



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR131 /2023

In the matter between:

KHOMOTSO SIMON RANGWATO

Applicant

and

TRANSNET BARGAINING COUNCIL

First Respondent

SEELE MOKWENA N.O.

Second Respondent

TRANSNET ENGINEERING

Third Respondent

Heard: 28 May 2025

Delivered: 26 August 2026

JUDGMENT

CITHI, AJ

Introduction

- [1] This is an application, in terms of section 145 of the Labour Relations Act² (LRA), brought by Khomotso Simon Rangwato (Applicant) to review and set aside an arbitration award issued by Commissioner Seele Mokwena (Commissioner) dated 8 December 2022 and under case number TNBC96 - 22 (Award), under the auspices of the First Respondent (Bargaining Council). The First Respondent (Company) does not oppose this application. In terms of his award, the Commissioner found that the Applicant's dismissal was procedurally and substantively fair.

Background facts

- [2] The background facts will be recounted only to the extent that they are relevant to this application and the Applicant's grounds of review. The Company is a state-owned enterprise involved in research, design, manufacturing, maintenance services, maritime activities, as well as products for the rail industry across the globe. The Applicant commenced his employment with the Company on 3 June 2006. At the time of his dismissal on 29 April 2022, the Applicant was employed as a Superintendent in the Company's Wheels and Coaches business unit.
- [3] The Applicant was charged in relation to an incident involving the loading of scrap that was sold at an auction. It is common cause that the Company conducted a public auction of scrap material during early 2021. The company that won the bid to purchase 400 tons of scrap material was Brass Investments. The Applicant was appointed as the Company's representative to facilitate the sale and loading of the 400 tons of scrap material by Brass Investments.
- [4] To ensure precise measurement of the scrap metal, the truck is first driven onto the weighbridge to record its tare mass while empty. After loading is completed, the truck returns to the scale to capture the gross mass. The initial tare weight is then subtracted from this final figure to determine the net mass,

² Act 66 of 1995, as amended.

or total tonnage, of the cargo. The representative (the Applicant), the driver of the truck, and the weighbridge officer must all agree on the total tonnage of the cargo.

- [5] The Applicant, the weighbridge officer, and the driver of the truck are required to sign the weighbridge certificate as evidence of their agreement on the total tonnage of the cargo. Thereafter, the Applicant takes the weighbridge certificate to one Jessica Strovel to generate a G16 gate pass, for the truck, which must be produced to the security personnel when departing from the Company's premises.
- [6] The G16 gate pass is electronically generated using the information provided by the Applicant. The G16 gate pass, serves as the authoritative record of the transaction, providing a verified account of the scrap tonnage sold and removed from the premises. The information on the weighbridge certificate and the G16, or gate pass, must correspond. Of relevance to this case, the name of the company loading the scrap metal and the total tonnage of the cargo must correspond.
- [7] On 20 April 2021, a truck arrived at the Company's premises to load the scrap metal that Brass Investments had bought after winning the auction. The Applicant, as the responsible Company representative, was in charge of the loading process. After the truck was loaded, the Applicant requested Jessica Strovel to generate the G16 gate pass, for the truck to exit the Company's premises. The weighbridge certificate that was used to generate the G16 gate pass, on 20 April 2021 was dated 22 February 2021 and belonged to a company called United Commodity. The weighbridge certificate and G16 gate pass reflected that 24 980 tons was loaded onto the Brass Investments truck using the weighbridge certificate of a different date belonging to United Commodity.
- [8] On 21 April 2021, the Applicant created a handwritten G16, or gate pass, for a truck belonging to Brass Investments to load 19 500 tons using the same weighbridge certificate dated 22 February 2021 belonging to United Commodity. In essence, the Applicant used the weighbridge certificate dated

22 February 2021, belonging to United Commodity, to generate the electronic and handwritten G16 gate pass, on 20 and 21 April 2021 for Brass Investments to load 24 980 and 19 500 tons respectively.

