



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



Signature

27 June 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: 2026-084057

In the matter between:

PETER TEBOGO JONKER

Applicant

and

DEPARTMENT OF PUBLIC WORKS AND ROADS

First Respondent

NORTH WEST

HEAD OF DEPARTMENT OF PUBLIC WORKS AND

Second Respondent

ROADS NORTH WEST

MEC DEPARTMENT OF PUBLIC WORKS AND ROADS

Third Respondent

NORTH WEST

SELLO RAMONG N.O

Fourth Respondent

GENERAL PUBLIC SERVICE SECTOR BARGAINING

Fifth Respondent

COUNCIL

Heard: 23 April 2026

Delivered: 27 June 2026

Summary: An urgent application for interim relief relating to a disciplinary hearing pending the determination by the CCMA whether it will hold an inquiry in terms of section 188A(11) of the LRA. Requirements for interim relief satisfied, and the employee has demonstrated exceptional circumstances justifying the court's intervention in *media res*.

JUDGMENT

GANDIDZE, J

Introduction

[1] On 28 January 2026, the applicant, Mr Jonker, was served by his employer, the Department of Public Works and Roads North West (the Department), with a notice to attend a disciplinary hearing to answer charges of misconduct. Believing the charges were brought against him because he had made protected disclosures, Jonker invoked section 188A(11) of the Labour Relations Act¹ (LRA), which provides as follows:

'188A Inquiry by arbitrator

(11) Despite subsection (1), if an *employee* alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act 26 of 2000), that *employee* or the employer may require that an inquiry be conducted in terms of this section into allegations by the employer into the conduct or capacity of the employee.'

[2] The Department informed Jonker that it was not interested in an inquiry by an arbitrator under section 188A(11) of the LRA and that it would proceed with a disciplinary hearing. The Chairperson of the disciplinary hearing ruled that the disciplinary hearing would proceed, hence the current application, in which Jonker seeks to interdict the disciplinary hearing pending the Bargaining Council's decision on his request for a section 188A(11) LRA inquiry.

[3] The Department, the Head of the Department of Public Works and Roads North West (HoD), and the MEC of the Department of Public Works and Roads North

¹ Act No 66 of 1995, as amended.

West (MEC) (collectively referred to as the respondents) filed a notice of opposition to the application. However, the answering affidavit was deposed to on behalf of the respondents and the Chairperson of the disciplinary hearing. That position maintained in the heads of argument.

- [4] The General Public Service Sector Bargaining Council (Bargaining Council) was cited as a party because a request had been made to it to convene a section 188A(11) LRA inquiry into allegations of misconduct against Jonker. The Bargaining Council issued the Department an invoice for a section 188A(11) inquiry on 13 March 2026.

Background facts

- [5] Jonker has served as the Department's Chief Mechanical Engineer since his appointment in April 2020. His duties include procuring all construction plant and equipment (Transversal Contract RT57); registering all equipment on eNATIS and licensing; repairing and maintaining all equipment (Transversal Contract RT46); managing fuel cards; buying bulk diesel (Transversal Contract RT70); and managing plant hire.
- [6] While the respondents allege that the current dispute arose in late 2025, Jonker alleges that the matter dates back to September 2022, following Mr Kgantsi's appointment as HoD on 1 August 2022. Accordingly, the history of the matter will be traced to 2022.
- [7] In September 2022, the HoD convened a departmental meeting. After the meeting, Jonker received a telephone call from the HoD's Secretary, instructing him to meet the HoD at the Corner Lifestyle restaurant. On arrival, Jonker was met by the HoD and an African male, Mr Modiselle, whom the HoD introduced as a long-time friend and a businessman who supplies diesel to several government departments. The HoD instructed Jonker to attend all sites with diesel tanks alongside Modiselle, discuss the Department's challenges, and allow Modiselle to propose solutions. Thereafter, the HoD left the restaurant, and Jonker and Modiselle stayed behind to discuss, as instructed. Modiselle runs an entity known as Reakgona Petroleum (RP).
- [8] Subsequently, Jonker and Modiselle visited several sites.

- [9] The HoD then instructed Jonker to prepare a technical report on doing business with RP for transmission to the District Directors. The report was prepared in October 2022, but the Chief Director did not approve it.
- [10] The HoD instructed Jonker to present the report at a Management Committee meeting chaired by the HoD. After the meeting, the HoD instructed Jonker to revise the report in consultation with the Finance Manager so it could be presented to the Executive Management Committee (EMC), chaired by the MEC. Jonker alleges that he and the Finance Manager agreed that the report would not 'enter the field of supply chain management and decide who would install and supply diesel tanks and diesel.'
- [11] Before the presentation to the MEC, the HoD instructed Jonker to include in the report that the Transversal Contract RT70 would be cancelled and that a contract would be entered into with RP, including the installation of diesel tanks and their equipping with monitoring systems. Jonker did not comply with the instruction, and the MEC refused to approve the report.
- [12] Following this presentation to the EMC, the HoD removed some of Jonker's functions and reassigned them to the Chief Financial Officer (CFO). The CFO became the proxy for eNATIS and for the Wesbank Transversal Contract RT46 (Yellow Fleet). The Acting Chief Engineer was assigned to procure tractors at the district level, rather than at the provincial level as previously. Jonker alleges that he was effectively sidelined.
- [13] Around March 2023, Jonker came across a report dated March 2023 about a user outcry over the quality of diesel supplied by RP, which allegedly damaged the engines of state vehicles.
- [14] On 27 March 2023, Jonker wrote to the Director of Legal Services, Ms Eva King (King), and copied his direct supervisor, the Chief Director of Transport Infrastructure, regarding the HoD's alleged irregular conduct in removing some of Jonker's functions, because of the HoD's intentions to do business with RP. Jonker requested that King provide a legal opinion on the matter.
- [15] On 29 March 2023, Jonker was served with a notice of intention to suspend him in relation to an investigation into the Yellow Fleet.

