



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

Signature

28 August 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C496/2023

In the matter between:

ANTHONY CURTIS

Applicant

and

ALTRON BYTES MANAGED SOLUTIONS

Respondent

Date of Hearing: 2 and 3 February 2026

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date of handing down judgment is deemed to be 28 August 2026.

Summary: An alleged automatically unfair dismissal claim for instituting a claim against the employer and a client, as contemplated in sections 5 and 187(1)(d) of the LRA, where the affected employee would have been appointed team leader for a client account but was not due to his debt review status. The factual causation test was met, but not the legal causation test. The proximate cause of the dismissal was the client's involvement of the client in the dispute, not the institution of claims against the employer.

JUDGMENT

GANDIDZE, J

Introduction

- [1] The trial proceedings concerned an alleged automatically unfair dismissal in terms of section 187(1)(d)¹ of the Labour Relations Act², lodged by Mr Anthony Curtis (Curtis), against his former employer, Altron Managed Solutions (Pty) Ltd (Altron).
- [2] When the claim was filed with this court, Curtis cited Altron and the Standard Bank of South Africa³ (SBSA) as respondents. Altron raised the special plea of misjoinder of SBSA. The issue was addressed at a pre-trial conference on 30 April 2025, and the court, per Haffegée AJ, ordered Curtis to file a notice withdrawing the dispute against SBSA. On 17 February 2025, Curtis filed the notice of withdrawal as ordered. Despite this, in a pre-trial minute signed subsequently and on 22 October 2025, Curtis implored the court to 'reconsider including SBSA as a second respondent', contending that he had withdrawn the dispute against SBSA on this court's recommendation. The simple answer is that there is a court order directing Curtis to withdraw the dispute against SBSA, and he complied with it. This court lacks jurisdiction to revisit its own orders which a litigant has already complied with.

Background facts

- [3] Altron conducts a business providing, *inter alia*, Information Technology Solutions to clients throughout the Republic of South Africa. SBSA is one of its clients.

¹ Reproduced later on in the judgment.

² Act 66 of 1995, as amended.

³ For reasons that will emerge later on in the judgment.

- [4] Curtis commenced employment with Altron, previously known as Bytes Management Solutions (BMS)⁴, on 1 May 2014 as a Customer Service Representative (CSR), following a transfer from Merchant Acquiring, where he had worked since 4 June 2012. At some point, he was assigned to the position of Service Technician at Massmart.
- [5] In April 2023, Altron advertised a Team Leader position on the SBSA account. Curtis was encouraged and personally assisted by Mr Ruan Marais (Marais), the Regional Manager and his line manager, to apply for the position, which would have been a promotion. Subsequently, Curtis was informed that his application was rejected because *'he had become indebted to the client who is a reputable financial institution, whereby he had been placed under debt review'*. Altron contended that appointing Curtis would constitute a breach of the Common Terms Agreement (the Agreement) with SBSA, which, *inter alia*, provides as follows:
- '27.1 The supplier must perform criminal record check, credit check REDS list check with the assistance of Standard Bank and any other checks required by Standard Bank and must provide a detailed summary of the work experience and qualifications of all personnel, together with the results of the checks to Standard Bank within a reasonable time after the signature date. If standard Bank notifies the supplier that any personnel member is unacceptable to it, on reasonable grounds given in writing, the supplier will substitute that person with a suitable replacement. This clause 27.1 will apply to all replacement candidates.
- 27.2 Grounds on which Standard Bank may object to any personnel member are:
- (1) unsatisfactory results of any credit or other checks required by Standard Bank.'
- [6] Following the decision not to promote him, Curtis referred several disputes to the Commission for Conciliation, Mediation and Arbitration (CCMA), alleging, *inter alia*, an unfair labour practice, discrimination and 'various ancillary

⁴ A Division of Bytes Technology Group South Africa (Pty) Ltd.

matters'⁵. He also cited SBSA as a second respondent in some of those disputes. A *subpoena* was issued to SBSA officials to appear before the CCMA, and they complied. The pre-trial minute records, as common cause, that Curtis involved SBSA despite instructions not to involve a client in an internal matter. However, in evidence, Curtis alleged that he had cited SBSA on the advice he received at the CCMA and that he had been misled about the contents of the pre-trial minute. I will return to this issue later in the judgment.

- [7] On 7 June 2023, Curtis was served with a notice to attend a disciplinary hearing to answer the charge:

'Misconduct: Bringing the company name into disrepute in that during June 2023 you involved a 3rd party (Standard Bank) who is a client of AMS in an internal employment dispute at the CCMA thereby bringing the company's name into disrepute. Your conduct had a detrimental or intolerable effect on the efficiency, profitability, and/or continuity of the business of AMS who is your employer.

In acting as allege (sic), you breach the company values of: Openness, honesty and integrity; Getting things done and enjoy doing it Leading returns for shareholders and Passionate about employees, customers, partners and communitie (sic).'