[9] The Company suffered a loss estimated at three million rand, according to the Directorate for Priority Crime Investigation (the Hawks), which was investigating the unlawful removal of scrap metal from the Company's premises. As part of the investigation, the Applicant provided a written statement. The Applicant stated, *inter alia*, that:

- 9.1 He was appointed as the Company's representative for the sale and loading of the 400 tons of scrap metal by Brass Investments;
- 9.2 On 12 April 2021, an empty truck belonging to Brass Investments was weighed, and the tare mass was recorded by the weighbridge officer;
- 9.3 On 13 April 2021, the first load was loaded onto the Brass Investments truck, and he was called to verify the tonnage once loading was completed;
- 9.4 The weighbridge officer printed the weighbridge certificate, which was signed by him, the weighbridge officer, and the driver from Brass Investments;
- 9.5 He took the weighbridge certificate to Jessica Strovel to generate the G16 gate pass;
- 9.6 Two copies of the G16 gate pass were printed because the copies were not always legible. Jessica Strovel and the Applicant both signed the copies. The Applicant kept the original copy; and
- 9.7 He learned of the investigation into the scrap sales on 29 April 2021. He had been assisting with the investigation by providing the required documents.

[10] The Applicant was issued with a notification to attend a disciplinary hearing to answering to the following allegations:

- (1) Gross negligence in that between 13 April 2021 and 12 May 2021, during the collection of the auctioned scrap by an external client, you failed as a business representative to comply with the Scrap Procedure as it requires that an employee of Transnet should always be present to monitor the suppliers when they are loading scrap.
- (2) Non – compliance between 13 April 2021 and 12 May 2021 when you failed to comply with the Scrap Procedure, your behaviour contravened clause 11.8.2 and 11.8.3 of Transnet Code of Ethics which states that employees should protect Transnet's assets and should not expose them to loss or theft.'

[11] At the conclusion of this disciplinary hearing, the Applicant was found guilty of all the above charges and was subsequently dismissed on 29 April 2022. Thereafter, the Applicant referred an alleged unfair dismissal dispute to the Bargaining Council in terms of section 191 of the LRA for conciliation, failing that, arbitration.

[12] The arbitration between the parties that resulted in the Award being issued was held on 28, 29 and 30 November 2022. The Applicant challenged both the procedural and substantive fairness of his dismissal. The impugned award was published on 8 December 2022.

Arbitration award

[13] During the arbitration proceedings, the Applicant's challenge to the substantive fairness of his dismissal was twofold: Firstly, he contends that the charges preferred against him by the Company impermissibly diverged from the investigator's report, which had recommended a charge limited to non-compliance with scrap procedure rather the allegations of gross negligence that was ultimately levelled against him. Secondly, the Applicant testified that the gravamen of the charge is legally and factually unsustainable, as there existed no workplace rule, policy, or obligations requiring his continuous presence during the loading of the scrap material.

[14] In respect of the procedural fairness, the Applicant attacks the impartiality of

the chairperson of the disciplinary inquiry. He testified that the chairperson was biased by finding him guilty of infractions with which he was never charged.

[15] In the award, the Commissioner dismissed the Applicant's procedural challenge on account that the Applicant failed to adduce evidence demonstrating bias on the part of the chairperson. The Commissioner further found that the Company was not obliged to only charged the Applicant on the basis of the recommendations contained in the investigator's report. The Commissioner reasoned that the Company was at liberty to level any allegations against the Applicant provided it can sustain the allegations with evidence.

[16] The Commissioner further found that the Applicant's contentions that the chairperson found him guilty of a charge that he was never charged with was without merit. The Commissioner found that the chairperson's evidence was that he never found the Applicant guilty of fraud and theft but rather made an observation that the discrepancies in the weighbridge certificate and gate pass have all the hallmarks of fraud and theft. The Commissioner was of the view that the chairperson of the disciplinary hearing was entitled to express his view based on the evidence before him.

