



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

Signature

9 July 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case no:C452/23

In the matter between:

PAMELA MARGARET ANNE FRY

Applicant

and

THE COMMISSION FOR CONCILIATION MEDIATION AND

ARBITRATION

First Respondent

ANDRE SIEBERT N.O

Second Respondent

GENERAL PUBLIS SERVICES SECTORAL

BRIEF DO NOT TRADE AND INVESTMENT 197

t/a BRIDDOON CAPE TOWN

Third Respondent

Heard : 26 November 2025

Delivered : 9 July 2026

Summary: An application to review and set aside an award dismissing a constructive dismissal claim. The employee contends that the finding that she was not constructively dismissed is incorrect and liable to be set aside, and that it should be

replaced with an order that she was constructively dismissed, that the dismissal was unfair, and that compensation be awarded. The employee failed to make out a case that her continued employment was rendered intolerable.

JUDGMENT

GANDIDZE, J

Introduction

[1] The review application by Pamela Fry (Fry), brought in terms of section 145 of the Labour Relations Act¹ (LRA), seeks to review and set aside an award issued by the second respondent commissioner, under the auspices of the Commission for Conciliation, Mediation and Arbitration, dated 8 August 2023, in case number WECT131791–22. The award dismissed an alleged constructive dismissal claim brought by Fry against her then employer, Bridoon Trade and Investment 197 t/a Bridoon Cape Town (Bridoon), a franchise of Nashua (Pty) Ltd (Nashua Limited). If the award is set aside, Fry seeks an order finding that she was constructively dismissed and that the dismissal was unfair. She seeks compensation as she has since reached retirement age.

[2] Bridoon opposed the application and sought the dismissal of the review application.

Background

[3] Fry resigned from Bridoon on 15 July 2022, on a month's notice. Her employment history with Bridoon, which is relevant to this application, can be summarised as follows.

[4] She commenced employment with Bridoon on 1 September 2003 in the Technical Division. Initially, she was a Service Administrator, and in 2015 she was promoted to Service Administration Manager, which was later renamed Technical Administration Manager.

¹ Act 66 of 1995, as amended.

- [5] In 2014, Francois Koekemoer was appointed MD of Bridoon Cape Town. Fry and two other Technical Managers, namely Charne Arendse and Whitney Sharnick, reported to Koekemoer.
- [6] Fry testified that, after his appointment, Koekemoer took a dislike to her because she challenged his thinking and strategy. The award records instances in which Koekemoer displayed his dislike for Fry, as testified to by Fry.
- [7] In 2021, Arendse was appointed Technical General Manager. Fry and Sharnick now reported to Arendse.² Sharnick was retrenched in 2021, leaving only Fry reporting to Arendse.
- [8] In July 2021, Fry underwent a disciplinary hearing and was issued a final written warning.
- [9] A month later, on 11 August 2021, Fry was transferred from the Technical division to the Finance division. She now reported to De Jager, the Finance Director. Although Bridoon contended that the transfer was for operational reasons, that Fry had been consulted, and that her status, remuneration, and benefits remained unchanged, Fry denies any operational reasons, admits the merger with another Nashua franchise, and regarded the transfer as a demotion.
- [10] In October 2021, Fry's attorneys assisted her in lodging a grievance with Nashua Limited's Chief HR Officer, challenging the transfer. The attorneys were referred to Bridoon, Fry's employer.
- [11] Fry lodged a grievance with Bridoon in November 2021, but no response was received.
- [12] On 10 November 2021, Fry referred an unfair labour practice dispute to the CCMA, challenging both the final written warning and her transfer to the Finance division, which she regarded as a demotion. In the absence of opposition, the CCMA issued a default award on 2 December 2021. Bridoon successfully rescinded the default award on 11 February 2022.

² Fry states that she started reporting to Arendse in 2020.

- [13] During or about April 2022, Mr Tiaan Petersen, the Training and Development Manager (who was standing in for the HR Manager), De Jager and Fry met. Bridoon contends that the purpose of the meeting was to 'have an exploratory discussion' about Fry's new job description, but Fry denies this, stating that the meeting was intended to persuade her to withdraw the dispute referred to the CCMA. She further states that thereafter she met with Petersen alone, '*who was unable to assist and undertook to revert to me*'.
- [14] On 4 May 2022, the parties entered into a settlement agreement, in terms of which it was agreed, *inter alia*, that the validity of the final written warning was reduced to 9 months and that '*a job description will be drawn up and discussed with [Fry] in order to sign a completed job description of her present position by for June 2021*'.
- [15] Pursuant to the settlement agreement, on 19 May 2021, Petersen requested a copy of Fry's latest job description, which was provided.
- [16] On 3 June 2022, a meeting was held between Fry, Petersen, Arendse (Fry's previous line manager), and De Jager (Fry's manager in the Finance Division). After the meeting, De Jager sent Fry an e-mail attaching a document titled 'Finance duties' outlining additional responsibilities, which could be expanded as the teams grow and the workflow increases.
- [17] Fry refused to sign the document because it did not reflect the abilities and capabilities that formed the basis of her employment in 2003.
- [18] On 2 June 2022, Petersen invited Fry to propose amendments to the duties. She did not propose any amendments but contended that she understood De Jager to have invited her to use her previous job description as a template and to use the additional responsibilities to make alternative proposals for the wording of the new job description.
- [19] On 6 June 2022, Petersen invited Fry to a meeting to discuss her proposals for the job description, but Fry declined. Bridoon contends that Fry stated she was 'not going to entertain a conversation' about changing her duties, whereas Fry's version is that she stated she would not entertain a conversation in which she would be looking at a job that was a shadow of what she used to do and did not represent a job.

