



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR83/24

In the matter between:

SOLIDARITY obo DELPORT, C.R.

Applicant

and

STUCKY MOTORS GROUP (PTY) LTD

First Respondent

**DISPUTE RESOLUTION CENTRE OF THE MOTOR
INDUSTRIES BARGAINING COUNCIL**

Second Respondent

COMMISSIONER BHEKI KHUMALO N.O

Third Respondent

Heard: 30 April 2026

Delivered: 14 May 2026 (This judgment was handed down electronically by emailing a copy to the parties. The 14 May 2026 is deemed to be the date of delivery of this judgment).

Summary: Review application – misconduct – principles considered – conduct of employee actually constituting gross negligence – arbitrator failing to have proper regard to serious nature of misconduct – finding that dismissal not appropriate is unreasonable and reviewable – appropriate relief – compensation.

JUDGMENT

MHAMBI, AJ

Introduction

- [1] The employee applicant (hereinafter referred to as “the applicant”) is represented by Solidarity Trade Union (hereinafter referred to as “Solidarity”).
- [2] The applicant, Mr Delport, was employed by the first respondent, Stucky Motors Group (Pty) Ltd before his dismissal. Aggrieved by his dismissal, the applicant referred the matter to the Dispute Resolution Centre of the Motor Industry Bargaining Council, which is the second respondent. Subsequent to the matter remained unresolved after Conciliation, the matter was then referred to the arbitration before the third respondent who then made a finding that the dismissal was both procedurally and substantively fair.
- [3] Dissatisfied with the findings of the Commissioners, the applicant brought the present application in terms of section 145 of the Labour Relations Act¹ (LRA). The applicant sought, *inter alia*, that the arbitration award issued by the third respondent under case number MIDB22588 dated 14 December 2023, be reviewed and set aside. Alternatively, the applicant seeks a substitution of certain paragraphs of the arbitration award his dismissal be declared substantively unfair and the first respondent be ordered to reinstate the applicant alternatively pay him compensation.
- [4] The main ground of review is that the third respondent committed a reviewable error when he found that the dismissal of the applicant was substantively and procedurally fair.

¹ Act 66 of 1995, as amended.

Common cause of facts

- [5] Mr Delport started employment with the first respondent on 15 January 2021.
- [6] Mr Delport was employed as a Group IT Supervisor at the time of his dismissal. At the time of his dismissal, Mr Delport earned a monthly remuneration of R29 000 (twenty-nine thousand).
- [7] It is common cause that Mr Delport received a notice to attend a disciplinary hearing on 6 March 2023, requiring his presence at the hearing on 9 March 2023.
- [8] It is further common cause that Mr Delport was charged with two counts of misconduct. The first charge being Gross and Blatant Negligence in execution of his duties as the first respondent's alleged that he failed to produce an IT Asset Registry before the due date of 28 February 2023. The second charge is insubordination pertaining to the IT Asset Register as the first respondent's alleged that he failed to produce the IT Asset Registry before the due date and alleged when his manager requested the IT Asset Registry from him, he behaved in an insubordinate manner towards her.
- [9] It is common cause that the applicant was found guilty of insubordination during the disciplinary hearing and found not guilty of the first charge which relates to negligence and failure to produce the IT Asset Registry before the due date of 28 February 2023.
- [10] Furthermore, it is common cause that the applicant was dismissed through the notice on 20 March 2023. It is common cause that following his dismissal, the applicant then declared a dispute with the second respondent on 14 April 2023 for unfair dismissal dispute.

Commissioner's key findings

- [11] In paragraph 27 of the arbitration award, the Commissioner found that the fact that the applicant submitted the register on the due date is indicative of insubordination.

- [12] Secondly, the finding in respect of insubordination relates to the incident of altercation between the applicant and Ms Wilander on 10 February 2023 and the meeting which was held on 15 February 2023 where the applicant was warned by the directors to refrain from repeating insubordination towards Willander.
- [13] Based on these two incidents, the Commissioner found that the first respondent proved that the dismissal of the applicant for gross insubordination was appropriate and fair. This is despite the applicant not being charged for the incidents of 10 February 2023 and 15 February 2023.
- [14] As a result, in paragraph 34 the Commissioner found that the sanction of dismissal was appropriate.

Grounds for review

- [15] As already stated in introduction above, this application is premised on the grounds that the third respondent committed a reviewable error when he made a finding and award that the third applicant's dismissal was substantively and procedurally fair.
- [16] When deciding whether or not to set aside the decision of the third respondent, the Court is in particular guided by the test applicable to review applications in terms of section 145 of the LRA.
- [17] The Constitutional Court (CC) in *Sidumo and another v Rustenburg Platinum Mines Ltd and others (Sidumo)*,² held that section 145 of the LRA must be read so as to ensure that administrative action by the Commission for Conciliation, Mediation and Arbitration (CCMA) or Bargaining Council is Constitutionally compliant. It was confirmed by the CC that arbitration awards are subject to the test of rationality derived from the Constitutional right to fair administration action³.
- [18] The question that arises then is how to measure whether an arbitration award is rational in the constitutional sense. The Labour Court in *Sidumo* considered

² [2007] 12 BLLR 1097 (CC) at p.1101.

