



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case No: C560/2023

In the matter between:

FATIMA GALANT

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION (“CCMA”)**

First Respondent

COMMISSIONER ANDRE SIEBERT N.O.

Second Respondent

DARTPAC (PTY) LTD

Third Respondent

(Registration No: 1994/010332/07)

Heard: 18 September 2025

This judgment was handed down electronically by circulation to the parties’ legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 22 May 2026.

JUDGMENT

VAN WYK, AJIntroduction

- [1] This is an application for the reviewing and setting aside of the arbitration award dated 21 September 2023 and issued under case number WECT 11161-23 under the auspices of the first respondent, wherein the second respondent (arbitrator) found that the applicant's dismissal was fair.
- [2] The third respondent opposed the application for the reviewing and setting aside of the award by the arbitrator.

Background

- [3] The applicant was employed as a Stock Controller by the third respondent and has been in the employ of third respondent for seventeen years prior to her dismissal. Some of her key duties as Stock Controller were to count stock, reconcile stock variances and submit final figures to the accountant for capturing purposes.
- [4] Third respondent discovered during March 2023 that there had been excessive spending on their cheque account and on investigation found that the excessive spending was on the acquisition of pallets known as CHEP pallets. This excessive spending on pallets was found to have taken place over a number of months.
- [5] It was as a result of this finding that the applicant was charged in a disciplinary hearing with poor work quality, neglect of duty and breach of her duty of good faith to her employer in relation to the excessive spending on pallets. These charges were based upon applicant making a misrepresentation to third respondent about the number of pallets counted by her on a monthly basis. In

this regard she would conceal in her report the fact that pallets were missing. The applicant was found guilty and dismissed.

- [6] The applicant referred an unfair dismissal dispute to the first respondent (CCMA) challenging both procedural and substantive fairness of her dispute.
- [7] At the commencement of the arbitration proceedings, applicant represented by an attorney made an application to be represented by her attorney during the arbitration proceedings, which was dismissed by the arbitrator after looking at the parties' comparative abilities and complexity of the matter.
- [8] It was not disputed during the arbitration that incorrect figures relating to the pallets were captured by the applicant on the system, leading to an increase in spending on pallets. The dispute however, revolved around whether the applicant had personal knowledge of the information that she fed into the system or whether she received the information for a certain Peter and a certain Mario.
- [9] The arbitrator on an analysis of the evidence found it improbable that the applicant could have received the information from either Peter or Mario and found that she had supplied the false information for capturing thereof and that it had led to the breakdown in the employment relationship which justified her dismissal. I now turn to deal with the grounds for review.

Test on review

- [10] The grounds of review raised by the applicant must be considered within the context of the applicable test. The test that has been laid down in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*¹ (*Sidumo*) is whether the decision reached by the commissioner is one that a reasonable decision maker could not reach. It was held furthermore in *Sidumo* that the arbitrator's conclusion must fall within a range of decisions that a reasonable decision maker could make.

¹ [2007] ZACC 22; (2007) 28 ILJ 2405 (CC) at para 110.

[11] This test was further clarified by the Labour Appeal Court in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and others*² as follows:

'In short: A reviewing court must ascertain whether the arbitrator considered the principal issue before him/her; evaluated the facts presented at the hearing and came to a conclusion that is reasonable.'

[12] It is not required of the Court on review to take into account every factor individually and consider how the arbitrator dealt with each of these factors. The totality of the evidence must be considered when determining whether the decision made by the arbitrator is one that a reasonable decision maker could make.³

[13] The Supreme Court of Appeal in *Herholdt v Nedbank Limited (Congress of South African Trade Unions as amicus curiae)*⁴ also clarified the test in the following terms:

'... the test "is a stringent [one] that will ensure that ... awards are being lightly interfered with" The Sidumo test will however, justify setting aside an award on review if the decision "is entirely disconnected with the evidence" or is "unsupported by any evidence" and involves speculation by the commissioner.'

[14] The test is therefore a stringent and conservative test of reasonableness, and the applicant must convince the Court that the arbitrator had in his conclusion on all the evidence arrived at an unreasonable result.

Grounds of review

² [2013] ZALAC 28; (2014) 35 ILJ 943 (LAC) at para 16

³ *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation Mediation and Arbitration and Others* [2013] ZALAC 28; (2014) 35 ILJ 943 (LAC) at paras 18-19.

⁴ 2013 (6) SA 224 (SCA); [2013] 11 BLLR 104 (SCA) (2013) ILJ 2795 (SCA) at para 13

[15] The applicant's challenge to the arbitration award is based on contentions that the arbitrator failed to apply his mind to the evidence that was presented to him, ignored relevant material evidence, took into account irrelevant evidence and misconstrued material evidence in delivering his award and came to a decision that was unreasonable and one that another arbitrator would not have come to on the available material. The grounds cited by the applicant in support of these contentions are that the arbitrator failed to appreciate that:

- a. She was unrepresented and that her version was reasonable and that the probabilities supported her version;
- b. The third respondent was inconsistent in its application of disciplinary measures, as no disciplinary steps were taken against Mr Peter who actually counted the stock in the warehouse;
- c. Dismissal was not an option of last resort as possible alternatives to dismissal such as a final warning or internal counselling was not considered by the third respondent;
- d. She was not guilty of the charges that were levelled against her;

Review Test

[16] The grounds of review proffered by the applicant will have to be dealt with in the context of the applicable test, that will determine whether the arbitrator's decision is reviewable. The test for review as laid down in *Sidumo and Another v Rustenburg Platinum Mines Ltd & Others*⁵ (*Sidumo*) is whether the decision reached by the commissioner is one that a reasonable decision maker could not reach. The conclusion reached by the arbitrator must therefore fall within a range of decisions that a reasonable decision maker could make.