[20] On 24 June 2022, Fry applied to the CCMA under section 142A of the LRA, which provides for the conversion of a settlement agreement into an arbitration award, thereby enabling enforcement.

[21] On 27 June 2022, Petersen sent Fry a revised job description and requested her feedback. Fry responded that she did not agree with the changes to her job functions and had not participated in the decision-making process. She also stated that the job description was unacceptable because it did not reflect her abilities or the work she was employed to do. Fry further stated that an application was pending before the CCMA.³

[22] On 29 June 2022, Fry sent an email to Petersen, De Jager and the HR Manager, Colleen Gordon, in the following terms:

'Hi Tiaan

I have a strong feeling that I may be followed, listened to and tricked into making a mistake which is extremely discomforting. However, I am sure I must be mistaken?'

[23] Petersen responded to Fry the same day and stated the following:

'Hi Margaret

I trust you are well. I can guarantee you that you are treated the same way as any other employee, there is no reason for you to speak about things as mentioned in your first email. I would advise that you stay focused on your duties as per normal. Please inform us should you have any uncertainties as we will discuss this as we usually do.'

[24] In the early hours of 30 June 2022, Fry sent an e-mail to her legal representative and Petersen, copying De Jager and Gordon. The e-mail is lengthy to reproduce. In it, *inter alia*, Fry advised that she would lodge a charge of vertical harassment with the CCMA, as she had endured unfair treatment by Koekemoer, who followed her around; that Petersen was eavesdropping on her; that the Finance division had been excluded from a discussion regarding roles; that the changes to her job functions had not been communicated to her or staff; and that she proposed working from home and coming in for meetings

³ The award records that Fry testified that Petersen hounded her to sign off the job description, and she did not agree.

until the matter is resolved, while she considered whether to obtain a protection order.

- [25] Petersen responded, *inter alia*, by instructing Fry to return to work, as she did not have management approval to work from home.
- [26] On 1 July 2022, Fry reported for work. She was described as visibly shaking and very emotional. She met with Petersen, De Jager and Koekemoer. When asked about the accusations she had made against Koekemoer and Petersen, she stated that she suffers from depression.⁴
- [27] Fry was instructed to obtain a medical certificate confirming her fitness for work. She consulted a physician the same day and was certified fit for work. She provided the medical certificate to Petersen, who instructed her to go home and return the following day.
- [28] Bridoon contends that when Fry submitted the medical certificate on 1 July 2022, Bridoon had already arranged for Fry to consult a psychologist via Discovery Health's Health and Wellness scheme, with the earliest available consultation date set for 13 July 2022.
- [29] Fry returned to work on 2 July 2022 and met with Petersen, Koekemoer and Gordon. Petersen told Fry to stay at home until she had consulted a psychologist and that an appointment had been made for her on 13 July 2022. Fry left the room in tears, and Petersen followed her.
- [30] On 6 July 2022, Fry sent Petersen an e-mail requesting permission to work from home. Petersen responded that Fry should rest until she had consulted with the psychologist.
- [31] On 12 July 2022, following an inquiry, Fry was informed that the days she was at home would be treated as sick leave.
- [32] Fry attended the appointment with the psychologist on 13 July 2022, and was informed that the medical report would be available by 14 or 15 July 2022.

⁴ The award records that Fry testified that Petersen and Koekemoer confronted her in De Jager's office, asking who she thought she was to decide to work from home. She informed them that she had depression and was on medication, after which Koekemoer informed her that she was a danger to herself and other employees, having regard to the email she had sent earlier that day.

[33] On 13 July 2022, Petersen sent Fry an e-mail stating that, upon receipt of the psychologist's report, a meeting would be held with her to discuss the way forward.

[34] On 15 July 2022, Fry sent an email to Bridoon, in which she recorded, *inter alia*, the following:

'However, in an attempt to resolve this matter internally, I am giving 30 days' notice.⁵ My last working day will be the 15th August, pending a satisfactory resolution to the matter, whilst reserving my rights to bring a claim for constructive dismissal in due course.'