- [16] In another e-mail dated 30 March 2023, Jonker requested that King investigate the HoD's ties to RP.
- [17] Believing that the intention to suspend him was linked to his correspondence with King, Jonker visited the HAWKS offices in April 2023 and raised the same issues he had raised with King.
- [18] In the same month, Jonker also wrote to the HoD, stating that he believed the intention to suspend him stemmed from the e-mails he had sent to King regarding the HoD's interests.
- [19] Security removed Jonker from the premises on 24 April 2023, and on 25 April 2023 he was served with the notice of suspension.
- [20] On 15 May 2023, Jonker escalated the matter to the MEC by lodging a grievance against the HoD.
- [21] On 26 June 2023, the HoD invited Jonker to meet the investigators regarding his suspension. The suspension was lifted after Jonker filed an urgent application in the North West High Court. He returned to work on 7 August 2023. Upon his return, Jonker requested that his functions relating to the Yellow Fleet be restored.
- [22] On 14 August 2023, Jonker was informed that he would be temporarily assigned to another directorate pending the investigation's finalisation.
- [23] In the same month, Jonker was contacted by the HAWKS to give an affidavit deposing to the allegations he had made about RP, and he did so.
- [24] On 8 September 2023, he was served with a notice of a disciplinary inquiry into the Department's Yellow Fleet. On 12 September 2023, Jonker invoked section 188A of the LRA by referring the dispute to the Bargaining Council. He also referred a dispute to the Bargaining Council under section 186(2)(d) of the LRA².

² Which provides that"

"(2) "Unfair labour practice" means an unfair act or omission that arises between an employer and an employee involving-

- [25] The dispute was unsuccessfully conciliated on 9 October 2023.
- [26] In October 2023, Jonker's attorneys sent correspondence to the Department, demanding that his functions be restored because the Department had failed to prove his misconduct at the September 2023 hearing. It does not appear that the demand was acceded to.
- [27] In February 2024, Jonker wrote to the National Treasury requesting information about the Bulk Fuel Supply Transversal Contract RT70, which was provided in April 2024. Jonker then forwarded the information to the HAWKS.
- [28] In October 2024, Jonker was served with an amended charge sheet and a new disciplinary notice in relation to a hearing scheduled for 28 October 2024. In response, he referred a second unfair labour practice dispute to the Bargaining Council, which led to the postponement of the disciplinary hearing. The dispute was unsuccessfully conciliated on 4 December 2024.
- [29] The disciplinary hearing resumed in December 2024.
- [30] In January 2025, Jonker once again invoked section 188A(11) of the LRA in respect of the 'amended charge sheet'.
- [31] In February 2025, the HAWKS contacted the National Treasury about their investigation.
- [32] In June 2025, Jonker received correspondence from the Department confirming that the position to which he had been redeployed did not exist within the structure and had no job description.
- [33] In August 2025, Jonker was instructed by the HoD to attend an interview with Elidna Genesis Consulting (Elidna), forensic investigators appointed to investigate 'leakage of sensitive information' and the 'defamation of the character of the HoD', based on information circulating on social media. Jonker met with Elidna on 19 August 2025. The Elidna report concluded that Jonker

(d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act 26 of 2000), on account of the employee having made a protected disclosure defined in that Act."

was a person of interest regarding the information leak, as he had claimed to be a whistleblower.

- [34] In October 2025, Jonker was invited to make representations as to why he should not be charged. In response, he stated that he was a whistleblower.
- [35] On 4 November 2025, Jonker was informed of an intention to suspend him.
- [36] On 28 January 2026, he was notified to attend a disciplinary hearing on 5 February 2026 to face charges, *inter alia*, of making serious and unsubstantiated defamatory allegations and circulating unsavoury and untruthful information about the HoD. He was suspended at the same time.
- [37] On 30 January 2026, Jonker invoked section 188A(11) of the LRA.
- [38] The disciplinary proceedings, scheduled to begin on 5 February 2026, were postponed to 9 March 2026 at the initiator's request.
- [39] On 9 February 2026, Jonker received a letter from the Department raising several issues, including a denial that he was a whistleblower and advising that the disciplinary hearing would proceed on 9 March 2026.
- [40] On 10 February 2026, Jonker sent an email to the Bargaining Council, the HoD, and the Department stating that, as a whistleblower, he has recourse if the disciplinary hearing proceeds.
- [41] On 9 March 2026, a pre-hearing was held. Jonker raised the issue that he had invoked section 188A(11) of the LRA and therefore the Chairperson should recuse himself. While Jonker alleges that the Chairperson ruled that the disciplinary hearing would proceed on 14 and 15 April 2026, the Department's case is that the postponement was by agreement.
- [42] On 13 March 2026, the Bargaining Council issued an invoice to the Department for the section 188A(11) LRA inquiry.
- [43] On 7 April 2026, Jonker received a letter dated 30 March 2026 from the Department, stating that the Department was not interested in a section 188A LRA inquiry and would proceed with the hearing on 14 and 15 April 2026.
- [44] Jonker responded on 8 April 2026, expressing concern about the Department's position and the Chairperson's impartiality.

