



(1) Reportable: Yes
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 2230/22

In the matter between:

REACH SUMMIT (PTY) LTD

Applicant

and

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

MUKHOVHE RAVHURA N.O.

Second Respondent

CINDI ALANI SAMSON

Third Respondent

Heard: 20 APRIL 2026

Delivered: 25 August 2026

JUDGMENT

MUNSAMY, AJ

[1] This is an application brought in terms of Section 145 of the Labour Relations Act, 66 of 1995 (the LRA), to review and set aside an arbitration award issued by the Second Respondent (the Commissioner) under the auspices of the

First Respondent, the Commission for Conciliation, Mediation and Arbitration (the CCMA).

- [2] In the award, dated 20 September 2022 under case number GATW5667-22, the Commissioner found that the dismissal of the Third Respondent, Ms Cindi Alani Samson, was procedurally fair but substantively unfair. The basis for the finding of substantive unfairness was that the Applicant's conduct amounted to double jeopardy. The Commissioner ordered the Applicant to pay the Third Respondent compensation equivalent to six months' salary, totalling R180,000.00.
- [3] The Applicant seeks to have this award reviewed and set aside and substituted with a finding that the dismissal was both substantively and procedurally fair.
- [4] A significant development has occurred since the arbitration award was issued. In a separate but related matter under case number JR2023/22, this Court, per Daniels J, delivered a judgment on 14th January 2025. That judgment reviewed and set aside a CCMA award which had found that the final written warning issued to the Third Respondent—the very warning that forms the basis of the double jeopardy finding in this matter—was fair. Daniels J declared the final written warning to be an unfair labour practice and set it aside. The implications of this judgment are central to the determination of the present review application.

Factual Chronology

- [5] The relevant sequence of events, as distilled from the pleadings and the record, is as follows:
- a. 1 November 2021: The Third Respondent commenced employment with the Applicant as a Project Manager, Recruitment and Placements.
 - b. 28 March 2022: The Third Respondent was issued with a notice to attend a disciplinary hearing concerning allegations of poor performance, negligence, and inefficiency.

- c. 5 April 2022: The Applicant sent an email to the Third Respondent retracting the notice to attend the disciplinary hearing. In the same communication, the Applicant issued the Third Respondent with a final written warning for *"Negligence, carelessness and not following company procedure throughout the Platinum and Kumba recruitment process"*, which had led to missed deadlines and delays.
- d. 6 April 2022: The Third Respondent was suspended. It is the Applicant's contention that it was on this date that it became aware of the full extent of the Third Respondent's failure to meet recruitment targets, having only secured 94 of the required 200 learners.
- e. 11 April 2022: The Applicant issued a new notice for a disciplinary hearing, charging the Third Respondent with "Bringing the company name into disrepute" and "Gross Negligence."
- f. 13 April 2022: The disciplinary hearing took place.
- g. 14 April 2022: The Third Respondent was dismissed.
- h. 20 September 2022: Following a referral to the CCMA, the Commissioner issued the arbitration award which is the subject of this review.
- i. 14 January 2025: In a separate review application (JR2023/22) concerning the fairness of the 5 April 2022 warning, Daniels J set the warning aside, declaring it an unfair labour practice.

The Arbitration Award Under Review

- [6] The Commissioner found the dismissal to be procedurally fair, a finding which is not challenged.
- [7] The central pillar of the Commissioner's reasoning on substantive fairness rests on the doctrine of double jeopardy. The Commissioner noted that both the Applicant's and the Third Respondent's witnesses confirmed that the issues raised in the final written warning of 5th April 2022 and the charges

leading to the dismissal on 14th April 2022 related to the same recruitment projects.

- [8] The Commissioner reasoned that the Applicant had already sanctioned the Third Respondent for the alleged misconduct by issuing a final written warning. He found no evidence was presented of any new missed deadlines or acts of misconduct occurring between the issuance of the warning on 5th April 2022 and the subsequent charges on 11th April 2022.
- [9] Consequently, the Commissioner concluded that subjecting the Third Respondent to a second disciplinary process for the same conduct constituted double jeopardy. He held, at paragraph 66 of the award: *"In my view, the respondent's conduct does amount to double jeopardy which renders the dismissal unfair."* Based solely on this finding, he deemed the dismissal substantively unfair without proceeding to consider any other arguments on the merits of the dismissal. This Court, having independently assessed the evidence, the bundles of documents and arguments raised in the arbitration, finds that the Commissioner reached an outcome that a reasonable decision maker could have reached on the evidence before him.

Grounds for Review and Analysis

- [10] The Applicant's primary ground for review is that the Commissioner committed a gross irregularity and misconducted himself by fundamentally misunderstanding and misapplying the doctrine of double jeopardy. The Applicant argues that there was only one disciplinary enquiry, and that the dismissal was based on new facts which came to its attention on 6th April 2022, after the warning was issued.
- [11] The Third Respondent opposes the application, submitting that the Commissioner's finding was rational and one that a reasonable decision-maker could reach based on the evidence presented. The evidence, it is argued, showed a clear overlap in the conduct being sanctioned.