[35] There was no response to the letter.

[36] Bridoon accepted her resignation on 18 July 2022, and she was instructed to complete a handover, which she did on 28 July 2022.

[37] The psychologist's note dated 18 July 2022 records the following:

'It is my opinion that Ms. Fry is committed to her work and would not purposefully do anything to jeopardize that. The current strife at work and resulting demotion has affected her quite intensely. It also threatens to sour the last month of work as well as the legacy which she has built in the 18 years at the company. This is greatly upsetting to her. I recommend that Ms. Fry continue to see me and if you require a full assessment may I recommend an assessment by an occupational therapist.'

[38] Fry referred the alleged constructive dismissal case to the CCMA.

The arbitration award

[39] Initially, Fry represented herself, but after an application for legal representation, it was granted. Bridoon was represented by an employer organisation.

[40] The award records that, at the commencement of the proceedings, a ruling was made that the dispute relating to the final written warning and the

⁵ During the arbitration proceedings she explained that she offered to work her notice period as she feared being disciplined if she did not do so.

demotion/transfer were addressed in the Settlement Agreement and would not form part of the constructive dismissal dispute.

- [41] Fry gave evidence in her own case. Bridoon's witnesses were Petersen, De Jager and Arendse.
- [42] After hearing evidence over six days, the commissioner rendered an award dismissing Fry's constructive dismissal claim. In dismissing the claim, the commissioner referred to the ruling made at the commencement of the proceedings that Fry had settled the final written warning and the demotion disputes, and therefore those disputes were not before him. The award also records that the commissioner allowed Fry to lead evidence regarding the demotion, with the caveat that 'I will see where it leads', and that, during her evidence, Fry was cautioned about evidence on the disputes that had been settled.
- [43] The commissioner found that although Fry felt strongly that continued employment was intolerable, an objective test had to be applied to determine whether this was the case. Applying that test, the commissioner did not, on a balance of probabilities, find that she was ill-treated, harassed, or humiliated, or that she was prevented from fulfilling her job. He found that Fry was not constructively dismissed, and therefore the CCMA lacked jurisdiction to arbitrate the dispute.

Grounds of review

- [44] Fry submits that, in concluding that she was not constructively dismissed, the commissioner failed to consider the evidence cumulatively and instead analysed each complaint in isolation. According to Fry, this constitutes a misdirection.
- [45] The submission is further that the commissioner erred in law by holding that Fry had to show she had no option but to resign, a finding inconsistent with section 186(1)(e) of the LRA and with Constitutional jurisprudence.
- [46] Had the commissioner applied the objective test of intolerability and the proper legal standard for constructive dismissal, he would have concluded that Fry was

constructively dismissed. Therefore, the commissioner committed a reviewable irregularity as contemplated in section 145(2)(a)(ii)⁶ and (iii)⁷ of the LRA.

The legal principles

[47] The LRA provides as follows:

‘192 Onus in dismissal disputes

(1) In any proceedings concerning any dismissal, the employee must establish the existence of the dismissal.

(2) If the existence of the dismissal is established, the employer must prove that the dismissal is fair.’

[48] When a dispute over a dismissal arises, the CCMA must determine whether a dismissal occurred. This is because, unless a dismissal occurred, the CCMA lacks jurisdiction to arbitrate the dispute. The CCMA makes a finding of jurisdiction for convenience, and on review, this Court determines *de novo* whether that finding was correct.⁸ Therefore, on review, the Court considers all the material presented to the commissioner and decides *de novo* whether a dismissal occurred.

[49] In *Maleka v Boyce N.O and Others*⁹ (*Maleka*), the Constitutional Court outlined the review test in constructive dismissal matters as follows:

‘[55] The question on review therefore is whether, objectively speaking, the employee was constructively dismissed. A finding that an employee has been constructively dismissed is a matter of fact and the test to be applied, as correctly held by the Labour Court in this matter, is an objective one that is concerned with correctness and not reasonableness, because the question “whether an employee has been dismissed” rests on the jurisdiction of the CCMA.’

⁶ Which refers to the defect of a gross irregularity in the conduct of the arbitration proceedings.

⁷ Which refers to the defect of exceeding the commissioner's powers.

⁸ *SA Rugby Players Association & Others v SA Rugby (Pty) Ltd & Others* (2008) 29 ILJ 2218 (LAC) para 39 and 40.

⁹ (CCT 175/23) [2026] ZACC 7 (24 February 2026). See also *Fidelity Cash Management Service v CCMA and Others* (2008) 28 ILJ 964 (LAC) at para 101.