³ See: section 33 of the Constitution of the Republic of South Africa, 1996.

the review of the commissioner's award as enunciated by the Labour Appeal Court in *Carephone (Pty) Ltd v Marcus No and others*⁴ ("*Carephone*"), where the following was stated:

"It seems to me that one will never be able to formulate a more specific test other than, in one way or another, asking the question: is there a rational objective basis justifying the connection made by the administrative decisionmaker between the material properly available to him and the conclusion he or she eventually arrived at? In time only judicial precedent will be able to give more specific content to the broad concept of justifiability in the context of the review provisions in the LRA."

- [19] The Supreme Court of Appeal in *Sidumo* referred with approval to *Carephone*, where the application of section 145 and section 158(1)(g) of the LRA was discussed, and held that the Labour Appeal Court in *Carephone* was not prepared to hold that section 158(1)(g) of the LRA created a separate and more expensive basis of review of the CCMA awards.
- [20] The Labour Appeal Court described the approach in *Carephone* as one of 'substantive rationality', likening it to administrative law concepts such as reasonableness, rationality and proportionality.⁵
- [21] However, the Constitutional Court in *Sidumo* held that the *Carephone* test, which was substantive and involved greater scrutiny than the rationality test set out in *Pharmaceutical Manufacturers Association of SA and another: In re: Ex Parte President of the Republic of SA and others* ("*Pharmaceutical Manufactures*"),⁶ was formulated on the basis of the wording of the administrative justice provisions of the Constitution at the time, more particularly, that an award must be justifiable in relation to the reasons given for it.⁷
- [22] In *Pharmaceutical Manufacturers Chaskalson P*, writing for the full court, held as follows:

⁴ 1999 (3) SA 304 (LAC) at para 37.

⁵ *Sidumo supra* n. 26 at pp. 1111-1112 paras 38-39.

⁶ 2000 (2) SA 674 (CC).

⁷ *Sidumo supra* n.28 at p.1129 para 106.

“It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the Executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action.”⁸

[23] Chaskalson P stressed that the threshold of rationality is a low one:

“The setting of this standard does not mean that the Courts can or opinions of those in whom the power has been vested. As long as the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and as long as the functionary’s decision, viewed objectively, is rational, a Court cannot interfere with the decision simply because it disagrees with it or considers that the power was exercised inappropriately. A decision that is objectively irrational is likely to be made only rarely but, if this does occur, a Court has the power to intervene and set aside the irrational decision.”⁹

[24] Therefore, it is a natural and inescapable denouement that the process leading to a decision must also be rational in that it must be rationally related to the achievement of the purpose for which the power is conferred. As stated in *Democratic Alliance v President of the Republic of South Africa*¹⁰:

“The means for achieving the purpose for which the power was conferred must include everything that is done to achieve the purpose. Not only the decision employed to achieve the purpose, but also everything done in the process of taking that decision, constitutes means towards the attainment of the purpose for which the power was conferred.”

[25] Additionally, in *Zuma v Democratic Alliance*,¹¹ Navsa ADP stated that a rationality review also covers the process by which the decision is made.

⁸ *Pharmaceutical Manufactures supra* n.29 at para 85.

⁹ *Ibid* at para 90.

¹⁰ 2013 (1) SA 248 (CC) at para 36.

¹¹ 2018 (1) SA 200 (SCA) at para 82.

- [26] When applying the principle of rationality, the Constitutional Court in *Sidumo* held that the Constitution now affords everyone the right to lawful, reasonable and procedurally fair administrative action.¹² The standard of reasonableness accordingly applies to section 145 of the LRA.
- [27] According to that test, an administrative decision is reviewable if it is one which a reasonable decisionmaker could not reach.¹³ Although the reasonableness test blurs the distinction between appeal and review, the Constitutional Court held, the distinction survives.¹⁴ This means that, when entertaining reviews, the Labour Court inevitably deals with the merits.
- [28] The CC further held that the danger lies not in such intervention itself, but in judicial overzealousness which results in judges substituting their views for those of commissioners.¹⁵
- [29] In endeavoring to apply the above principles to the third respondent's award it is obviously required that the third respondent should have applied his mind to the facts and the law applicable. The third respondents failed to properly, rationally or justifiably apply his mind to the facts and/or the law in this matter.
- [30] The issue which I find problematic on the award is how the Commissioner reached the decision that the first respondent has proved that the applicant committed a gross misconduct. This decision seems to be informed by two incidents. The first being the altercation which took place on 10 February 2023 and the second incident which took place on 15 February 2023. It is unfortunate that both incidents were not part of the charges which were proffered against the applicant during the disciplinary hearing, neither was he charged of any misconduct in respect of these two incidents.