- [45] The following day, Jonker's attorneys wrote to the Department seeking an undertaking that the disciplinary hearing would not proceed, failing which they would file an urgent application to this court.
- [46] On 10 April 2026, the Director of Legal Services wrote to Jonker's attorneys, among other things, disputing Jonker's status as a whistleblower.
- [47] On 13 April 2026, Jonker attorneys advised that they had been instructed to file an urgent application and sought an undertaking from the Department that the disciplinary hearing would not proceed on 14 April 2026.
- [48] Jonker alleges that on 14 April 2026, the 'matter effectively collapsed' and that the Chairperson postponed the hearing to 23 April 2026. The Department alleges that on 14 and 15 April 2026, Jonker threatened the Chairperson and was abusive towards the Head of Legal Services, accusing him of corruption, and that he had to be escorted from the premises by security.
- [49] The current application was filed on 14 April 2026. The Department agreed to adjourn the disciplinary hearing until 24 April 2026, the day after the application is argued. Oral arguments were heard on 23 April 2026, and the court issued an order staying the disciplinary proceedings pending this judgment. The delay in handing down the judgment is regrettable and is partly due to the volume of paper involved³. In addition, when the court was finalising the judgment, it learned of a decision of the Labour Appeal Court (LAC) handed down in March 2026, which overturned a judgment of this court on which Jonker had based his application. The parties had not referred to it in their heads of argument.
- [50] Returning to the background facts, and for completeness, Jonker alleges that the HAWKS informed him that they had completed their investigation and that the matter is with the National Prosecuting Authority (NPA) for a decision.
- [51] Jonker also alleges that he reported the matter to the Special Investigations Unit (SIU) shortly after filing a complaint with the HAWKS in April 2023, and

³ The founding affidavit is accompanied by 57 annexures. The answering affidavit and annexures run into more than 100 pages. The replying affidavit is 50 pages long, plus annexures. There is also the 300-page forensic investigation report by Elidna Forensic Investigators. The respondents filed their heads of argument late in the day on 22 April 2026, and the applicant's heads of argument were uploaded onto Caselines 30 minutes before the start of court on 23 April 2026.

disputes the Department's assertion that he first reported it to the SIU in February 2026.

Urgency

[52] On behalf of Jonker, the submission was made, with reference to the decision of this court in *Fisher v Ngcuka NO and Others*⁴ (*Fisher*), that the issue of an occupational detriment following a protected disclosure is in itself an issue that carries with it an inherent quality of urgent intervention, where section 188A(11) LRA inquiry has been invoked. It is also said that the relief sought is to some extent time-sensitive, and unless the court intervenes, Jonker will suffer a gross injustice in that the right envisaged in section 188A(11) would become academic if the matter is placed on the ordinary roll. With reference to *Chung-Fung (Pty) Ltd and Another v Mayfair Residents Association and Others*⁵, the submissions were, *inter alia*, that a matter is urgent if a litigant could not obtain substantial redress in due course, that the threshold for absence of redress is lower than that of irreparable harm⁶, and that a court should be slow to refuse to hear a matter where a litigant will be deprived of substantial redress in due course. Jonker disputes that he will obtain substantial redress at a hearing in due course, and submits that there is no substitute for a section 188A(11) inquiry. It was also submitted that the respondents were afforded five court days to file an answering affidavit, they took six days to file it, and therefore, they had sufficient opportunity to place their case before the court.

[53] Insofar as the urgency was alleged to be self-created, Jonker submitted, with reference to *Tlhakudi v President of South Africa Mr Mamatela Cyril Ramaphosa and others*⁷ that even where a party delays in approaching the court, the court has discretion to hear the matter as urgent, the main consideration being whether the litigant can obtain substantial redress in due course.

⁴ (2025/189683) [2025] ZALCJHB 514 (28 October 2025).

⁵ (2023/080436) [2023] ZAGPJHC 1162 (13 October 2023).

⁶ With reference to *Mbude v Premier of the Eastern Cape and others* [2022] 9 BLLR 859 (ECB).

⁷ (J 1220/2022) [2022] ZALCJHB 277 (12 October 2022).

- [54] The respondents contend that the urgency was self-created. They criticise Jonker's inaction following the Department's letter dated 9 February 2026. They also contend that, after being informed that the disciplinary hearing would proceed on 14 and 15 April 2026, Jonker took nine days to send a letter demanding an undertaking.
- [55] The respondents' submission regarding self-created urgency is unpersuasive when one has regard to the sequence of events since the issue of the notice to attend the disciplinary on 30 January 2026. Jonker acted reasonably by first engaging the Chairperson to explain that he had requested that the Bargaining Council conduct a section 188A(11) inquiry, that he was awaiting a response, and that the disciplinary proceedings should be terminated for that reason.⁸ The Bargaining Council issued the Department with an invoice on 13 March 2026, and it was not unreasonable for Jonker to expect the Chairperson to favourably consider his request and to postpone the disciplinary hearing pending the Bargaining Council's decision.
- [56] Moreover, the main consideration is whether Jonker can obtain substantial redress in due course if the court does not intervene at this stage. He seeks interim relief pending the Bargaining Council's decision on whether it will conduct a section 188A(11) LRA inquiry into the misconduct charges against him. Unless the court hears the matter as a matter of urgency, the Department will continue with the disciplinary hearing, even though the Bargaining Council must still consider Jonker's request. He has elected to exercise a right afforded to him in terms of section 188A(11) of the LRA, and he is entitled to make that election. Jonker cannot obtain substantial redress in due course.
- [57] Therefore, a case for urgency has been made. The next issue is whether this court has jurisdiction to hear the application.