- [8] He was found guilty and dismissed on 15 June 2023.
- [9] He referred an alleged unfair dismissal dispute to the CCMA. During the arbitration proceedings, Curtis alleged an automatically unfair dismissal, and the commissioner seized with the matter advised him to refer the dispute to this court in terms of section 187 of the Labour Relations Act⁶ (LRA). He withdrew the dispute from the CCMA and referred it to this court, leading to the trial proceedings addressed in this judgment.

⁵ As per the pre-trial minute.

⁶ Act 66 of 1995.

[10] The disputes that Curtis referred to the CCMA before his dismissal were consolidated and arbitrated as a discrimination claim. In an award dated 1 August 2023, the claim was dismissed.

Curtis's pleaded case

[11] He completed the CCMA referral forms, citing Altron and SBSA, on the CCMA's advice. By referring the dispute to the CCMA, he was exercising his constitutional rights. The CCMA documents relied on as evidence of misconduct are protected by section 187(1)(d) of the LRA because he was exercising his right. Without those documents, Altron provided no credible or legitimate evidence of the alleged misconduct. Accordingly, his dismissal was automatically unfair.

[12] He sought maximum compensation, as he no longer trusted Altron. He also sought an order directing Altron to pay his notice and leave pay, to correct the UI19 form issued to him, to reimburse the costs of engaging a 'labour law expert trainer' to provide training and guidance in the matter, and to reimburse the costs of travelling from George, where he resides, to Cape Town to file papers with the court.

Altron's pleaded case

[13] The contractual arrangement with SBSA required that only employees with a clean credit record be placed there. Because Curtis did not have a clean credit record, he could not be placed with SBSA, as doing so would have breached the Agreement. Curtis was within his rights to refer the dispute to the CCMA, but by involving SBSA, he disregarded his employer's reputation and good name. He involved SBSA in disputes at the CCMA, despite numerous instructions not to involve a client in internal matters. SBSA officials attended the CCMA, causing Altron great embarrassment. SBSA threatened to cancel the contract. Curtis was informed of the threat, the reputational damage he was causing, and the disrepute he was bringing on the employer's name, but he persisted in involving SBSA in the dispute. His intention in including SBSA was *mala fide* and aimed at affecting the employer's good standing. This is why he was disciplined. He also attempted to coerce a

settlement. The conduct led to an irretrievable breakdown in the employment relationship and had the potential to permanently damage the relationship with SBSA.

- [14] Curtis was dismissed not for exercising his rights but for his intentional and malicious conduct in involving SBSA, with the ulterior motive of bullying Altron by securing a favourable settlement agreement, thereby causing reputational and financial harm to Altron. He remained defiant, obstinate and unnecessarily confrontational, and ignored pleas not to involve an important client in his dispute with the employer. The dismissal was neither automatically unfair nor unfair for a reason that is not automatically unfair.

Pre-trial minute

- [15] Two sets of pre-trial minutes were placed before the court. The first, dated 24 April 2024, is unsigned and will therefore be disregarded. The signed pre-trial minute, concluded before Melapi AJ, is dated 22 October 2025. The common cause facts recorded in that minute have already been set out above. In that minute, Curtis also contended that he became aware of the Agreement between Altron and SBSA at the CCMA only after he had been dismissed.

Oral and documentary evidence

Curtis's case

- [16] Curtis gave evidence in support of his claim.
- [17] He testified that the CCMA commissioner recommended that the employer settle his dispute, but the employer refused.
- [18] The position at SBSA was created specifically for him. His line manager, Marais, told him he had been appointed and that SBSA wanted to know when he would be released from Altron. He then received a 17-minute phone call from HR enquiring about the debt review process he was under. They informed him that the matter would be discussed with SBSA. Therefore, Altron involved SBSA in an internal matter. By then, he was already making plans to move to the Eastern Cape, where the position was based. A week later, he

was informed that he would not be promoted. He was angry. The Lord told him to go to the CCMA, and the CCMA advised him to request a subpoena against SBSA. He involved SBSA because it was 100% responsible for his non-promotion. The Head of Human Resources (HR), Mancy Letuka (Letuka), informed him that Altron respected his decision to refer the matter to the CCMA, but matters took a turn for the worse when SBSA officials were subpoenaed to appear before the CCMA. Altron tried to consolidate the cases at the CCMA, including a disciplinary hearing against him, which was trickery.⁷

- [19] Altron knew he was under debt review, which contributed to his negative credit score. It was illogical to charge him, as Altron had involved the SBSA. Altron brought its own name into disrepute by agreeing to the Agreement. In any case, Altron and the SBSA are intertwined. Marais and Mark Naidoo (Naidoo) worked for both.
- [20] He knew that the outcome of the disciplinary enquiry would be against him. The chairperson stated that he would seek internal advice before issuing a ruling. He also said that the disciplinary enquiry was convened because SBSA had sent a letter to Altron threatening to cancel the contract. Altron's representative also said that Curtis would be to blame if SBSA cancelled the contract. He recorded the proceedings and implored the court to listen to the recordings. He also referred the court to the summary of the disciplinary proceedings, which he compiled and submitted into evidence.
- [21] The only evidence Altron relied on was the CCMA documents, which could not be used because of the protection afforded by section 187(1)(d) of the LRA.
- [22] His colleagues and clients held him in high regard, as evidenced by statements he submitted into evidence. The salary schedules attached to the UI19 forms contained discrepancies.