- [50] If an employee resigns involuntarily because the employer made continued employment intolerable, this constitutes a dismissal, as defined in section 186(1)(e) of the LRA. The three requirements that must be met to determine that a constructive dismissal has occurred are, namely, (a) termination of employment by the employee, (b) because continued employment was rendered intolerable, and (c) by the employer.¹⁰
- [51] In *Strategic Liquor Services v Mvumbi NO & Others*¹¹, it was stated that an employee need not prove that they had no choice but to resign, only that the employer rendered continued employment intolerable¹², and that the employer's conduct was such that an employee could not reasonably be expected to put up with it.¹³
- [52] Intolerable means beyond that which can be tolerated, or endured, or insufferable, too great to bear, not to be put up with, and beyond the limits of intolerance. (See *Solidarity on Behalf of van Tonder v Armaments Corporation of SA (Soc) Ltd & Others*¹⁴ (*Solidarity obo Van Tonder*)).
- [53] In *Booi v Amathole District Municipality*¹⁵, the Constitutional Court held that 'the term 'intolerable' implies a level of unbearability, and must surely require more than the suggestion that the relationship is difficult, fraught or even sour'.
- [54] In *Maleka*¹⁶, the Court stated the following:
- [2] ...The standard of proof is an objective one. Therefore, the focus is not on the employee's subjective feelings and perceptions but rather, on the actions, or lack thereof, of the employer that rendered the employee's

¹⁰ *Solid Doors (Pty) Ltd v Commissioner Theron and others* (2004) 25 ILJ 2337(LAC).

¹¹ (2009) 30 ILJ 1526 (CC) at para 4 and *Murray v Minister of Defence* (2008) 29 ILJ 1369 (SCA); [2008] 3 All SA 66 (SCA); at paras 12 and 67.

¹² *Ibid* at para 4.

¹³ *Ibid* at para 12. See also *Jordaan v Commission for Conciliation Mediation and Arbitration and others* (2010) 31 ILJ 2331 (LAC).

¹⁴ (2019) 40 ILJ 1539 (LAC).

¹⁵ [2021] ZACC 36 (CC); 2022 (3) BCLR 265 (CC); (2022) 43 ILJ 91 (CC).

¹⁶ *Ibid* fn 9 para 104.

continued employment intolerable. It is not enough that the employment relationship has become inconvenient or uncomfortable...

[55] The court in *Maleka*¹⁷ also stated that the threshold for whether a constructive dismissal has occurred is high:

[73] In my view, intolerability means something more than just conduct (on the part of the employer) or working conditions, which simply result in difficult, unpleasant or stressful situations for the employee. It would not be enough that the employer's conduct is merely rude, uncompromising or unbecoming. Likewise, "even a breach of the employment contract, deductions from salary, or unfair disciplinary actions would not per se establish intolerability". The employee would need to show that such conduct is characterised by what can objectively be construed as unendurable or agonising and he or she must show that the perpetrator is their employer. In other words, it must be clear that the employer's conduct was the cause for complaint and that it brought the employee's tolerance to a breaking point. This position is consistent with what has been followed by the labour courts since *Solidarity*.

[74] This is to avoid an unhealthy situation in a workplace where employees, who have become disgruntled and dissatisfied for flimsy reasons, would simply walk out and thereafter claim a constructive dismissal....Employees should refrain from hastily resigning and then arguing that the employment relationship had become unbearable.

[56] The review application will be considered against these principles.

Fry's submissions

[57] Fry submits that the employment relationship began to deteriorate in August 2021, when she received the final written warning, followed by a transfer to the Finance division. She was promised a detailed, updated job description in the coming weeks. After her transfer, she had very little to do at work, as most of her duties had been reassigned to others. Her requests to be allocated work to

¹⁷ Ibid fn 9.

fill her time and make use of her skills and knowledge were ignored. She no longer had staff reporting to her. This left her feeling humiliated, bullied, harassed and forced into a corner.

[58] She lodged a grievance with Nashua Limited and then with Bridoon, but the dispute remained unresolved, prompting her to file unfair labour practice claims with the CCMA. The disputes were settled on the basis that a job description would be drawn up, discussed, and signed by 4 June 2022. At the 3 June 2022 meeting, vague proposals were made, and no job description was provided. Only after she invoked section 142A of the LRA did she 'suddenly' receive a job description on 27 June 2022, and she was asked to comment. She informed Petersen that the proposed job description affected her dignity, and Petersen responded dismissively, saying she could follow internal processes. Her e-mail of 30 June 2022, stating that she had been excluded and marginalised, led to her being called to the office, where she was instructed to submit a medical report confirming that she was fit to work. Despite submitting the requested medical report, she was sent home. When she reported the following day, she was again sent home pending a psychologist's examination on 13 July 2022. This left her feeling insulted. Her requests to return to work or work from home in the meantime were denied.

[59] Fry takes issue with Bridoon's concern for the safety of its staff, citing her loud outbursts towards other staff members as a sudden cause for concern, even though there had been at least 10 such outbursts previously. Petersen's account that he felt unsafe after her e-mail of 30 June 2022 did not explain why he feared being physically attacked by her. There was no reason to keep her away from work. She resigned because no resolution was reached on 13 and 14 July 2022. Her resignation letter made it clear that she remained open to resolving the matter, yet Bridoon did not respond.

