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

[signature redacted] 26 May 2026

Signature Date

THE LABOUR COURT OF SOUTH AFRICA
IN CAPE TOWN

Case no: C 463/2024

In the matter between:

ALFRED ALEKHINE ABRAHAMS **Applicant**

and

NATIONAL STUDENT FINANCIAL AID SCHEME (NSFAS) **Respondent**

Summary: (Automatically unfair dismissal for making a protected disclosure – Dismissal for ostensibly breaching ICT policy of employer, simply means by which employee was dismissed for making a protected disclosure – Employee awarded reinstatement and full costs)

JUDGMENT

LAGRANGE, J

Introduction

[1] This matter concerns whether the dismissal of the applicant, Mr A Abrahams ('Abrahams') constituted an automatically unfair dismissal in terms of section

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187(1)(h) of the Labour Relations Act 66 of 1995 ("the LRA"), read with the Protected Disclosures Act 26 of 2000 ("the PDA").

[2] The respondent contends that the dismissal was for misconduct arising from a breach of its Information and Communication Technology ('ICT') policies. The applicant contends that the dismissal was in truth a reaction to a protected disclosure he made to the Special Investigating Unit ("the SIU").

[3] The dispute essentially turns on identifying the true reason for the dismissal and, more particularly, whether there exists a causal nexus between the disclosure he made and the disciplinary action taken against him.

[4] Abrahams testified for himself and NSFAS also only led one witness, Mr O. Selekisho ('Selekisho'), a Senior Manager in Data Management. NSFAS was going to call other witnesses, but they were unavailable at the time of the trial.

<u>Background</u>

[5] On 1 February 2020, Abrahams was employed by the respondent ('NSFAS') as a Facilities Manager, Corporate Services in its head office in the Western Cape.

[6] Abrahams's responsibilities included overseeing the organisation's buildings, lease agreements, and space planning requirements, effectively acting as the "end user" representative in procurement processes. In that capacity, he became centrally involved in planning NSFAS's relocation from its existing offices and began engaging with the Department of Public Works to determine appropriate space requirements. In the course of this process, he calculated that the organisation required approximately 6,000 to 7,200 square metres of office space, which included provision for future growth. He consistently emphasised to management that urgent decisions were needed because the existing lease was to expire soon.

[7] He began to have serious concerns as the procurement process unfolded. He explained that despite his calculations and input, a tender specification was issued for approximately 8,000 square metres of space, a figure which he could not justify and which was not aligned with the NSFAS's actual needs. Significantly, he stated that this tender was nonetheless approved and

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advertised without being signed off either by him, as the end user, or by his immediate line manager, which he regarded as a fundamental procedural irregularity. He further criticised the timelines imposed on the project, explaining that management expected a new office to be identified, procured, and occupied within a period of roughly six to seven months. In his experience, such a timeframe was entirely unrealistic, particularly in the public sector where consultation, tender processes, and stakeholder engagement typically take much longer.

[8] Abrahams testified that he repeatedly raised these concerns through formal channels. He prepared reports for executives and board committees, highlighted risks in internal submissions, and even recorded these issues in formal risk registers. Nevertheless, he testified that his warnings were largely ignored. When bids were eventually evaluated, he noted that one building option, which was more affordable and largely ready for occupation, clearly would have been the preferable bid. However, the Foreshore building, which ultimately won the tender was effectively an empty "white box" requiring extensive fitting-out before it could be used. He testified that the decision to award the contract to this building was surprising and inconsistent with the comparative advantages of the competing options.

[9] The consequences of this decision, according to Abrahams, were significant. He explained that although NSFAS began paying rent for the bare premisses of approximately R2 million per month from March 2022, whilst the building remained largely unoccupied for several months because it was not ready for use. Only a small fraction of staff worked at the new premises during that period. He further testified that, shortly after the building was occupied, a proposal was made to extend the lease for an additional five years, effectively turning what had originally been a short-term arrangement into a much longer and more costly commitment. In his view, this development reinforced his belief that irregular and wasteful expenditure was being incurred.

[10] By that stage Abrahams said he had exhausted all available internal reporting mechanisms. He had issued reports and memoranda to management and

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raised the issue with executives, included concerns in reports to board structures, and utilised formal governance processes, but to no effect.