Jurisdiction

- [58] Section 188A(11) of the LRA permits an employee or an employer to request that an inquiry into allegations of misconduct be conducted by an arbitrator,

⁸ See *Matlala v Forskor Proprietary Limited and others* (2025/169524) [2025] ZALCJHB 478 (22 October 2025) at para 30.

where an employee, in good faith, alleges that a disciplinary hearing against him is in breach of the Protected Disclosures Act⁹.

[59] Section 3(1) of the (PDA) states as its object the protection of an employee who makes a protected disclosure from any occupational detriment; the provision of remedies for those who suffer an occupational detriment in consequence of having made a protected disclosure, and the provision of procedures to enable an employee, in a responsible manner, to disclose information concerning improprieties by his or her employer.¹⁰

[60] Section 4 of the PDA reads as follows:

"(1) Any *employee* who has been subjected, is subject or may be subjected, to an *occupational detriment* in breach of section 3, may -
(a) approach any court having jurisdiction, including the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act No 66 of 1995), for appropriate relief;

[61] Therefore, section 188A(11), read together with the PDA, confers express jurisdiction on this court to hear matters concerning alleged breaches of the PDA. Jonker seeks to interdict disciplinary action, which he contends amounts to an occupational detriment.

[62] Case authority has also held that this court has jurisdiction to intervene in disciplinary proceedings. In *Booyesen v Minister of Safety and Security and Others*¹¹, the court held as follows:

'... the Labour Court has jurisdiction to interdict any unfair conduct including disciplinary action. However, such an intervention should be exercised in exceptional cases. It is not appropriate to set out the test. It should be left to the discretion of the Labour Court to exercise such powers having regard to the facts of each case. Among the factors to be considered would in my view be whether failure to intervene would lead to grave injustice or whether justice might be attained by other means. The list is not exhaustive.'

⁹ Act 26 of 2000.

¹⁰ [2010] 3 BLLR 229 (SCA) at para 33.

¹¹ (2011) 32 ILJ 112 (LAC) at para 54.

[63] In *Member of the Executive Council for Education, Northwest Provincial Government v Gradwell*,¹² the court confirmed that applications for interim relief pending the outcome of unfair labour practice disputes will be entertained by this court only 'in extraordinary or compellingly urgent circumstances' and that where an employee harbours a reasonable apprehension of harm, the appropriate remedy is to seek interim relief pending the outcome of the unfair labour practice proceedings.

[64] In *Palace Group Investments (Pty) Ltd & Another v Mackie*¹³(Mackie), the Labour Appeal Court determined an appeal against a judgment of this court which granted interim relief to an employee pending the outcome of an unfair labour practice dispute that the disciplinary hearing that the employee would be subjected to constituted an occupational detriment. The court stated this:

[13] It is trite that the granting of an interim interdict pending the outcome of further proceedings is an extraordinary remedy within the discretion of a court, exercised upon a consideration of all the facts.

[65] Therefore, apart from the fact that the PDA expressly provides that Jonker can approach this court for appropriate relief, the LAC has held that this court has jurisdiction to intervene in disciplinary proceedings. What remains to be determined is whether Jonker has made out a case for the relief he seeks.

[66] Jonker seeks interim relief. He seeks to interdict the disciplinary hearing pending the Bargaining Council's decision, to be made by an arbitrator, on whether a section 188A(11) LRA inquiry will be held. He states that if the arbitrator decides that a section 188A(11) LRA inquiry will be held, the disciplinary proceedings will be terminated permanently. However, if the arbitrator decides not to hold a section 188A(11) LRA inquiry, the disciplinary proceedings against him must proceed.

¹² (2012) 33 ILJ 2033 (LAC).

¹³ (2014) 35 ILJ 973 (LAC).

[67] *Mackie*¹⁴ set out the requirements for interim relief as a *prima facie* right, even though open to some doubt; a well-grounded apprehension of irreparable harm if the interim relief is not granted; the absence of an alternative remedy; and a balance of convenience in favour of granting the interim relief.'

Jonker's submissions

[68] His protected disclosures relate to the Department's Yellow Fleet, the supply of diesel and diesel tanks and the abuse of power. The '*the right to intervene arises from a right bestowed upon the Applicant by the LRA in terms of section 188A(11) of the LRA.*' Extensive reference was made to *Fisher*¹⁵, which held that because the employee had invoked section 188A(11) of the LRA and the Commission for Conciliation, Mediation, and Arbitration (CCMA) had yet to allocate the matter to an arbitrator, it would be inappropriate and irregular for the employer to continue with the disciplinary hearing.

[69] Relying on *Nxele v National Commissioner: Department of Correctional Services and Others*¹⁶ (*Nxele LC*), which was upheld on appeal in *National Commissioner: Department of Correctional Services v Nxele and Another*¹⁷ (*Nxele LAC*), it was submitted that the object of section 188A(11) of the LRA is to avoid disputes in which an employee alleges that holding a disciplinary hearing into allegations of misconduct breaches the PDA, and that the provision aims to reduce the risk of collateral litigation. The submission is that once an employee invokes section 188A(11) of the LRA, it is for the appointed arbitrator to establish the jurisdictional prerequisites.