[60] The resignation was not impulsive but the final step in a protracted attempt to resolve her grievances. She had consistently engaged with the CEO of Nashua Limited, Bridoon, lodged formal grievances, retained legal representation, and referred disputes to the CCMA. She was informed that Petersen's patience with her was running out when she refused to withdraw the dispute. She settled the disputes to continue her employment, but the employer did not comply with the

settlement agreement. When she sought to enforce the settlement agreement, she was instructed to provide proof of fitness for work, yet she was still excluded from the workplace. When she resigned, the outcome of the psychological assessment, which had been promised to her on 14 or 15 July 2022, had not yet been provided. She still did not have a job description. Resignation under those circumstances was reasonable. She did not have to show that she had no other option but to resign. In her resignation letter, she indicated a willingness to have the dispute resolved but received no response.

- [61] The cumulative pattern of demotion, marginalisation, and ultimately her exclusion from the workplace rendered continued employment intolerable.
- [62] Reliance was placed on the decision in *Western Cape Education Department v General Public Service Sector Bargaining Council and others*¹⁸, which held that the facts in that matter were analogous to those in *Murray v Minister of Defence*¹⁹ (*Minister of Defence*), which held that the employee's subjective condition of suspicion, demoralisation and depression, evident to all who dealt with the employee, was relevant to how the employer ought to have dealt with the employee, and the employer's conduct as a whole, judged reasonably and its cumulative impact, was such that the employee could not be expected to put up with it. Reliance was also placed on the decision in *Makombe v Cape Conference of the Seventh-day Adventists and others*²⁰ (*Makombe*), which followed the approach in *Minister of Defence*, that an employer's conduct must be looked at as a whole and its cumulative impact on an employee determined.

Bridoon's submissions

- [63] Bridoon contends that Fry was transferred to the Finance division for operational reasons, which were discussed with her. She was transferred to an important role that was highly demanding and would have kept her busy. She

¹⁸ (2014) 35 ILJ 3360 (LAC).

¹⁹ 2009 (3) SA 130 (SCA).

²⁰ (2025) 46 ILJ 1362 (LC).

retained many of the technical duties from her old role; her new role remained senior, and a large portion of the technical team still reported to her.

- [64] Fry's assertions that she was bullied, unfairly disciplined and unfairly demoted were not supported by the facts. As regards bullying, it was unclear what this referred to. In any event, these assertions did not constitute grounds for review.
- [65] The disputes relating to the alleged unfair discipline and the final written warning were settled on the basis that the validity of the final written warning was reduced from 12 months to 9 months. The transfer and/or demotion dispute was settled on the basis that Fry would be provided with a job description. This meant that Fry accepted that she would remain in the position to which she was transferred, and all that remained was for her to be furnished with a job description. Her consent to that job description was not required. What was required was for the job description to be discussed with her. Therefore, Fry's contention that Bridoon did not comply with the settlement agreement is misguided. She entered into the settlement agreement, compromising her claim, while acting on legal advice. The settlement agreement remained binding on the parties, which explains why Fry instituted proceedings to enforce its terms. Fry is attempting to re-introduce issues that were settled through the back door.
- [66] In her pleadings, Fry alleged that her continued employment became intolerable after 4 May 2022. Accordingly, the grievance she lodged with Nashua Limited in November 2021 was irrelevant, as it predated the May 2022 settlement agreement. That grievance was, in any event, not lodged with the employer, and Fry was tarnishing Bridoon by publishing grievances to other companies rather than addressing them internally.
- [67] Similarly, the CCMA referrals and the settlement agreement could not be relied on to establish that continued employment was intolerable, as they predated 4 May 2022.
- [68] What's left is that, in the first place, Fry contends that continued employment was rendered intolerable because her duties in her new role were different to what they had been before her transfer and/or she was not satisfied with the duties that she had to perform. Second, Bridoon did not comply with the

settlement agreement in that she was not provided with a job description. Third, she was not allowed to return to work until she had consulted with a psychologist.

[69] As regards the change in duties, Bridoon submits that it took place in August 2021, when Fry was transferred to the Finance division, and did not occur after 4 May 2022. In addition, the dispute over the alleged demotion was settled.

[70] As regards the job description, Bridoon submits that it had already engaged with Fry in May 2022, before the settlement agreement was signed. After the settlement agreement, Fry obstinately refused to make concrete suggestions about the content of her job description and elected to invoke section 142A of the LRA, prompting Bridoon to provide her with the job description it had unilaterally prepared on 27 June 2022. Even then, Fry was dissatisfied, contending that the duties set out therein were purportedly being performed by other employees, leaving her with nothing to do. Bridoon disputes the merit of that contention, as Fry has not provided the specifics of the duties being performed by other employees or which employees. It also contends that Fry could have ring-fenced those duties for herself.