[11] After the President authorised the Special Investigating Unit (SIU) to investigate irregularities at NSFAS sometime around the end of August 2022, Abrahams approached the organisation's internal forensic audit lead, Ms. A Basson, with his concerns. She advised him to convey his disclose his worries about fruitless and wasteful expenditure directly to the SIU. Acting on this advice, he met with SIU investigators and provided them with an account of the procurement process and the irregularities he had identified.

[12] To obtain support for his disclosures, Abrahams gathered documentary evidence, including emails relating to the office procurement. On 13 September 2023, he sent these emails to his personal email address and then forwarded them to the SIU. He explained that he did this out of fear of victimisation and in order to preserve evidence for potential future proceedings, as he believed he might be targeted once his disclosures became known.

[13] He further testified that sending documents to personal email addresses was common practice within the organisation, particularly during the COVID-19 period, and that he did not believe he was breaching any policy at the time.

[14] Nothing transpired following his disclosures until shortly after 15 February 2023 when the leader of the United Democratic Movement and Member of Parliament, Mr B Holomisa, publicly revealed the same information which Abrahams had conveyed to the SIU. The very next day, NSFAS launched an investigation into how the information was leaked. The investigation of email correspondence emanating from NSFAS was narrowly focussed on searching for all correspondence containing only the terms the "office and building move". Unsurprisingly, this revealed the emails Abrahams had sent to the SIU. The investigation was finalised by 26 February 2023.

[15] Just under a month later on 23 March 2023, NSFAS subsequently charged Abrahams with misconduct for breaching its ICT policies by sending confidential information to his personal email account. NSFAS was at pains to emphasise that he was not charged for disclosing information but solely for

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breaching its ICT policies. A breach of ICT policies could result in merely being suspended from access to the system to dismissal. Abrahams was found guilty and dismissed in May 2023. Quite apart from claiming that the real reason for his dismissal was the information he disclosed, he maintained that the relevant ICT policies had never been properly explained or "socialised" to employees, that similar conduct by other staff members had not been disciplined, and that only the emails to himself connected to his disclosure were singled out, whereas others were ignored.

[16] The central thrust of his evidence, therefore, was that his dismissal was not genuinely about a breach of policy but was instead a pretext for retaliation. He argued that the timing and focus of the disciplinary action demonstrated a causal link between his protected disclosures and his dismissal. In support of this, he pointed to the fact that only the seven emails sent in connection with the SIU disclosure formed the basis of the charges, despite similar email practices being widespread within the organisation.

[17] Finally, Abrahams testified that subsequent findings by the Auditor-General confirmed many of the irregularities he had identified, including failures in the procurement process, lack of proper approvals, and the risk of fruitless and wasteful expenditure. He stated that this report effectively validated the concerns he had repeatedly raised prior to making his disclosure. Taken as a whole, his evidence sought to establish that he had acted in good faith as a whistleblower, that the procurement process had been materially flawed, and that his dismissal was causally linked to his efforts to expose those irregularities.

[18] The employer called Selekisho, a senior manager in data management, who also performed network security functions. His evidence was directed at explaining the purpose, scope and importance of NSFAS's ICT and information-security policies, and why the conduct attributed to Abrahams constituted a serious breach. Unlike Abrahams' evidence, which traversed the procurement process in detail, this witness did not deal with the building tender at all. Instead, his evidence concentrated narrowly on data governance, security risks, and policy compliance within the organisation.

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[19] He began by explaining his role, which involved ensuring that organisational data is properly sourced, stored, and used to support decision-making. In that context, he emphasised that data is regarded as a critical organisational asset, and that its protection is essential for the integrity of the organisation's operations. He testified that if data is compromised or not properly secured, this can undermine decision-making and expose the organisation to risk.

[20] Expanding on this, Selekisho explained the rationale behind NSFAS's ICT and information-security policies. These policies, he said, exist to ensure that all information and systems are protected from internal and external threats. Importantly, he stressed that responsibility for data security does not rest solely with management or IT personnel. Rather, it is a shared responsibility across all employees, who are required to comply with the rules governing the use and protection of organisational information.

[21] He then described how these policies are implemented in practice. A key routine is that whenever employees log onto the NSFAS system, they are required to acknowledge the organisation's ICT security policy by clicking an "OK" prompt. He argued that this served as a continuous reminder that employees are bound by the policy and must comply with it, and that failure to do so may result in disciplinary consequences. Consequently, employees could not claim ignorance of the policy.