[70] Reliance was also placed on *Tsibani v Estate Agency Affairs Board and Others*¹⁸ (*Tsibani*). It was submitted that section 188A(11) of the LRA does not envisage a parallel process, and that if the disciplinary process relates to an employee's conduct, the s188A(11) LRA inquiry will replace the disciplinary

¹⁴ *Ibid* para 18.

¹⁵ Para 34-35, 41

¹⁶ (2018) 39 ILJ 1799 (LC).

¹⁷ [2025] 5 BLLR 472 (LAC).

¹⁸ [2021] JOL 51625 (LC) at para 67.

hearing. The contention is therefore that holding a disciplinary inquiry, when Jonker has invoked the provisions of section 188A(11) of the LRA, is inappropriate and, in fact, no longer competent. Therefore, unless the court interdicts the disciplinary hearing, Jonker will 'face the dubious prospect of having to participate in an internal disciplinary process which could have no lawful consequences and could rightly be considered to be terminated.'¹⁹

[71] Reference was also made to *Fisher*, in which this court held that an employee's entitlement to a section 188A(11) process is triggered if (a) there is a protected disclosure of which the employer is aware, (b) the protected disclosure predates the institution of the disciplinary proceedings, and (c) the employee invokes section 188A(11) of the LRA. The submission is that, on the facts, all these requirements are satisfied. Jonker made a disclosure, as defined in section 1 of the PDA, regarding the conduct of the HoD, reasonably believing that the information he disclosed shows or tends to show, *inter alia*, that a criminal offence has been committed, is being committed, or is likely to be committed. The submission is further that the disclosures were made to persons listed in the PDA: a legal adviser (section 5), the employer (section 6), and the HAWKS and the Special Investigations Unit (SIU) (a person or body in accordance with sections 8 and 9 of the PDA). The disclosures were made in March and April 2023, thereby predating the most recent disciplinary hearing.

The respondents' contentions

[72] The respondents dispute that Jonker is a whistleblower as contemplated in the PDA, deny that the pending disciplinary inquiry constitutes an occupational detriment, deny that the alleged disclosures were made in good faith, and

¹⁹ See *Matlala v Foskor Proprietary Limited and Others* (2025/169524) [2025] ZALCJHB 478 (22 October 2025) at para 51, which held that "Should the court then grant interim relief by suspending the internal inquiry pending the decision of the CCMA commissioner whether to proceed with the s 188A(11) inquiry? If the court does not stay the internal inquiry, Matlala could be denied the opportunity of exercising his right to request the statutory inquiry because, unless the request for the statutory inquiry is accepted, the employer can proceed with the internal one in the meantime ... "

submit that there is no nexus between the alleged occupational detriment and the ongoing disciplinary hearing.²⁰

- [73] The Department contends that the HoD was appointed after a period during which the Department had been under administration, and that upon his appointment he had to review delegations and other administrative processes to enhance efficiency. At the time of the HoD's appointment, the CFO's investigation into Jonker regarding the Yellow Fleet was already underway. The HoD received a report that the annual budget for the Yellow Fleet was spent within two months of allocation, and that this was one of the reasons the Yellow Fleet function was taken away from Jonker, to prevent the Department from sinking deeper into debt and collapsing service delivery. Jonker's foul cry is not based on any facts but stems from a public servant who believes he owns departmental resources and cannot be held accountable.
- [74] Regarding RP, the HoD was informed by the senior managers responsible for the districts of challenges with diesel supply. Jonker resisted conducting market research to identify potential service providers for the National Treasury Transversal Contract. This was the reason his powers to appoint service providers were withdrawn, so that the Department could explore the supply of diesel tanks following reports of diesel losses and unmanageable expenditure. Presentations from service providers were required to assess where capacity could be drawn, not to appoint RP in the manner Jonker alleges. Neither RP nor any other service provider was appointed to supply or repair diesel tanks. Jonker could not have been instructed to cancel the Transversal Contract, as he is a junior manager, reporting to Directors and Chief Directors. RP was appointed by the National Treasury before the HoD's appointment and is on the National Treasury database. The court was invited to read the founding affidavit together with all other correspondence and documents because of the applicant's 'concentrated falsehood aimed at tarnishing the image and the good character of any person that differed with him'. Jonker has a propensity to tell lies, fabricate facts, and claim victimhood once his lies catch up with him. He is

²⁰ On behalf of Jonker it is pointed out that the last part must be an error and that what was being submitted is that there is no nexus between the disclosure and the disciplinary hearing.

not even worthy of claiming to be a whistleblower or to be facing an occupational detriment.