[71] It is Bridoon's further submission that if Fry was of the view that Bridoon had acted in breach of the settlement agreement, she should have pursued the section 142A LRA dispute to a final determination rather than resigning. The contention that, because Bridoon did not comply with the settlement agreement, 'I was left with no avenue to complain and nowhere to go' has no merit.

[72] With reference to Fry's pleaded case, Bridoon submits that she resigned 'in a desperate attempt to get [Bridoon] to allow her to return to work', which undermines the argument that non-compliance with the settlement agreement rendered continued employment intolerable. The submission is that if she had no work and found her duties unfulfilling, she would not have resigned in a desperate attempt to return to work. Bridoon also takes issue with Fry working out her notice period, despite alleging that the working relationship was intolerable.

[73] As regards the contention that Fry was prevented from returning to work, Bridoon contends that Fry was instructed to work from home for her safety and

that of other employees. She was paranoid, and when confronted, she explained that she suffered from depression. She had a history of 'poor mental health' and had taken time off for a psychological issue for which she was periodically medicated, 'to take the edge off'. She later sent the e-mail of 30 June 2022 alleging that Koekemoer spied on her by looking at her twice, and that Petersen took time off work to follow and spy on her during her lunch hour. Fry did not contend that this was rational behaviour or that it was not a cause for serious concern for Bridoon.

- [74] Bridoon was not compelled to accept the general practitioner (GP) medical report. It could rely on common sense and deductive reasoning to ensure that its interests and those of its employees were not prejudiced by insisting that she consult a psychologist. Fry was suffering from what appeared to be a psychological affliction, leading her to believe she was being spied on and followed. In this regard, case authorities were cited. First, *AECI Explosives Ltd (Zomerveld) v Mambalu*²¹, which held that an employee could be dismissed for malingering even if they produced a medical certificate. Second, *Mgobhozi v Naidoo NO and others*²², which called on courts to scrutinise medical certificates given their widespread abuse. Lastly, *Old Mutual Life Assurance Co SA Ltd v Gumbi*²³, which upheld a chairperson's decision to reject a medical certificate on the grounds that the employee was malingering. The most rational and reasonable response was to refer Fry to a psychologist.
- [75] Fry had alternatives to resigning. She could have filed a grievance with the CCMA challenging the forced sick leave or brought an unfair suspension claim, as advised by her attorneys.
- [76] Fry could not rely on the resignation letter, in which she called on Bridoon to resolve her grievances and reserved the right to refer a constructive dismissal claim to the CCMA should Bridoon fail to do so. The submission is that resignation is a unilateral act and that an employee cannot demand the

²¹ (1995) 16 ILJ 1505 (LAC).

²² (2006) 27 ILJ 786 (LAC) at para 27-29.

²³ 2007 (5) SA 552 (SCA); (2007) 28 ILJ 1499 (SCA) at para 18.

resolution of a grievance on pain of lodging a constructive dismissal claim, particularly where the employee has legal advice.

- [77] Fry did not explore the alternatives available to her because she realised the complaints lacked merit. Her decision to resign was not objectively reasonable, and the commissioner did not err in finding that she was not constructively dismissed.

Evaluation

- [78] Fry terminated her employment with Bridoon. She resigned on 15 July 2022, giving 30 days' notice. At the end of the 30 days' notice, she left Bridoon's employment. The first requirement for constructive dismissal is met. However, all three requirements must be present for constructive dismissal to occur.
- [79] The next question is whether Bridoon rendered Fry's continued employment intolerable.
- [80] Although Fry alleged that Koekermoer ill-treated her from the time he joined Bridoon in 2014, she also submitted that her relationship with the employer began to deteriorate in August 2021, when she was transferred to the Finance division. I will return to the period from August 2021 after addressing Koekermoer's alleged conduct.
- [81] Bridoon submitted that the alleged harassment by Koekermoer had not been specified. This is incorrect. The award lists examples of the alleged harassment by Koekermoer, as per Fry's testimony. It did not lie with Bridoon's witnesses to contend that Koekermoer did not commit the harassment he was accused of. Their version was also that Koekermoer sometimes came across as unsympathetic, rude, and strict. They also testified that he was the same to everyone. That Koekermoer was 'rude' to all employees did not make his conduct right. Therefore, Fry's experience of feeling harassed was not a figment of her imagination. Nashua did not process Fry's grievance against Koekermoer for reasons never explained, and the franchisor refused to entertain it.
- [82] That said, the harassment claim was not before the commissioner. If Fry's claim related to harassment by Koekermoer, it was a dispute that ought to have been

referred to the CCMA in terms of section 10 of the Employment Equity Act²⁴ (EEA) for conciliation. No such dispute was referred to the CCMA.