[17] The Commissioner concluded that in any event, the observation made by the chairperson was consisted with the objective evidence. Accordingly, the Applicant's procedural fairness challenge ought to be dismissed.

[18] In dealing with the Applicant's substantive fairness challenge, the Commissioner held that:

'therefore, the fact that the investigator recommended a course of action and the decision – maker decided on something else in order to deal with the incident, does not amount to any irregularity. Whatever charges the respondent preferred against the applicant, the respondent still have had a duty to substantiate those charges with evidence'.

[19] The Commissioner further found that there was no policy directive requiring

the Applicant to be always present during the loading of the scrap material. The Commissioner was of the view that the objective facts showed that no such policy existed. The Commissioner reasoned that it would be unfair to hold the Applicant guilty of omission that is not set out in the Company's policy and procedures. However, the Commissioner reasoned that it would be overly technical to acquit an employee on the basis of the inelegant phrasing of the charge sheet in circumstances where the evidence establishes misconduct on the part of the employee. The Commissioner concluded that the evidence before him does not established negligence on the part of the Applicant. `

[20] The Commissioner noted however that the nub of the complaint against the Applicant was that he failed to follow the scrap procedure. The Commissioner further noted that the Applicant's testimony during the arbitration proceedings was that he was expected to first require to obtain the empty mass before loading and thereafter weight the truck after loading to obtain the actual mass.

[21] The Commissioner observed that the Applicant's version during the arbitration proceedings was consistent with the Company's version that the Applicant was expected to first obtain the empty mass before loading and thereafter weight the truck after loading to obtain the total mass irrespective of whether there was a written policy or not. Accordingly, reasoned the Commissioner, the Applicant was not prejudiced by the inelegant phrasing of the charge sheet which suggests that he was expected to be present all the material time during the loading of the scrap material.

[22] At paras 29 and 30 the award, the Commissioner made the following findings:

'The applicant was aware that Brass Investment was the bidder that won the bid to buy scrap from the respondent. Regardless of whether or not there was a procedure or a policy that directed him how to discharge his responsibility, he acknowledged that he was responsible, among others, to manage the weight of the scrap that the buyer loaded so that the respondent could invoice the buyer for the correct tonnage. This being the case, he should have firstly noted that the weighbridge certificate was issued in the name of an incorrect

entity and should have required of the weighbridge operator to correct same. If he did not notice this discrepancy, it amounted to failure to discharge his duties with diligence. If he noticed the discrepancy and required of the weighbridge operator to effect corrections and the operator did not cooperate, he should have raised alarm and report the matter to his superiors. This way, he would have fulfilled his duty to protect the employer's assets.

Based on the above considerations, I am satisfied that the respondent has proved with the requisite standard that the dismissal of the applicant was for fair reasons related to his unacceptable conduct and that the dismissal was preceded by a fair procedure. In the circumstances, I find no reason to interfere with the respondent's decision to terminate the employment relationship with the applicant.'

- [23] Ultimately, the Commissioner found that the Applicant's dismissal was both procedurally and substantively fair. It is the above conclusions that are the subject of these review proceedings.

Grounds of review

- [24] The Applicant contends that the Commissioner came to a conclusion that no reasonable decision maker could have come to, having regard to the material placed before him. In particular, the Applicant contends that it is unreasonable for the Commissioner to find that the Company did not have a rule governing the conduct of the employees at the workplace but nevertheless made a finding that the employee breached the rule.

- [25] The Applicant further contends that he cannot be found guilty of breaching a non-existing rule.

- [26] The Applicant further contends that the Commissioner was biased in finding against him in circumstances where the witnesses indicated that there was no standard operation procedure in place which should govern the conduct of the employees. In addition, the Applicant contends that the Commissioner was biased when he found that the work of the weighbridge clerk and conduct of the person responsible for issuing the gate pass should be regarded as negligent conduct of the Applicant.

- [27] The Applicant further contends that the Commissioner failed to consider that the investigating officer recommended that he should be charged with breach of procedures rather than gross negligence.