- [75] Jonker was redeployed after the HoD learned that he was still at home, rather than charging him with absconding. The HoD asked Jonker to indicate a directorate where his skills could be best utilised.
- [76] Jonker filed a complaint with the HAWKS in August 2023, after his suspension, after some of his functions had been withdrawn, and after he had been interviewed by Open Waters forensic investigators in connection with the Yellow Fleet. The complaint lodged with the SIU in February 2026 was made after Jonker had been charged following the Eligna investigation. Therefore, both complaints were lodged in response to disciplinary proceedings against Jonker.
- [77] The Department has had a PDA Policy since 2022, which was reviewed in March 2023. Jonker's alleged whistleblowing is driven by malice and bad faith. If he were a genuine whistleblower, he would have requested that his identity be withheld, rather than shouting from the rooftops as he is doing.
- [78] The submission further stated that Jonker was first suspended in March 2023 and that the purported disclosure to the HAWKS in August 2023 occurred while an investigation into the Yellow Fleet was already underway.
- [79] The Department agreed to a section 188A(11) inquiry in respect of the first disciplinary hearing due to delays with that hearing, and that no precedent was set that disciplinary inquiries will be terminated if an employee invokes section 188A(11) of the LRA. Section 188A(11) of the LRA does not confer an automatic right to an inquiry, and Jonker is required to provide proof of the irregular conduct, not merely to make allegations, express beliefs, or present a biased narrative of victimisation driven by ulterior motives. Jonker is charged with gross misconduct arising from a forensic investigation, and a fair procedure is being followed. The PDA does not protect insolence, defamatory allegations, or a refusal to cooperate.

Evaluation

- [80] Before assessing whether Jonker has made out a case for the relief he seeks, the court notes that the *Fisher* decision, on which Jonker heavily relied, was

followed in *Modika v Industrial Development of South Africa and Another*²¹ (*Modika LC*). In fact, the same judge issued both decisions. It is unclear whether the *Fisher* decision was challenged. *Modika LC* was taken on appeal, and in *Industrial Development Corporation of South Africa v Modika and others*²² (*Modika LAC*) handed down on 17 March 2026, the court set aside the decision of the court *a quo*.

- [81] In *Modika LC*, the employee approached the court for a final order interdicting a disciplinary hearing, *inter alia*, on the basis that he had invoked section 188A(11) of the LRA. The court interdicted the disciplinary hearing pending an arbitrator's decision on whether to hold a section 188A(11) LRA inquiry.
- [82] On appeal, *Modika LAC* criticised the court *a quo*, *inter alia*, for granting interim relief interdicting the disciplinary hearing pending the CCMA's decision on whether to hold a section 188A(11) LRA inquiry, despite the employee having sought final relief. In the present matter, Jonker seeks interim relief pending the Bargaining Council's decision on whether it will hold a disciplinary hearing.
- [83] Further findings in *Modika LAC* will be referred to when dealing with the requirements for interim, an issue that I turn to next.

Prima facie right

- [84] Jonker seeks an order interdicting the disciplinary hearing pending the CCMA's decision on whether to conduct a section 188A(11) inquiry into the allegations of misconduct against Jonker. Section 188A(11) gives an employee who alleges in good faith that the holding of an inquiry contravenes the PDA, the option to request that an inquiry be conducted into the allegations regarding the employee's conduct or capacity.
- [85] The respondents devoted much of their arguments to challenging Jonker's assertion that he is a whistleblower. That issue is not relevant to the question of whether Jonker has a *prima facie* right to the relief he seeks. For section 188A(11) of the LRA to be triggered, what is required is for an employee to

²¹ [2026] 2 BLLR 172 (LC).

²² (A2026/037072) [2026] ZALAC 21 (17 March 2026).

allege, in good faith, that the disciplinary proceedings have been instituted because the employee made protected disclosures. It is not necessary for the employee to establish that they made protected disclosures, as found in *Modika LAC*, which decision did not refer to an earlier decision of the same court in *Nxele LAC*, which found otherwise.

[86] The court in *Tsibani v Estate Agency Affairs Board and others*²³, held that section 188A(11) of the LRA is not designed or intended to determine whether the facts constitute a protected disclosure as contemplated by the PDA or not. Instead, the provision provides for an inquiry into allegations concerning an employee's conduct or capacity.

[87] Whether an employee made protected disclosures is a matter for determination when the employee refers a dispute to the Bargaining Council or the CCMA for conciliation in terms of section 186(2)(d) of the LRA. If the dispute remains unresolved, a referral to this court is made in terms of section 191(13) of the LRA.²⁴

[88] It is for that court, hearing the unfair labour practice claim, to determine whether an employee was subjected to an occupational detriment for making protected disclosures.

[89] In *National Commissioner: Department of Correctional Services v Nxele and another*²⁵ (*Nxele LAC*), the court held as follows regarding section 188A(11) of the LRA:

[14] There is no obligation on an employee who seeks to rely on section 188A(11) to prove that the holding of the disciplinary hearing constitutes

²³ [2021] JOL 51625 (LC) at para 72.

²⁴ Which states as follows:

(13) (a) An *employee* may refer a *dispute* concerning an alleged unfair labour practice to the Labour Court for adjudication if the *employee* has alleged that the *employee* has been subjected to an occupational detriment by the employer in contravention of section 3 of the Protected Disclosures Act, 2000, for having made a protected disclosure defined in that Act.

(b) A referral in terms of paragraph (a) is deemed to be made in terms of subsection (5) (b).

See *Mackie*, fn 13.

²⁵ [2025] 5 BLLR 472 (LAC).

a contravention of the PDA. Rather, what is required is that the employee alleges in good faith that the holding of an inquiry does so.’

[90] Also in *Matlala*, the court decided after *Nxele LAC* that

[48] ...the employee has to show that *their belief* is *bona fide*, not that the disciplinary action taken does amount to an occupational detriment.’

[91] Therefore, a *prima facie* right is demonstrated if the court accepts that Jonker’s allegation that he is being disciplined because he made a protected disclosure is made in good faith.