- [83] Similarly, if Fry's dispute concerned being subjected to an occupational detriment for making protected disclosures, it needed to be referred to the CCMA for conciliation under section 186(2)(d) of the LRA, followed by adjudication. No such dispute was referred to the CCMA.CMA.
- [84] Returning to the period after August 2021, Fry contends that she attempted to address her grievances internally and, when she hit a wall, lodged them with Nashua Limited, Reunert, and an independent service provider contracted to handle protected disclosures, but still received no assistance.
- [85] Our labour laws protect employees whose grievances are not addressed internally. Therefore, Fry acted reasonably in referring the matter to the CCMA, as she did not accept the final written warning and the transfer.
- [86] It is common cause that at the CCMA, Fry settled the two disputes she had referred, which had been consolidated. It was agreed that the validity of the final written warning would be reduced from 12 months to 9 months. As regards the demotion dispute, it was agreed that a job description would be discussed with her and signed by 4 June 2022.
- [87] Consequently, Fry could no longer rely on the disciplinary action, the final written warning, and the transfer, which she regarded as a demotion, to show that continued employment had become intolerable. She settled all these disputes and compromised those claims. If she believed the transfer or the demotion was unfair, she ought to have persisted with her dispute at the CCMA, which would have issued an award on the issue. As correctly pointed out on behalf of Bidoon, she had legal advice when she signed the settlement agreement. Therefore, she compromised her claim and must accept the consequences.
- [88] The arbitration awards correctly found that the disputes over the final written warning and the demotion had been settled, but that Fry was permitted to testify on those issues, subject to the commissioner's discretion to see where it led.

²⁴ Act 55 of 1998.

The award also records that when Fry gave detailed evidence about the demotion, she was cautioned that a ruling had already been made, but she insisted on presenting that evidence because 'it speaks to her frame of mind'. The ruling that the final written warning and the demotion disputes were settled is not sought to be reviewed in these proceedings. That ruling was correct.

[89] Paragraph 110 of the award does not find that Fry was not demoted, contrary to Fry's submission. Instead, it merely records the evidence led by Bridoon's witnesses regarding Fry's new role after the transfer to the Finance division.

[90] Now that the allegations of harassment by Koekermoer, and the disputes over the final written warning and the demotion, have been ruled out as rendering continued employment intolerable, what remains are the contentions that Bridoon failed to comply with the settlement agreement, and that Fry was prevented from returning to work despite a GP having certified her fit for work.

[91] Fry contends that Bridoon failed to comply with the settlement agreement and that, when she 'wrote progressively more agitated e-mails to achieve this objective', she was barred from the workplace without lawful justification. Only after she resigned was she permitted to return to work for a handover process. Bridoon's conduct in treating her as fit to hand over, despite having found her unfit to work, was unfair.

[92] The first issue is whether the alleged non-compliance with the settlement agreement rendered continued employment intolerable. Believing that Bridoon had not complied with the settlement agreement, Fry invoked section 142A of the LRA to have the settlement agreement made an arbitration award. Once the settlement agreement had been made an arbitration award, Fry would have been able to enforce it as if it were an order of court. Therefore, Bridoon's alleged non-compliance with the settlement agreement did not leave Fry without a remedy and could not have rendered continued employment intolerable. Instead of awaiting the outcome of the section 142A application, Fry resigned. On those facts, it cannot be said that the non-compliance with the settlement agreement rendered continued employment intolerable.

[93] The next issue concerns the contention that Bridoon would not allow her to return to work despite her having been certified fit for work by a GP. That

Bridoon sent Fry home after a GP had certified her fit for work is undisputed, even if the commissioner did not refer to it in the award. An award cannot possibly refer to all the evidence led during the arbitration proceedings.

[94] Fry did not dispute that she had outbursts in the workplace on at least 10 occasions. That Bridoon had done nothing about these previous outbursts did not mean that Fry's lengthy e-mail, sent in the early hours of 30 June 2022, and the allegations it contained should not have been a cause for concern for Bridoon. Fry described her e-mail as 'progressively agitated'. In oral argument, Ms Myburgh referred to the e-mail as 'irate'. It was not disputed that Fry suffered from depression and took medication for it. On those facts, it was not unreasonable for Bridoon to insist that she consult a psychologist. It would have been insensitive, if not discriminatory, for Bridoon to insist that she continue to report for duty when it appeared that she was unwell. The submission that Fry's e-mail was based on 'deeply rooted paranoia' and that this was an observation was most unfortunate. All that needed to be said was that, given her history of depression, it was in her best interests to stay at home until she had consulted with a psychologist. Given that conclusion, I do not deem it necessary to consider Bridoon's submission that it could reject the GP's medical certificate, save to say that the submission seems legally correct.