The Legal Principles

[12] The test for review is settled. As established in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*¹, the question is whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach.

[13] The doctrine of double jeopardy in the employment context provides that an employee should not be disciplined or sanctioned twice for the same offence. Its application is rooted in the principle of fairness. For the doctrine to be applicable, there must have been a first, valid disciplinary action or a sanction imposed.

The Impact of the Judgment by Daniels J

[14] The judgment of Daniels J in case JR2023/22 is central to the issue before me. That judgment has declared the final written warning of 5th April 2022 to be an unfair labour practice and has set it aside. The legal effect of this order is that the warning is rendered a nullity; it is void *ab initio* (from the beginning).

[15] The entire foundation of the Commissioner's finding of double jeopardy was the existence of a valid prior sanction—the final written warning. With that warning having been retrospectively invalidated by an order of this Court, the first "jeopardy" required to sustain a finding of double jeopardy ceases to exist. An employee cannot be placed in "double jeopardy" if they were never validly "in jeopardy" in the first place.

[16] The Commissioner, through no fault of his own, proceeded on the assumption that the warning was valid. He could not possibly have been privy to the subsequent findings of this Court. However, in conducting this review, I cannot ignore a definitive and material judicial finding that fundamentally alters the legal and factual landscape upon which the Commissioner's decision was built.

[17] The Commissioner's finding that the Applicant's conduct amounted to double jeopardy is, in light of the judgment of Daniels J, a material error of law at the

¹ [2007] ZACC 22; [2007] 12 BLLR 1097 (CC).

time that this matter came before this Court. This error is not merely peripheral; it goes to the heart of the award and had a distorting effect on the outcome. The finding of substantive unfairness was based *exclusively* on this legal premise, which, albeit subsequently, has been rendered *ex lege*, incorrect.

[18] Therefore, the Commissioner's conclusion is disconnected from the true legal reality of the matter. The decision that the dismissal was unfair on the basis of double jeopardy is one that could not be sustained in the present context. But does this mean that the arbitration award must accordingly be reviewed and set aside?

[19] Mr. Higgs argued, for the Third Respondent, that the powers of a Court on a review of this nature are within the ambit of S145 of the LRA. In this regard he pointed out excerpts of the Judgment of the Constitutional Court in *CUSA v Tao Ying Metal Industries and Others*², the Constitutional Court held as follows:

“What is the dispute that the Commissioner had to resolve?”

6.1 *What divided the Supreme Court of Appeal was what the real dispute was that the Commissioner had to resolve. The debate in this Court also focused on this issue. This debate raised three related questions: the first is the role of commissioners in resolving labour disputes; the second is the proper characterisation of labour disputes; and the third is the role of courts in overseeing the arbitral process. The answers to these questions lie, in the main, in the objects of the LRA. (My emphasis).*

6.2 *The role of commissioners in resolving labour disputes is set out in section 138(1) of the LRA which provides:*

“The commissioner may conduct the arbitration in a manner that the commissioner considers appropriate in

² (CCT 40/07) [2008] ZACC 15.

order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.”

- 6.3 *The LRA introduces a simple, quick, cheap and informal approach to the adjudication of labour disputes. This alternative process is intended to bring about the expeditious resolution of labour disputes. These disputes, by their very nature, require speedy resolution. Any delay in resolving a labour dispute could be detrimental not only to the workers who may be without a source of income pending the resolution of the dispute, but it may, in the long run, have a detrimental effect on an employer who may have to reinstate workers after a number of years. The benefit of arbitration over court adjudication has been shown in a number of international studies.*
- 6.4 *The absence of appeal from arbitral awards was intended to speed up the process of resolving labour disputes and free it from the legalism that accompanies other formal judicial proceedings. By adopting this simple, quick, cheap and informal approach to the adjudication of labour disputes, Parliament intended that, as far as it is possible, arbitral awards should be final and should only be interfered with in very limited circumstances. In order to give effect to these objectives, Parliament deliberately decided against appeals from arbitral awards and opted for the narrowest species of review, namely, that specified in section 145 of the LRA.*
- 6.5 *Consistent with the objectives of the LRA, commissioners are required to “deal with the substantial merits of the dispute with the minimum of legal formalities.” This requires commissioners to deal with the substance of a dispute between the parties. They must cut through all the claims and counter-claims and reach for the real dispute between the parties. In order to*

perform this task effectively, commissioners must be allowed a significant measure of latitude in the performance of their functions. Thus the LRA permits commissioners to “conduct the arbitration in a manner that the commissioner considers appropriate”. But in doing so, commissioners must be guided by at least three considerations. The first is that they must resolve the real dispute between the parties. Second, they must do so expeditiously. And, in resolving the labour dispute, they must act fairly to all the parties as the LRA enjoins them to do.

