



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C480/2024

In the matter between:

**THE COMMERCIAL STEVEDORING AGRICULTURAL
& ALLIED WORKERS UNION**

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

COMMISSIONER RANDALL N.O.

Second Respondent

LADISMITH CHEESE (PTY) LTD

Third Respondent

Heard: 26 August 2026

Delivered: 27 August 2026

JUDGMENT

JACOBS AJ

Introduction

- [1] This is an opposed review application.
- [2] The Applicant seeks an order:
 - 2.1 Reviewing and setting aside the arbitration award issued by the Second Respondent under the auspices of the First Respondent on 18 November 2024 under case number WEGE1786-24;
 - 2.2 Referring this matter back to be adjudicated by an arbitrator other than the Second Respondent; alternatively, substituting the award of the Second Respondent with an award that the court deems fit;
 - 2.3 Costs against any party who opposes the application; and
 - 2.4 Further and/or alternative relief.
- [3] This matter concerns the interpretation of a collective agreement.

Preliminary issues

- [4] The Third Respondent raised an objection to the premature filing of the Applicant's heads of argument and the failure by the Applicant to file the requisite notice in term of Rule 37(20)(b).
- [5] The Applicant's heads of argument were filed on 4 June 2025, before Rule 37(20) was complied with.
- [6] On 10 June 2025 the Third Respondent filed an objection in terms of Rule 57(2)(b).
- [7] On 13 June 2025 the Third Respondent filed a notice in terms of Rule 37(20)(b), followed by a condonation application on 20 June 2025.
- [8] The Third Respondent filed its answering affidavit in the review application and an answering affidavit in the condonation application on 3 July 2025.
- [9] After hearing the parties, condonation for the late filing of the Rule 37(2) notice was granted. Although the delay was almost 4 months, and the explanation therefore not wholly convincing, the absence of prejudice, the interests of

justice and the need to bring finality to the dispute between the parties, weighed in favour of granting condonation.

Historical context

- [10] The history of the matter is mostly common cause.
- [11] The Applicant is a recognised trade union which enjoys organisational rights and an established relationship with the Third Respondent.
- [12] On 19 June 2024, Mr Karel Swart, the national organiser for the Applicant, attended the premises of the Third Respondent for a pre-arranged visit with union members.
- [13] Upon arrival, security staff required Mr Swart to undergo a breathalyser test in accordance with recently introduced access control procedures at the premises.
- [14] Mr Swart refused to undergo the test, and he was denied access to the premises. The arranged meeting could not proceed.
- [15] In debating the matter, the Third Respondent advised that all contractors, visitors and categories of employees are subjected to breathalyser tests as part of its admission requirements. The Applicant was referred to clause 5.2.6 of the collective agreement between the parties. This clause determines that the union will adhere to any reasonable security or access control measures of the employer and will not disrupt the normal and safe functioning of the workplace.¹
- [16] The Applicant was of the opinion that the above clause could not mean what the Third Respondent suggested, and referred a dispute to the CCMA, seeking interpretation of the relevant clause in the collective agreement.

¹ The Afrikaans text reads: *Die vakbond sal voldoen aan enige redelike sekuriteits of toegangsvereistes van die werkgewer en mag nie die normale en veilige werking van die werksplek ontwrig nie.*

- [17] The arbitration hearing took place on 5 November 2024, and the Second Respondent (the Arbitrator) issued an award on 18 November 2024.

The arbitration award

- [18] In his award the Arbitrator found that the Applicant conceded that it had no objection to security checks being done as part of access control at the premises.
- [19] The Arbitrator's ruling confirmed the interpretation that the Third Respondent attached to the clause in question.
- [20] The Arbitrator found that it was difficult to see how the requirement for a breathalyser test, falls outside the ambit of "reasonable security or access control requirements", and concludes that the Third Respondent correctly interpreted the relevant clause to include the right to subject visitors to breathalyser tests.

Grounds for review

- [21] The Applicant contends that the Arbitrator erred and that he committed gross misconduct in finding that clause 5.2.6 was clear and unambiguous.
- [22] The Applicant submits that the Arbitrator committed misconduct in not inquiring into the intention of the parties at the time of conclusion of the agreement.