¹² Section 33(1) of the Constitution states: "*Everyone has a right to administrative action that is lawful, reasonable and procedurally fair.*"

¹³ The CC in *Sidumo* made reference to *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and others* 2004 (4) SA 490 (CC) at para 44, and held that the reasonableness standard was dealt with in the context of section 6(2)(h) of the Promotion of Administrative Justice Act, 3 of 2000 where O'Regan J said: "*(A)n administrative decision will be reviewable if, in Lord Cooke's words, it is one that a reasonable decisionmaker could not reach.*"

¹⁴ See *Sidumo supra* n. 30 at para 108.

¹⁵ *Ibid* at paras 109-110.

[31] The Commissioner disregarded the record of the disciplinary proceedings including the charges that were put against the applicant during the disciplinary hearing. This conduct is contrary to the decision of this Honourable Court in the case of *Department of Home Affairs v General Public Services Sectoral Bargaining Council and Others*,¹⁶ wherein the court held as follows:

“The Commissioner cannot disregard the record of disciplinary proceedings purely because he is hearing the matter for the first time. The record of disciplinary proceeding could also be used to assess whether the dismissal of the employee was effected in accordance with a fair procedure. Most importantly, the commissioner must test the totality of the evidence submitted by the employer against the guidelines on dismissal set out in the LRA Code of Good Practice: Dismissal.”¹⁷

[32] It is my view that the third respondent failed to apply his mind fairly and objectively to the evidence that was led during the arbitration.

[33] Therefore, the third respondent misconceived the nature of the dispute by failing to assess the evidence of the disciplinary hearing in respect of the charges and his conduct renders the Arbitration Award defective as defined in section 145(2) of the LRA.

[34] In the premises, the third respondent took into account an irrelevant consideration in arriving at the conclusion that the dismissal was both procedurally and substantively fair.

[35] There could be no justification for this finding as there was no evidence which was led during the disciplinary hearing which relate to the two incidents of the 10 February and 15 February 2023. The charge that the applicant was found guilty of during the disciplinary hearing was insubordination which relate to the submission of the IT registry.

¹⁶ (JR 281/2017) [2019] ZALCJHB 386 (14 August 2019).

¹⁷ See also *Sidumo and Palluci Home Depot (Pty) Ltd v Herskowitz* [2015] 5 BLLR 484 (LAC).

[36] In the premises, the assessment of evidence by the third respondent was unreasonable and no decision maker would have arrived at such a conclusion.

Appropriate relief

[37] In view of my finding above that the decision by the Commissioner to dismiss the applicant's claim for unfair dismissal is not a decision that a reasonable Commissioner would have reached.

[38] I now turn to the question of appropriate relief. Section 193(1) of the LRA gives the arbitrator or Labour Court discretion to order reinstatement, re-employment or compensation.

[39] The factors to be taken into account in assessing whether a court should substitute the decision of the decision maker include:

39.1 where the result is a foregone conclusion and it would be a waste of time to send the decision back; or

39.2 where further delay would cause unjustifiable prejudice; or

39.3 where the decision-maker showed bias or serious incompetence; or

39.4 where the Court considers itself as well qualified as the original decision-maker to make the decision.¹⁸

[40] Having considered the evidence *in toto* led during the arbitration proceedings and the fact that the applicant during the arbitration testified that the relationship between him and the employer is irretrievably broken down, reinstatement is therefore not an option.

[41] I am therefore left to consider the option of compensation. The applicant submitted during the hearing that he seeks compensation of a maximum period of 12 months which I disagree with. On the other hand, the first respondent's representative suggested compensation of three months. The

¹⁸ *Darson Construction (Pty) Ltd v City of Cape Town* 2007 (4) SA 488 (C) at page 501I – 502A.

applicant was employed for a short period before his dismissal. It would not be fair to award maximum compensation.

[42] Having found the above that the decision reached by the Commissioner is unreasonable, the award falls to be set aside. The Commissioner's irregularities are that they result in a misconceived decision which no reasonable decision maker could reach on the material that was before him. In exercising my discretion and given that the complete record of the arbitration proceedings is before me, I have decided to substitute the arbitration award rather than remitting the matter back to the CCMA for a fresh hearing and award compensation as ordered below.

The costs

[43] This Court has a wide discretion in awarding costs. I am of the view that this is matter where the interest of justice would be best served by making no order as to costs.

[44] In the premises, the following order is made:

Order

1. The arbitration award issued by the second and third respondents dated 14 December 2023 under the case number MIDB22588 is reviewed and set aside in its entirety.
2. The applicant's dismissal is substantively unfair.
3. The first respondent is ordered to compensate the applicant with full payment of his salary at the time of dismissal, which was R29 000.00 for a period equivalent to six (6) months.
4. The amount is to be paid to the applicant by 25 June 2026.
5. There is no order to cost.

M. H. Mhambi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : N. Ras

Instructed by : Solidarity

For the Respondent : AS Mengel

Instructed by : Stucky Motors Group (Pty) Ltd