[95] Fry was instructed to remain at home pending the outcome of the consultation with the psychologist. She met the psychologist on 13 July 2022 and was told that a report would be available by 14 or 15 July 2022.²⁵ She resigned on 15 July 2022, before the psychologist could provide the anticipated report. Fry alleges that the psychologist informed her that Bridoon had asked the psychologist to report to them on the session with Fry, and that the psychologist informed them she could not do so. She then states, '*I understood this to mean that Nashua would do whatever it could to prevent me from either working or returning to a meaningful position within the company*'.

[96] In the court's view, resigning before the psychologist's report was available was fatal to Fry's case that continued employment had become intolerable. The report was available on 18 July 2022 and recorded that she wanted to work, but

²⁵ Or 13 or 14 July 2022.

that an occupational therapist was best placed to determine her fitness to work. It is unknown what Bridoon would have done upon receipt of the report had Fry not resigned in the meantime. It is also unknown whether she would have been allowed to return to work. Fry's contention that she had no reason to believe Bridoon would change its decision to keep her at home, regardless of the psychologist's report, was speculative and unreasonable. In *Maleka*,²⁶ the court stated this, which is apposite in this case:

[106] As this judgment finds, Mr Maleka's decision to resign had more to do with what he feared or perceived would happen in the future rather than one based on his present circumstances.... To decide the issue of intolerability on this scenario, would require one to look into a crystal ball. This is not what the test envisages.

[97] Fry also states that she resigned in a desperate attempt to be allowed to return to work. In oral argument, Ms Myburgh submitted that she decided that 'maybe they will listen if I resign', and Dr Orton retorted that she 'screamed for help when she was already jumping off the cliff'. The point is that Fry resigned before the psychologist's report was available. The decision to resign while awaiting the psychologist's report was premature, as the commissioner correctly found. She resigned because she was frustrated by the uncertainty and the forced sick leave, but she could have waited for the psychologist's report.²⁷ As it turned out, the psychologist's report was available three days later, but Fry had resigned. That resignation can be said to be due to Bridoon making continued employment intolerable.

[98] The criticism that the commissioner failed to consider the evidence cumulatively is without merit. The commissioner was obliged to determine whether continued employment had been rendered intolerable, and this could only be done by considering Fry's contentions, ranging from the alleged ill-treatment by Koekemoer to the instruction to stay at home until she had consulted a

²⁶ Ibid fn 9.

²⁷ See also *Royale Energy (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (A2025/076355) [2026] ZALAC 26 (25 May 2026), where an employee's resignation when an investigation was pending was found not to constitute constructive dismissal.

psychologist. The court has adopted the same approach, grounded in Fry's own contentions.

[99] *Makombe* is of no assistance to Fry's case, as it was decided on its own facts, as each case should be.

[100] The contention that the commissioner held that the requirement of intolerability is that Fry had no option but to resign is not supported by the award. The commissioner held that Fry was required to show that the employer made the working environment so 'intolerable' that she could not be expected to continue in the employment relationship. Admittedly, the use of the word 'so' was unnecessary, but the commissioner applied the correct test, namely whether the employer rendered continued employment intolerable. In *Maleka*,²⁸ the court clarified that resignation must be a measure of last resort.²⁹

[101] The contention that, in *Minister of Defence*, the court held that an employee's subjective opinions matter was a reference to how the employer ought to have dealt with the employee in that matter. The statement should not be read to mean that an employee's subjective opinion that continued employment has been rendered intolerable prevails. In fact, the opposite is true. In *Maleka*, the Constitutional Court held that an employee's subjective feelings and perceptions are not the focus of a constructive dismissal claim, but rather the employer's conduct.³⁰

[102] It follows that the CCMA lacked jurisdiction to arbitrate the matter, and the commissioner's finding to that effect was correct. Accordingly, the award is not reviewable.

Costs

[103] Nashua sought costs against Fry, contending that she was legally represented and therefore had the means, that there was no relationship to protect, and that 'her irrational' behaviour warranted a costs order. These contentions merely needed to be stated to be rejected. In this court, the principle that costs follow

²⁸ Ibid fn 9.

²⁹ Ibid fn 9 at para 74 and 145.

³⁰ Ibid at para 2.

the result does not apply. Instead, costs are awarded in accordance with the requirements of law and fairness, as contemplated in section 162 of the LRA. Even if Fry was unsuccessful in the review application, one would have thought that after 18 years of dedicated service she would have received some sympathy, especially given that she suffered from depression. Instead, Nashua sought costs based on what it termed Fry's 'irrational behaviour'. An appropriate order is that each party pays its own costs.

[104] In the premises, I make the following order:

Order

1. The review application is dismissed.
2. There is no order as to costs.



T. Gandidze

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Lynette Myburgh

Instructed by: Mr Brandon Schiff of Bargraims Attorneys

For the Respondent: Dr RCJ Orton

Instructed by: Snyman Attorneys

LABOUR COURT