[22] Another central plank of his testimony dealt with the specific prohibition on forwarding work-related emails to personal accounts, which formed the basis of the case against Abrahams. Referring to the information-security policy, he explained that employees are expressly instructed not to forward work emails to personal email addresses, as this creates a risk of "data leakage." He elaborated that NSFAS can only properly secure and control information while it remains within its own systems and infrastructure. Once data is sent to a personal email account, it leaves the organisation's controlled environment, and NSFAS loses the ability to monitor access to that information or ensure its security. In those circumstances, the organisation cannot know who might access the data or how it might be used.

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[23] Selekisho's testimony sought to establish that forwarding internal documents to a personal email account is not a trivial or technical violation, but a serious breach of data governance principles, with inherent risks to confidentiality and organisational integrity.

[24] He further testified that disciplinary consequences for such conduct are consistent with organisational practice and gave an example of another employee who had been dismissed for similar conduct involving copying work-related WhatsApp messages to himself. Although he did not provide detailed knowledge of that matter, the purpose of this evidence was to counter Abraham's claim that during COVID employee routinely sent work emails to their own email addresses, without facing disciplinary action, and to challenge his assertion that he had been uniquely targeted.

[25] Under cross-examination, however, certain limitations in his evidence became apparent. It emerged that he was not employed at NSFAS at the relevant time when the events in question occurred, so he had no direct involvement in the events leading to Abraham's dismissal. He was also pressed on whether the ICT policy acknowledged by users when logging in clearly and expressly prohibited sending emails to personal accounts and struggled to find direct expression of the rule against sending work emails to private addresses in the login page. The prohibition was more explicit in the second, more detailed information-security policy, rather than in the general acceptable-use policy displayed at login.

[26] In re-examination, the employer clarified that the two policies must be read together. The general policy requires employees to comply with all information-security policies, while the detailed policy contains the specific prohibition and states that breaches may lead to disciplinary action, including dismissal. Selekisho confirmed that, read together, these policies do provide a warning that non-compliance could result in disciplinary consequences.

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Evaluation

The Parties' Cases

[27] NSFAS's case is that the dismissal was entirely based on the applicant's breach of ICT rules. It further contends that, because it did not know that the applicant had made a disclosure to the SIU, the dismissal could not have been on account of such disclosure.

[28] Abrahams' case is that the breach of ICT policy was inseparable from the disclosure itself and that the investigation which led to his dismissal was triggered by the very information he had disclosed.

The reason for Abraham's dismissal

[29] The determination of the true reason for dismissal requires the application of well-established principles. In *SA Chemical Workers Union v Afrox Ltd*[1] the Labour Appeal Court held that the enquiry entails both factual and legal causation, viz:

> *'[32] The enquiry into the reason for the dismissal is an objective one, where the employer's motive for the dismissal will merely be one of a number of factors to be considered. This issue (the reason for the dismissal) is essentially one of causation and I can see no reason why the usual twofold approach to causation, applied in other fields of law, should not also be utilized here (compare S v Mokgethi & others 1990 (1) SA 32 (A) at 39D-41A; Minister of Police v Skosana 1977 (1) SA 31 (A) at 34). The first step is to determine factual causation: was participation or support, or intended participation or support, of the protected strike a sine qua non (or prerequisite) for the dismissal? Put another way, would the dismissal have occurred if there was no participation or support of the strike? If the answer is yes, then the dismissal was not automatically unfair. If the answer is no, that does not immediately render the dismissal automatically unfair; the next issue is one of legal causation, namely whether such participation or conduct was the 'main' or 'dominant', or 'proximate', or 'most likely' cause of the dismissal. There are no hard and fast rules to determine the question of legal causation (compare S v Mokgethi at 40). I would respectfully venture to suggest that the most practical way of approaching the issue would be to determine*

[1] (1999) 20 *ILJ* 1718 (LAC)

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> *what the most probable inference is that may be drawn from the established facts as a cause of the dismissal, in much the same way as the most probable or plausible inference is drawn from circumstantial evidence in civil cases.'*

[30] In *Kroukam v SA Airlink (Pty) Ltd* [2] the LAC emphasised that the enquiry is not confined to the employer's stated reason but extends to determining the real or dominant cause of dismissal:

> *'[91] … I am of the view that, where, as in this case, the reason or reasons for the dismissal of an employee comprise one or more reasons that would render the dismissal automatically unfair and one or more reasons that would not render the dismissal automatically unfair but the reason or reasons that would render the dismissal automatically unfair can be said to be the dominant reason or reasons, the dismissal is automatically unfair.'*

[31] In *TSB Sugar RSA Ltd (now RCL Food Sugar Ltd) v Dorey*[3] the court emphasised that where more than one reason exists, the presence of a protected disclosure as one of them is sufficient to render the dismissal automatically unfair.

