived the nature of the enquiry.

[19] Instead of enquiring whether there was a rational and fair basis for the suspension, the commissioner elevated the requirement of a prior hearing to a rigid and peremptory rule.

[20] That approach is inconsistent with binding authority, in particular *Gradwell*, which makes plain that a prior hearing is not invariably required in cases of precautionary suspension on full pay.

[21] The evidence before the commissioner established that the suspension was:

⁶ *Long* (id fn 5) at para 12.

⁷ *Long* (id fn 5) at para 27.

⁸ (2014) 35 ILJ 943 (LAC) at para 20.

21.1 precautionary in nature;

21.2 effected on full pay; and

21.3 implemented in order to preserve the integrity of an ongoing investigation.

[22] These factors are directly relevant to the enquiry into fairness.

[23] The commissioner failed to engage meaningfully with these considerations and instead focused narrowly on the absence of a prior hearing. In doing so, the commissioner ignored material evidence and applied an incorrect legal standard. This constitutes a material misdirection.

[24] The consequence of that misdirection is that the commissioner arrived at a conclusion that is not supported by the applicable legal principles governing precautionary suspension.

[25] Properly considered, the suspension served a legitimate purpose, namely to safeguard the investigation and maintain workplace integrity. There is nothing on the record to suggest that the suspension was punitive or effected in bad faith.

[26] In these circumstances, the absence of a prior hearing does not render the suspension unfair. The commissioner's conclusion to the contrary is one that a reasonable decision-maker could not reach.

[27] The award accordingly falls to be reviewed and set aside.

Substitution

[28] The remaining question is whether the matter should be remitted to the Commission for Conciliation, Mediation and Arbitration or whether this Court should substitute the award.

[29] The issue in dispute is primarily one of law. The material facts are either common cause or appear from the record. This Court is therefore in as good a position as the commissioner to determine the dispute.

[30] In these circumstances, substitution is appropriate.

Costs

[31] In terms of section 162 of the LRA, the Court must exercise a discretion in relation to costs in accordance with the requirements of law and fairness.

[32] The Constitutional Court in *Zungu v Premier of KwaZulu-Natal and Others*⁹ cautioned against the routine awarding of costs in labour matters.

[33] Although the applicant has been successful, the dispute arises in the context of an employment relationship and there is no indication of *mala fides* on the part of any party.

[34] In these circumstances, considerations of fairness dictate that each party should bear its own costs.

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

Order

1. The arbitration award issued by the third respondent under case number GATW 4063-22 is reviewed and set aside.

2. The award is substituted with the following finding:

2.1 *“The applicant’s precautionary suspension 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:

⁹ (2018) 39 ILJ 523 (CC) at para 24.

For the Applicant : Ms Makgolane of Molebaloa Attorneys Inc

For the Respondent : No Appearance

LABOUR COURT