6.6 *A commissioner must, as the LRA requires, “deal with the substantial merits of the dispute”. This can only be done by ascertaining the real dispute between the parties. In deciding what the real dispute between the parties is, a commissioner is not necessarily bound by what the legal representatives say the dispute is. The labels that parties attach to a dispute cannot change its underlying nature. A commissioner is required to take all the facts into consideration including the description of the nature of the dispute, the outcome requested by the union and the evidence presented during the arbitration. What must be borne in mind is that there is no provision for pleadings in the arbitration process which helps to define disputes in civil litigation. Indeed, the material that a commissioner will have prior to a hearing will consist of standard forms which record the nature of the dispute and the desired outcome. The informal nature of the arbitration process permits a commissioner to determine what the real dispute between the parties is on a consideration of all the facts. The dispute between the parties may only emerge once all the evidence is in.*

6.7 *Subject to what is stated in the following paragraph, the role of the reviewing court is limited to deciding issues that are raised in the review proceedings. It may not on its own raise issues which were not raised by the party who seeks to review an arbitral*

award. There is much to be said for the submission by the workers that it is not for the reviewing court to tell a litigant what it should complain about. In particular, the LRA specifies the grounds upon which arbitral awards may be reviewed. A party who seeks to review an arbitral award is bound by the grounds contained in the review application. A litigant may not on appeal raise a new ground of review. To permit a party to do so may very well undermine the objective of the LRA to have labour disputes resolved as speedily as possible.

6.8 *These principles are, however, subject to one qualification. Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, mero motu, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality. Accordingly, the Supreme Court of Appeal was entitled mero motu to raise the issue of the Commissioner's jurisdiction and to require argument thereon. However, as will be shown below, on a proper analysis of the record, the arbitration proceedings in fact did not reach the stage where the question of jurisdiction came into play.” (My emphasis).“*

[20] One cannot deny the validity of Mr. Higgs argument that under S145 of the LRA this Court is limited to consider the proceedings as they stood before the Commissioner and needs to determine, only, whether or not the award is reviewable based on the evidence that served before the Commissioner.

[21] The situation that the Third Respondent finds herself in is unfortunate in labour litigation where the purpose of the LRA is the effective resolution of labour disputes.

- [22] Were the Appellate court to set aside the Daniels J judgment and this Court set aside the award based on the Daniels J judgment then this judgment would be rendered a *brutum fulmen*.
- [23] The Third Respondent would find herself in an endless loop of litigation that could have best been avoided by consolidating her unfair labour practice and unfair dismissal dispute.
- [24] The doctrine of *stare decisis* finds application in this matter. This Court is duty bound to apply the law as it stands. At the time this matter was heard, there had been no challenge to the judgment of Daniels J which therefore stands.
- [25] This Court is of the view that where subsequent proceedings have set aside the warning on which the double jeopardy reasoning was based, then it is a point of law which invalidates the foundation upon which the Commissioner's reasoning is based and must be set aside.

The Appropriate Remedy

- [26] The Applicant seeks an order substituting the award with a finding that the dismissal was fair. I am not persuaded that substitution is appropriate in these circumstances. As the Commissioner made his finding exclusively on the preliminary point of double jeopardy, he expressly declined to consider the substantive merits of the dismissal. At paragraph 66 of his award, he states:

"Based on this finding alone, I will not proceed to deal with the second argument as raised by the applicant."

- [27] The core question of whether the Third Respondent's conduct, particularly the failure to meet the recruitment targets and communicate this failure, constituted negligence sufficient to warrant dismissal, has therefore never been determined at arbitration. Daniels J's judgment, invalidating the warning, analysed the facts through the lens of incapacity versus misconduct and did not make a definitive finding on whether the conduct justified dismissal.
- [28] It would be improper for this Court to sit as an arbitrator of first instance to determine these unresolved factual and legal disputes. The merits of the

dismissal remain an issue that requires a proper hearing where evidence can be led and tested. The most appropriate and fair course of action is to remit the matter to the CCMA for a hearing *de novo*.

Costs

[29] In labour matters, the principle that costs follow the result does not automatically apply. The law and fairness are the primary considerations. Given the complex legal history of this dispute and the fact that the determinative issue arose from a separate court process, it is my view that a costs order would not be fair or appropriate.

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

Order

1. The application for review is granted.
2. The arbitration award issued by the Second Respondent on 20 September 2022 under CCMA case number GATW5667-22 is reviewed and set aside.
3. The matter is remitted to the First Respondent (the CCMA) for a hearing *de novo* before a Commissioner other than the Second Respondent.
4. There is no order as to costs.

K.R. Munsamy

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: J. JONES.

Instructed by: MACGREGOR ERASMUS ATTORNEYS.

For the Respondent: C. HIGGS.

Instructed by: HIGGS ATTORNEYS INC.

LABOUR COURT