> *'[94] In terms of s 3 of the PDA, an employee may not be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure. The phrase 'on account of' means 'owing to', 'by reason of' or 'because of the fact that'. The phrase is used to introduce the reason or explanation for something — for the purposes of the present discussion, the reason or explanation for the occupational detriment. The word 'partly' means 'not completely', 'not solely', 'not entirely' or 'not fully'. A finding that an employee was subjected to an occupational detriment on account of having made a protected disclosure will be based on a conclusion that the sole or predominant reason or explanation for the occupational detriment was the protected disclosure; whereas a finding that an employee was subjected to an occupational detriment partly on account of having made a protected disclosure will be to the effect that the protected disclosure was one of more than one reason for the occupational detriment.*

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[2] (2005) 26 *ILJ* 2153 (LAC)

[3] (2019) 40 ILJ 1224 (LAC)

[95] Section 3 of the PDA thus casts the net wide. If there is more than one reason for a dismissal, the PDA will be contravened if any one of the reasons for the dismissal is the employee having made a protected disclosure. The wide scope of protection is consistent with the purposes of the PDA which addresses important constitutional values and injunctions regarding clean government and effective public service delivery. In City of Tshwane Metropolitan Municipality v Engineering Council of SA & another, the Supreme Court of Appeal favoured an extensive approach to interpreting the provisions of the PDA to give proper effect to its broad purposes, namely the encouragement of whistleblowers in the interests of accountable and transparent governance. It stated:

> *'A further difficulty with this approach to the nature of information under the PDA is that its narrow and parsimonious construction of the word is inconsistent with the broad purposes of the Act, which seeks to encourage whistleblowers in the interests of accountable and transparent governance in both the public and the private sector. That engages an important constitutional value and it is by now well-established in our jurisprudence that such values must be given full weight in interpreting legislation. A narrow construction is inconsistent with that approach. On the construction contended for by Mr Pauw the threat of disciplinary action can be held as a sword of Damocles over the heads of employees to prevent them from expressing honestly held opinions to those entitled to know of those opinions. A culture of silence rather than one of openness would prevail. The purpose of the PDA is precisely the opposite.'*

[32] More recently, in *Railway Safety Regulator v Kekana*[4], the LAC reaffirmed that:

> *'[38] It is by now trite that an employee must establish a prima facie case that he or she has made a protected disclosure and that there is a causal link between his or her dismissal and that protected disclosure, and in event of that being established, and in order to escape liability, the employer would have to show that the employee had been dismissed for a fair reason (such as misconduct)'*

[33] The difficulty in this matter arises from the respondent's contention that, because it did not know that the applicant had made a disclosure to the SIU, the dismissal cannot have been causally connected to it.

[34] This argument is premised on an unduly narrow understanding of causation.

[35] The evidence establishes the following sequence. The applicant disclosed information relating to alleged irregularities. That disclosure involved the

[4] (2024) 45 *ILJ* 284 (LAC)

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transmission of documents to the SIU. The information contained in those documents subsequently got into the hands of Mr Holomisa. When Holomisa publicised it this triggered concern, if not consternation, within the respondent. NSFAS management immediately instructed the ICT department to conduct an investigation into how the information contained in Mr Holomisa's letter to SIU and the Priority Crime and Investigation Directorate, which was information only known to NSFAS employees, could have leaked.

[36] It was not a general investigation into breaches of the ICT policy relating to sending emails from work to staff's personal emails. The data search parameters used were fragments of the inculpatory information referred to in Holomisa's disclosure. Its purpose was plainly to determine where the the leak had originated. The search naturally brought to light the emails Abrahams had sent to himself containing the information in question,

[37] He was then disciplined and dismissed ostensibly not for disclosing the damning information to the SIU, but for simply breaching the ICT policy.