The Review Test

- [28] The applicable test on review in applications such as this one is now trite. In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*³ the Constitutional Court held that:

‘the reasonableness standard should now suffuse s 145 of the LRA, and that the threshold test for the reasonableness of an award was: ... Is the decision reached by the Commissioner one that a reasonable decision – maker could not reach? ...’⁴

- [29] In *Glencore Operations South Africa (Pty) Ltd v Taala and Others*⁵, the Labour Appeal Court (LAC) per Van Niekerk JA restated the threshold for interference with a commissioner’s arbitration award:

‘The hurdles that the appellant was required to overcome on review were to establish some misdirection on the part of the arbitrator in his assessment of the evidence and, secondly, that the factual conclusions that he drew were untenable, rendering the award one to which no reasonable decision-maker could come. Implied in the Labour Court’s finding is that the arbitrator had regard to relevant evidence, did not take irrelevant evidence into account, and arrived at a conclusion that fell within the bounds of reasonableness.’⁶

- [30] In *Makuleni v Standard Bank of SA (Pty) Ltd and others*⁷ the LAC per Sunderland JA indeed reminded this Court of the crucial distinction between a review and an appeal. The case highlighted instances where the Labour Court was ‘misled into treating the case for a review as if it were an appeal.’ The

³ (2007) 28 ILJ 2405 (CC).

⁴ Ibid at para 110.

⁵ (JA 52/24) [2025] ZALAC at para 23.

⁶ Ibid at para 25.

⁷ (2023) 44 ILJ 1005 (LAC).

learned Judge observed:

'The court asked to review a decision of commissioner must not yield to the seductive power of a lucid argument that the result could be different. The luxury of indulging in that temptation is reserved for the court of appeal. At the heart of the exercise is a fair reading of the award, in the context of the body of evidence adduced and an even-handed assessment of whether such conclusion are untenable. Only if the conclusion is untenable is a review and setting aside warranted.'⁸

- [31] In sum, this Court's review powers are limited to scrutinising the rationality and reasonableness of the decision-making process and outcome. They do not extend to it, re-adjudicating the merits of the case that was before a commissioner as if it were an appeal.

Analysis

- [32] The Applicant's primary grounds of review is that the Commissioner arrived at a decision to which no reasonable decision – maker could come. In particular, the Applicant argues that he could not be found guilty of breaching a non-existent workplace rule, that the Commissioner exhibited bias, and that the charges preferred against him impermissibly diverged from the investigator's initial recommendations. I shall deal with these contentions in turn.
- [33] The Applicant strongly contends that he cannot be found guilty of gross negligence or non-compliance because the Commissioner explicitly found that the Company lacked a formal standard operating procedure or policy directive requiring his continuous presence during the loading of scrap material.
- [34] In my view, this argument is fundamentally flawed and represents a mischaracterisation of the Commissioner's reasoning. While the Commissioner noted that it would be unfair to penalise the Applicant for an omission not strictly codified in writing (namely, remaining physically present at all times during loading), the Commissioner correctly looked at the true core of the misconduct: a failure to follow core scrap validation procedures that the

⁸ Ibid at para 4.

Applicant himself acknowledged. In *EOH Abantu (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*,⁹ the LAC held:

‘...courts and arbitrators must not adopt too formalistic or technical an approach. It normally will be sufficient if the employee has adequate notice and information to ascertain what act of misconduct he is alleged to have committed. The categorisation by the employer of the alleged misconduct is of less importance.’

[35] It is common cause that the Applicant was the designed business representative responsible for managing and verifying the weight of the scrap to ensure that the scrap material loaded accords with the 400 tons of scrap metal won by Brass Investments during the auction. By his own admission during testimony, the process required obtaining an empty mass, weighting the loaded truck, and cross-checking the total tonnage. Crucially, the information contained in the weighbridge certificate (i.e. name, tonnage and date) must correspond with the information in the G16 gate pass.