[92] The disciplinary process sought to be interdicted concerns allegations of ‘leakage of sensitive information’ and the ‘defamation of the character of the HoD and the MEC’ by Jonker. There can be no denying that the charges arise from Jonker’s allegations, dating from 2023, that the HoD and the MEC were engaged in irregular conduct in respect of, *inter alia*, the Yellow Fleet, the supply of bulk diesel, and the installation of diesel tanks. The fact that the respondents allege that the charges stem from a forensic investigation conducted by Eligna in August 2025 does not alter the picture.

[93] Given that background, the court is of the *prima facie* view that Jonker’s allegation that he is being disciplined for making protected disclosures is made in good faith. In *Nxele LAC*, the court stated that ‘the concept of good faith is sensitive to context.’²⁶ The charges against Jonker have context that is relevant to determining whether Jonker made the request for a section 188A(11) inquiry in good faith.

[94] I say *prima facie* intentionally because it is for the Bargaining Council to determine whether Jonker’s request for a section 188A(11) LRA inquiry was made in good faith. In *Modika LAC*, the court held that the *court a quo* usurped the CCMA’s powers by finding that the jurisdictional requirements for accepting a section 188A(11) LRA referral were met, as the power to make such a determination rested with the CCMA. In that regard, the court referred to this court’s decision in *Matlala v Foskor Proprietary Limited and others*²⁷ (*Matlala*)

²⁶ *Ibid* at para 20.

²⁷ (2025/169524) [2025] ZALCJHB 478 (22 October 2025) at paras 50 and 51.

which reached the same finding that it is for the CCMA or the Bargaining Council to determine whether the jurisdictional requirement is met. Obviously, that decision can be reviewed by this Court, as the Bargaining Council and the CCMA make jurisdictional findings for convenience.

[95] If the CCMA or the Bargaining Council finds that to be the case, it will conduct the section 188A(11) LRA inquiry. It cannot be said that Jonker is attempting to evade answering the allegations against him, as this is precisely what the section 188A(11) LRA inquiry will be concerned with.

[96] Jonker has made out a prima facie case for an order interdicting the internal disciplinary hearing, so that the Bargaining Council can decide whether to hold a section 188A(11) LRA inquiry into the allegations of misconduct against Jonker.

Irreparable harm and balance of convenience

[97] Jonker submitted that unless interim relief is granted, he will be denied the opportunity to exercise his right to a section 188A(11) LRA inquiry. Reference was made to *Fisher*,²⁸ which held that, unless interim relief is granted, an employee would face the dubious prospect of participating in a disciplinary hearing that could have no lawful consequence, and that this may lead to collateral challenges and litigation, which section 188A(11) of the LRA seeks to avoid. In addition, specific reference was made to the Chairperson's remarks at the disciplinary hearing, suggesting he would not be impartial. The Chairperson also opposed the current application, further proving that he would not be impartial.

[98] The Department submitted that the alleged harm is speculative and not fact-based. The Department has the right to discipline Jonker for legitimate reasons, and he can seek recourse later through Bargaining Council arbitration in terms of section 193 of the LRA²⁹, or pursue PDA remedies or review proceedings. Halting the disciplinary hearing would be to allow forum shopping.

²⁸ *Fisher* para 43.

²⁹ Which provides for remedies of unfair dismissals and unfair labour practices.

[99] In *Tshwane City v Afriforum*³⁰ and another, the court held that:

[59] Irreparable implies that the effects or the consequences cannot be reversed or undone. Irreparable therefore highlights the irreversibility or permanency of the injury or harm...'

[100] Unless the interdict is granted, the Department will proceed with the disciplinary hearing against Jonker, even though section 188A(11) of the LRA permits Jonker to request that the misconduct charges against him be heard by an independent person appointed by the Bargaining Council who has no ties to the Department. The only requirement is that the employee's allegation that he is being subjected to a disciplinary hearing for making protected disclosures must be made in good faith, and the court has found, *prima facie*, that this is the case. Once the disciplinary hearing is completed, the outcome cannot be reversed. That harm is irreparable.

[101] That the Department did not consent to a section 188A(11) LRA inquiry is irrelevant, as the provision is invoked at the request of either the employee or the employer. Unlike section 188A(1), section 188A(11) of the LRA does not require the other party's consent to be invoked.

[102] If the Bargaining Council accepts the referral, the Department will have an opportunity, before an arbitrator appointed by the Bargaining Council, to prove the charges. The only difference is that the arbitrator is independent, unlike the Chairperson appointed by the Department. If, however, the Bargaining Council rejects Jonker's referral, the Department may proceed with the disciplinary hearing. Whether a section 188A(11) LRA inquiry or a disciplinary hearing is convened, the Department will be able to enforce discipline. The court fails to see any harm to the Department should the interdict be granted pending the Bargaining Council's decision on whether to hold a section 188A(11) LRA inquiry.

[103] There is also no prejudice to the Department, as the disciplinary hearing has not yet commenced and no witnesses have given evidence.

³⁰ 2016 (6) SA 279 (CC) at para 59.

[104] The respondents' submission that a precedent will be set if it agrees to a section 188A(11) LRA inquiry is without merit. Employees have a right to invoke the provision, and an inquiry will be held only if the Bargaining Council accepts that the allegation that the employer is disciplining the employee was made in good faith. Unless that jurisdictional requirement is met, employees cannot invoke section 188A(11) of the LRA to avoid a disciplinary hearing.

[105] The Department will suffer no harm if the court interdicts the disciplinary hearing pending the Bargaining Council's decision on whether to hold a section 188A(11) LRA inquiry into the allegations of misconduct against Jonker. The balance of convenience favours the grant of interim relief.