Test on review

- [23] The test on review to be applied in a matter such as this, is the well-established reasonableness-test and will not be discussed in detail. Essentially the court must determine whether or not the decision reached by the arbitrator was one that a reasonable decision maker could not reach. In other words, whether or not the award falls outside of the range of reasonableness.²

² *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC); *Fidelity Cash Management Service v Commission for Conciliation, Mediation and Arbitration and Others* (2008) 29 ILJ 964 (LAC).

The parties' submissions

- [24] For the Applicant it was argued that the collective agreement does not specifically provide for the union to subject themselves to breathalyser tests. They were not in the past required to undergo such tests, and on the day in question, the collective agreement was not cited as the reason for expecting Mr Swart to undergo such a test.
- [25] On behalf of the Applicant, it was also conceded before this court that it had no objection to security checks being done as part of access control at the premises.
- [26] The Applicant suggested that the employer's interpretation of clause 5.2.6, as confirmed by the Arbitrator, would allow the employer to continuously extend its list of security measures, and that this would be untenable.
- [27] For the Applicant it was submitted that the Third Respondent was obliged to negotiate with the union before an additional safety or access control measure, such as a breathalyser test, may be introduced.
- [28] It was suggested on behalf of the Applicant that this matter did not concern an issue of safety policy, but that it concerned the question whether the collective agreement allowed the introduction of breathalyser testing.
- [29] The Third Respondent submitted that it is entitled to introduce security and admission requirements to control access to its premises. The breathalyser requirement applies to all visitors and contactors to the premises and is not unreasonable or unlawful.
- [30] The Third Respondent's position is that the provisions of clause 5.2.6 of the collective agreement has direct application and requires the Applicant to comply with the particular security and admission requirement.

Evaluation

- [31] The subject matter of this dispute is surprisingly frivolous.

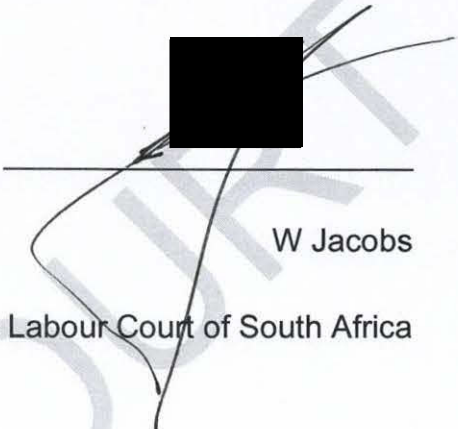
- [32] Access control measures such as the requirement to undergo breathalyser tests are not uncommon. Such a requirement is usually motivated by safety and security concerns, something any business is entitled, if not obliged, to implement.
- [33] The adoption of reasonable safety and access control measures are not issues that require negotiated consent from the union. Clause 5.2.6 in this instance also clearly acknowledges the employer's right to introduce reasonable security or access control measures, and the union's undertaking to adhere to such measures.
- [34] The objection to undergo breathalyser testing is difficult to comprehend. The test is no more invasive than physical searches, something the Applicant agreed were reasonable. The requirement for all visitors to undergo a breathalyser test cannot be regarded as a personal affront to the Applicant or its officials.
- [35] Clause 5.2.6 was drafted in broad enough terms to include additional security measures that may be introduced over time to address safety concerns. Safety and access control measures protect the business and employees alike. These measures are not aimed at insulting or inconveniencing specific individuals.
- [36] The Arbitrator was correct and his finding that the clause was clear and unambiguous, and that it was reasonable. There was no need to make further inquiry into the initial intention of the parties.
- [37] This court is charged with dealing with numerous serious disputes on a daily basis. It is disappointing that the CCMA and in this court are forced to dedicate time and resources to deal with such a trivial matter. If not for the strict principle set in matters such as *National Union of Mineworkers obo Masha and Others v SAMANCOR Limited (Eastern Chromes Mines) and Others*³ a cost order would have been made against the Applicant.

³ (CCT 154/20) [2021] ZACC 16; (2021) 42 ILJ 1881 (CC); [2021] 9 BLLR 883 (CC); 2021 (10) BCLR 1191 (CC).

[38] In the result, the following order is made:

Order

1. The application is dismissed.
2. There is no order of cost.



W Jacobs

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: - Adv N Simmons

Instructed by: - Seri Law Clinic

For the Third Respondent: - Ms J Pead of Maserumele Attorneys