[36] Despite this known responsibility, the Applicant utilised a weighbridge certificate from an entirely different entity (United Commodity) dated months prior to generating the G16 gate passes for Brass Investments. In my view, the Commissioner’s reasoning – that it would be overly technical to acquit an employee due to the ‘inelegant phrasing’ of a charge sheet when the objective facts conclusively demonstrate a gross failure to exercise basic diligence – is legally sound. An employer is not required to draft a policy for every self-evident duty of care. The Applicant knew his core function was to safeguard the process; he failed to spot or act on glaring discrepancies, resulting in a three-million-rand loss.

[37] In my view, the evidence adduced during the arbitration proceedings showed that the Applicant’s conduct was laden with dishonesty. As the Company’s representative, the Applicant was explicitly tasked with overseeing the loading of only 400 tonnages won by Brass Investments. On the objective evidence, the Applicant, in charge of the loading process on 20 April 2021, facilitated the

⁹ (2019) 40 ILJ 2477 (LAC) at para 15.

creation of a G16 gate pass using a weighbridge certificate dated 22 February 2021 that belonged to a completely different company, United Commodity. Consequently, 24,980 tons of material was loaded and removed under a false, mismatched certificate.

[38] The following day, the Applicant further engaged in questionable conduct by creating a handwriting gate pass for another Brass Investments truck. The Applicant re-used the exact same February 2021 United Commodity weighbridge certificate to authorise the removal of an additional 19,500 tons. In essence, the Applicant systematically used a third party's outdated weighbridge certificate to generate both electronic and handwritten gate passes on 20 and 21 April 2021, allowing Brass Investments to illicitly remove 24,980 and 19,500 tons respectively which is more than the 400 tons Brass Investments won in a bid. This calculated bypass of internal controls directly resulted in an estimated three-million-rand loss for the Company.

[39] The Applicant has provided no plausible explanation for using the weighbridge certificate dated 22 February 2021 belonging to United Commodity to create a G16 gate pass for Brass Investments on 20 April 2021. In his written statement submitted as part of the investigation, the Applicant alleges that the Brass Investment truck was weighed on 12 April and subsequently verified for total tonnage on 13 April 2021. This claim is wholly unsustainable and directly contradicted by the objective evidence on record. During the arbitration proceedings, the Applicant failed to produce a weighbridge certificate and G16 gate pass to substantiate this timeline. On the contrary, the available evidence shows that the Brass Investment truck loaded on 20 April using the weighbridge certificate dated 22 February 2021 belonging to United Commodity.

[40] Furthermore, the explanation that the Applicant sought to provide for creating the handwritten gate pass on 21 April 2021 – namely, that he sought to correct the tonnage error that purportedly occurred on 20 April when he wrote 19,500 tons - is illogical. The undisputed evidence was that the driver, the Applicant (Company representative) and the TFR weighbridge officer must all

agree on the total mass tonnage by signing the weighbridge certificate.

[41] In this instance, the weighbridge certificate was already signed on 22 February 2021 and recorded the agreed total mass tonnage as 24 980 tons. Accordingly, the Applicant could not unilaterally amend the tonnage on 21 April 2021 after the truck had already left the premises on 20 April 2021. The information contained in the G16 gate pass issued on 21 April materially differs with the source document (weighbridge certificate dated 22 February 2021) in respect of the total mass tonnage. On the conspectus of evidence, the Applicant facilitated the unlawful removal of scrap materials from the Company's premises.

[42] In attempting to explain his manifestly dishonest and fraudulent conduct, the Applicant concocted a version of events that runs entirely parallel to the objective evidence. His explanation unequivocally exposes the *modus operandi* he used to facilitate the unlawful removal of the scrap materials.