Absence of an adequate alternative remedy

[106] Only this court can grant an interdict pending the Bargaining Council's decision on whether to conduct a section 188A(11) LRA inquiry into the charges against Jonker. Therefore, Jonker has no adequate alternative remedy to halt the disciplinary hearing that the Department insists on, and the Chairperson has ruled must continue, other than approaching the court for an interdict. Jonker need not wait for his dismissal, as contended by the respondents, and then file an automatic unfair dismissal claim if that is the outcome of the section 188A(11) LRA inquiry. This is because the provision affords him the option to invoke it when the jurisdictional requirement is met, allowing an independent decision-maker to assess the allegations of misconduct against him. If the independent decision-maker finds merit in the misconduct allegations and dismisses Jonker, he would lose the right to claim that the dismissal was automatically unfair, given section 188A(12) of the LRA.

[107] The interdict to be granted will operate for a limited period, allowing the Bargaining Council to decide whether to hold the section 188A(11) LRA inquiry. Once that decision is made, the interdict will lapse. Granting the interdict, which is limited in duration, will not prejudice the Department.

Exceptional circumstances

[108] Where an employee alleges, in good faith, that an employer is convening a disciplinary hearing against them because they made protected disclosures, and seeks an order interdicting pending the decision of the CCMA or the Bargaining Council whether to conduct a section 188A(11) LRA inquiry, that employee would have demonstrated exceptional circumstances warranting the court's intervention.

Relief

[109] Jonker seeks an order interdicting the disciplinary hearing pending an arbitrator's decision on whether to hold a section 188A(11) LRA inquiry. In this case, the Bargaining Council issued an invoice to the Department in respect of a section 188A(11) LRA inquiry. It can reasonably be assumed that on payment of the invoice, the matter would be allocated to an arbitrator to conduct the section 188A(11) LRA inquiry. On that interpretation, arguably, the Bargaining Council has already accepted the referral.

[110] However, the respondents did not rely on this to refuse the relief sought. The matter was argued on the basis that the Bargaining Council had not yet decided whether to conduct a section 188A(11) inquiry. Accordingly, the order to be granted is one interdicting the disciplinary hearing pending the Bargaining Council's decision on whether to accept the section 188A(11) LRA referral.

[111] A question that arises is whether the Bargaining Council would convene an initial hearing to determine whether Jonker's allegation that he is being subjected to a disciplinary process for making protected disclosures is made in good faith, and to issue a ruling. This is because, unless that jurisdictional requirement is met, the Bargaining Council cannot conduct the section 188A(11) LRA inquiry into Jonker's alleged misconduct.

[112] Alternatively, does the issue of a notice of set down for a section 188A(11) LRA inquiry serve as proof of the acceptance of Jonker's referral, as suggested in *Modika LAC*?³¹ Is it not the case that issuing of set-down notices is an administrative function performed by an administrative clerk, often without paying much attention to the contents of the referral and any annexures? If that

³¹ Para 20.

is so, can it really be said that the issuing of a set-down notice amounts to a finding that the CCMA or the Bargaining Council has accepted the referral?

[113] Although the current application did not require these questions to be considered, they require clarification at some point.

Costs

[114] Jonker sought costs from the Department and the HoD for refusing to agree to a section 188A(11) LRA inquiry and for failing to upload the answering papers to Caselines in accordance with Directive 1 of 2025 ahead of the hearing. The Department also sought costs from Jonker on an attorney-and-client scale B for launching the application, which it believes lacked merit.

[115] Jonker was not frivolous in bringing the application. The respondent's defence largely relied on the assertion that Jonker did not make protected disclosures. At the time of writing the judgment, there were conflicting decisions of the LAC on whether, in an application such as the present, an employee is required to make out a case that they made protected disclosures. Those decisions are *Nxele LAC* and *Modika LAC*, and this court resolved to follow *Nxele LAC*. The respondents did not rely on any of these decisions. Jonker relied on *Nxele LAC* but not on *Modika LAC*, which overturned the *Fisher* judgment that he relied upon. An order in accordance with the requirements of law and fairness is that each party pay its own costs.

[116] In the premise, the following order is made:

Order

1. The matter is heard as an urgent application, in terms of Rule 38 of the Rules for the Conduct of Proceedings in the Labour Court, and that the prescribed forms and procedures are dispensed with insofar as is necessary.
2. The internal disciplinary inquiry at the first respondent into the charges of misconduct against the applicant, following the disciplinary notice dated 26 January 2026, is interdicted and suspended pending a decision by an arbitrator to be appointed by the fifth Respondent whether the disciplinary

inquiry should be conducted within the contemplation of Section 188A(11) of the Labour Relations Act 66 of 1995.

3. If the arbitrator decides that the disciplinary inquiry shall be conducted in accordance with Section 188A(11) of the LRA, under the auspices of the fifth respondent, the internal disciplinary inquiry shall be considered and regarded as finally terminated.
4. If the arbitrator decides that the internal disciplinary inquiry shall not be conducted in accordance with section 188A(11) of the LRA, the internal disciplinary inquiry may reconvene, and the interim interdict of paragraph 2 shall automatically lapse.
5. There is no order as to costs.



T. Gandidze

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr Scholtz

Instructed by: Scholtz Attorneys

For the 1st to 4th Respondent: Advocate Motlogelwa

Instructed by: Setshedi Makgale & Matlapeng Attorneys

LABOUR COURT