⁵ (2007) 28 ILJ 2405 (CC); 2008 (2) SA 24 (CC) at para 110

[17] The Labour Appeal Court in clarifying the test laid down in *Sidumo* said the following in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others*⁶ (*Gold Fields Mining*):

“In short: A reviewing court must ascertain whether the arbitrator considered the principal issue before him/her; evaluated the facts presented at the hearing and came to a conclusion that is reasonable.”

[18] The Court on review must take into account the totality of the evidence presented during the arbitration proceedings when deciding whether the decision made by the arbitrator is one that a reasonable decision maker could make.⁷

[19] In further clarification of the test to applied on review, the LAC remarked as follows in *Quest Flexible Staffing Solutions v Legobate*⁸:

“[12] The test that the Labour Court is required to apply in a review of an arbitrator’s award is this: “Is the decision reached by the commissioner one that a reasonable decision-maker could not reach?” Our courts have repeatedly stated that in order to maintain the distinction between review and appeal, an award of an arbitrator will only be set aside if both the reasons and the result are unreasonable. In determining whether the result of an arbitrator’s award is unreasonable, the Labour Court must broadly evaluate the merits of the dispute and consider whether, if the arbitrator’s reasoning is found to be unreasonable, the result is nevertheless, capable of justification for reasons other than those given by the arbitrator. The result will, however, be unreasonable if it is entirely disconnected with the evidence, unsupported by any evidence and involves speculation by the arbitrator.”

⁶ (2014) 35 ILJ 943 (LAC) at para 16

⁷ *Gold Fields Mining* (supra) at paras 18-19

⁸ (2015) 36 ILJ 968 (LAC) at paras 12-13

[13] An award will no doubt be considered to be reasonable when there is a material connection between the evidence and the result, or, put differently, when the result is reasonably supported by some evidence. Unreasonableness is, thus, the threshold for interference with an arbitrator's award on review."

[20] The applicant in accordance with the applicable review test must show that the arbitrator ultimately arrived at an unreasonable result.

[21] This application for review therefore falls to be decided within the context of the stated test.

The arbitrator's findings and the grounds for review

[22] The overarching ground for review upon which the application is based is that the arbitrator failed to apply his mind to the relevant and material evidence placed before him and by failing to apply his mind, he reached a decision that no reasonable decision maker could have reached, based on the totality of the evidence.

[23] The first ground under this overarching ground, as cited by the applicant is that the arbitrator arrived at an unreasonable result by failing to appreciate that she was unrepresented and that her version was reasonable and supported by the probabilities. The applicant unfortunately did not develop the point raised about the failure of the arbitrator to appreciate that she was unrepresented in her founding papers and in argument before this Court. However, looking at the record of proceedings of the arbitration it is apparent that there was equality of arms between the applicant and the employer representative as both were similarly situated as far as experience in labour matters are concerned. In addition to this, the issues involved were not complex in nature. It is also apparent from the record of proceedings that it did not affect a fair trial of the dispute which if it did may have led to a failure of justice. As far as the assertion that the applicant's version was reasonable and supported by the probabilities is

concerned, the evidence paints an entirely different picture. The uncontradicted evidence is that incorrect data had been captured on the system of the third respondent for some time and that it did not reflect that there was a variance between stock on hand and system figures. It was the duty of applicant to ensure that correct figures were captured. The inescapable conclusion is that the applicant had supplied the false information for capture for some time intentionally. This disposes also of the fourth ground raised by the applicant, as the finding of her guilt on the charges proffered against her by the third respondent is supported by the evidence.

[24] The second ground raised by the applicant relates to inconsistent application of discipline by the third respondent. This is based on her assertion that a certain Peter who was working with her, should also have been charged for the same misconduct as she received the information that she gave to the accountant from him and a certain Mario. The evidence and the probabilities do not however, support this assertion of the applicant. As indicated above, the inescapable conclusion drawn from the evidence is that the applicant was responsible for the false information that was provided.

[25] The third ground raised by the applicant was that dismissal was not an option of last resort, as other possible alternatives to dismissal existed. Besides the fact that no alternatives to dismissal was presented to the arbitrator by the applicant, what is a stark reality is that the conduct for which the applicant was charged involved an element of dishonesty that led to substantial financial loss to the third respondent. In addition to this, the conduct of the applicant has led to the breakdown in the relationship of trust between the third respondent and the applicant, which is crucial to a continued employment relationship. In the absence of trust, the third respondent cannot be expected to continue with the employment relationship with applicant.

CONCLUSION

[26] I am satisfied therefor that the arbitrator dealt with the matter with the minimum of legal formalities, applied a process that gave the parties a full opportunity to have their say in respect of the dispute, properly identified and understood the nature of the dispute between the parties and dealt with the substantial merits of the dispute. I am furthermore satisfied that the arbitrator's decision is one that another decision-maker could reasonably have arrived at based on the evidence that was before him.

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

Order

1. The application for the arbitration award to be reviewed is dismissed.
2. There is no order as to costs.

P Van Wyk

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

A Isaacs

Instructed by:

Parker Attorneys

For the Third Respondent:

T Du Preez

Instructed b:

Hannes Pretorius Bock Bryant