[38] This sequence of events leading to his dismissal is analogous to the causal connections examined in other the decisions of the Labour Appeal Court.

[39] In *Kroukam*, the employee was dismissed for misconduct, but the Court found that the misconduct charges were the manifestation of an earlier dispute arising from protected conduct. The causal link was not broken by the temporal or formal separation between the protected conduct and the disciplinary charges.

[40] In *Dorey*'s case, the employee's mode of engaging in disclosures was itself relied upon as misconduct. The Court held that such conduct could not be divorced from what was disclosed and that dismissing an employee for conduct inherent in the act of disclosure did not sever the causal link between the disclosure and the dismissal.

[41] In *Kekana*, the disclosure gave rise to internal conflict which in turn resulted in disciplinary proceedings. The Court still recognised that the causal chain may operate indirectly through intervening steps.

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[42] NSFA's argument that it lacked knowledge of his disclosure to the SIU does not, in my view, defeat Abrahams' claim.

[43] The authorities make it clear that the enquiry is into the real cause of the dismissal, not the employer's characterisation of it or its awareness of the precise route through which the relevant conduct manifested. An employer may act on the consequences of a disclosure without appreciating the precise form it took. Where the dismissal results from the exposure of information attributable to the employee, the causal link remains intact.

[44] To hold otherwise would allow an employer to avoid the consequences of section 187(1)(h) by focusing narrowly on the immediate trigger for disciplinary action while disregarding the broader sequence of events. Such an approach would undermine the purpose of the PDA, which is to encourage the disclosure of wrongdoing by protecting employees against reprisals.

[45] In the present case, the forwarding of emails to a personal account was not an independent act of misconduct which happened to coexist with the disclosure. It was the very means by which the disclosure was carried out.

[46] The ICT investigation was not initiated in the interests of identifying breaches of the email policy. It was directed at identifying who was responsible for the transmission of very specific information exposing corruption in NSFAS. Abrahams was identified not as a result of a general audit of staff emailing their private email addresses, but as a result of an email search for emails with a specific content sent to an external email address. The policy against emailing one's own private email address was then disingenuously invoked to punish him for conduct he should have been commended for.

[47] It is an inescapable inference to draw from the evidence that, but for the publication of the information Abrahams had disclosed to the SIU, there would not have been an investigation to determine the source of the leak and his dismissal would not have ensued. His disclosure set off the chain of causation which led to the action taken against him, even if it's action was delayed until a third party publicised what he had disclosed.

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[48] Accordingly, all the evidence points to the overwhelming cause of his dismissal being his disclosure of the information of various act of wrongdoing on the part of NSFAS management.

Conclusion

[49] In my view, the applicant has established that his disclosure formed an integral part of the causal chain leading to his dismissal. The breach of ICT policy relied upon by the respondent cannot be isolated and treated separately and independently from that chain. The respondent has not discharged the burden of proving that the dismissal was for a reason unrelated to the disclosure.

[50] Abraham's dismissal was therefore automatically unfair in terms of section 187(1)(h) of the LRA.

Relief and Costs.

[51] Abrahams seeks reinstatement to the date of his dismissal. There is every reason to grant him full relief in the circumstances.

[52] On the question of costs, the court is dealing with someone who was dismissed for performing in responsible manner with a *bona fide* intention of bringing to light wrongdoing, once management had failed to act on the information he provided to it. As a matter of fairness and law, I see no reason why he should have to bear any of his legal costs of fighting to overturn his dismissal, which was the result of a disciplinary process instituted with the ulterior motive of punishing a genuine whistle-blower.

Order

1. The Applicant's dismissal by the Respondent was for making a protected disclosure in terms of the Protected Disclosures Act 26 of 2000 and accordingly was automatically unfair under section187(1)(h) of the Labour Relations Act, 66 of 1995.

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2. The Respondent must reinstate the Applicant, with full retrospective effect to the date of his dismissal on 23 May 2023 and must pay him his remuneration from the date of his dismissal to the date of his reinstatement, within fifteen (15) days of him reporting for work.

3. The Respondent must pay the Applicant's legal costs on an attorney own client scale.

R Lagrange

Judge of the Labour Court of South Africa

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Appearances:

For the Applicant: M Aggenbach
Instructed by: Cato Attorneys

For the Respondent: T Manchu SC
Instructed by: Cheadle, Thompson & Haysom Inc.