[43] I am of the view that in light of the evidence presented, it is clear that the Applicant's actions went far beyond gross negligence. By using the weighbridge certificate dated 22 February 2021 belonging to United Commodity to create a G16 gate pass for Brass investment, in my view, the Applicant facilitated the unlawful removal of scrap materials from the Company's premises on 20 April 2021. His questionable conduct on 21 April was in furtherance of his *modus operandi*. Undoubtedly, this conduct is incompatible with the element of trust required to sustain an employment relationship. In *Standard Bank of South Africa Ltd v CCMA and Others*,¹⁰ Tip AJ stated:

'it is one of the fundamentals of the employment relationship that the employer should be able to place trust in the employee. A breach of this trust in the form of conduct involving dishonesty is one that goes to the heart of the employment relationship and is destructive of it.'

[44] The Applicant's conduct, in my view, rendered him a perfect candidate for

¹⁰ [1998] 6 BLLR 622 (LC) at para 38.

dismissal. In other words, the Applicant earned the right to be fairly dismissed. His dismissal, in my view, cannot be said to be unjustified in the circumstances of this case.

- [45] The Applicant's contention that the Commissioner was biased is patently without merits. The Applicant asserts that the Commissioner displayed bias by holding him accountable for the oversight of the weighbridge clerk and the gate pass issuer, and by ignoring the lack of a formal standard procedure. In my view, there is no merit to this complaint. In *South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Ltd (Seafoods Division, Fish Processing)*¹¹ the court observed:

'Not only must the person apprehending bias be a reasonable person, but the apprehension itself must in the circumstances be reasonable. This two-fold aspect finds reflection also in *S v Roberts*, decided shortly after *Sarfu*, where the Supreme Court of Appeal required both that the apprehension be that of the reasonable person in the position of the litigant and that it be based on reasonable grounds.'

- [46] To sustain a claim of bias, an applicant must demonstrate a reasonable apprehension of bias rooted in the conduct of the proceedings, not merely dissatisfaction with an adverse factual finding. In my view, the Commissioner did not conflate the duties of other staff with those of the Applicant. Rather, the Commissioner evaluated the Applicant's independent duties as the authorised representative over the entire transaction.

- [47] I am of the view that even if the other employees were negligent, the Applicant had a distinct duty to check the weighbridge certificate before taking it to have a G16 gate pass generated. The Commissioner's finding – that if the Applicant failed to notice the wrong entity name, the date on the weighbridge certificate, the tonnage recorded *vis* the tonnage Brass investments won in the auction, he was grossly negligent, and if he did notice it but did nothing, he failed to protect company assets – is logical inference drawn from the body of evidence. It does not indicate bias. As I indicated in my analysis of the

¹¹ 2000 (3) SA 705 (CC) at para 14.

evidence above, the Applicant's conduct goes beyond mere gross negligence and revealed dishonesty and fraud.

- [48] Finally, the Applicant attacks the award on the basis that the Commissioner failed to consider that the initial investigating officer recommended a lighter charge of breach of procedures rather than the severe charge of gross negligence. As the Commissioner correctly held, an employer is never bound by the preliminary recommendations of an internal investigator. The investigator's report is an advisory tool; the initiator or decision-maker retains the prerogative to formulate final disciplinary charges, provided the employer can ultimately substantiate those allegations with competent evidence at the disciplinary hearing. In my view, the Commissioner focused properly whether the evidence led at arbitration supported a finding of misconduct.

Conclusion

- [49] For all the reasons set out above, I am of the view that the Applicant has failed to demonstrate grounds of review to justify this Court's interference with the Commissioner's findings. Thus, adhering to the strict distinction between an appeal and a review as restated in *Makuleni* (supra), this Court cannot substitute its own view simply because a different argument could be constructed. This Court is of the view that the Commissioner evaluated the material before him, weighed the common cause deviations regarding the gate passes and discrepancies with regard to the name of the entity, and reached a decision that falls squarely within the bounds of reasonableness. Accordingly, there is no basis for this Court to interfere.

Costs

- [50] Given that the application is unopposed, the issue of costs does not arise for determination.

- [51] Accordingly, the following order is made:

Order

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

D. Cithi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Manu Mapila

Instructed by: Mapulaneng MM Attorneys

For the Third Respondent: No opposition