⁷ The relevance thereof was difficult to determine.

- [23] Under cross-examination, he stated that he was dismissed for reporting wrongdoing by Altron and SBSA to the CCMA. He agreed that he needed to maintain harmonious relationships with clients and colleagues. IT services are provided at clients' premises. Had he been promoted, he would have become a senior employee. He agreed that SBSA decides whom to entrust with its IT systems. Under his employment contract, he agreed to undergo criminal and credit checks. The contract with SBSA was due for renewal in November 2023. He had no employment relationship with SBSA. He denied that SBSA was involved in the dispute to obtain money from Altron. He confirmed that he cited SBSA in the court proceedings, even after being informed that it was not his employer. The arbitration award issued by the CCMA found that the dispute was between him and Altron, not between him and SBSA.
- [24] He could not recall being instructed not to involve SBSA and challenged Altron to prove the instruction. He received no formal instruction not to involve SBSA. The pre-trial minutes record this as a common-cause fact, but he was informed that the document merely reflects the parties' perspectives. He was misled about the contents of the pre-trial minutes. It was Altron that involved SBSA. Letuka invited him to a meeting, which he declined. Letuka informed him that he was entitled to refer a dispute to the CCMA. During the disciplinary hearing, he was informed that he was charged with involving SBSA in the dispute. He denied that he involved SBSA to 'poke the bear' because he was indebted to it. He also disagreed that it is disconcerting for an employer to have its clients hauled before the CCMA by an employee.
- [25] When he referred a dispute to the CCMA challenging a final written warning issued to him, he was not charged for it.
- [26] He did not seek reinstatement because the trust between him and Altron had broken down over the years.

Altron's case

- [27] Altron called Mr Mohammed Peters (Peters), its Head of Operations. He met Curtis while working on the Massmart account. In 2023, he was responsible for the SBSA account. The contract was awarded in 2019 and due for renewal

in 2023. Therefore, 2023 was a critical period for ensuring the contract was renewed, given the stiff competition for business.

- [28] He was aware of Curtis's dispute. He was concerned that SBSA had been hauled before the CCMA by an employee. He also received a communication from SBSA in this regard and informed them that he was dealing with the matter. SBSA sent Curtis correspondence after the matter was referred to the CCMA and this court.
- [29] Under cross-examination, he stated that SBSA remained a client. He confirmed that SBSA had sent Curtis a letter after Curtis's dismissal. He was briefed on Curtis's matter and on the fact that Curtis had not been promoted.
- [30] In re-examination, he testified that senior people at SBSA were curious about why Curtis was involving them in an internal matter, and that this was not how they did business.
- [31] The second witness was Alida Stegmann (Stegmann). She is the Lead Employee Relations at the head office and supports business units on CCMA matters. She did not attend the conciliation meetings for about 4 of Curtis's 5 disputes. She assisted in consolidating the disputes and represented Altron in the arbitration concerning the discrimination matter, which was dismissed.
- [32] She was informed that Curtis had been instructed not to involve SBSA, but he refused to comply. Altron had no objection to employees referring disputes to the CCMA. In 2022, Curtis referred a dispute to the CCMA, which was decided in his favour. Even then, he was considered for a promotion. He was dismissed for a lack of commitment to change. He insisted that he had done nothing wrong.
- [33] In cross-examination, she testified that she met Curtis after his dismissal. She could not recall offering him his job back at the conciliation meeting and said that offering reinstatement would have been unusual. She applied to consolidate all disputes, but the commissioner refused to do so.

- [34] The third witness was Martinus Van Deventer (Van Deventer). He was employed as Senior Manager, Compliance and Risk. Curtis submitted four referrals to the CCMA, citing SBSA in each, despite being told not to involve a client. He attended the first conciliation meeting at the CCMA on 19 May 2023. An SBSA employee attended the meeting and appeared visibly irritated. After the SBSA employee left, he informed Curtis, in the commissioner's presence, not to involve SBSA, as it may consider cancelling the contract. Curtis responded that Altron and SBSA were colluding to hide something and that he would take the matter to the Labour Court.
- [35] He initiated the disciplinary enquiry against Curtis. During the hearing, Curtis stated that they could do as they wished and that he would take the matter to the Labour Court.
- [36] In cross-examination, he testified that before the referrals to the CCMA, he had dealings with Curtis after Curtis's mobile phone was stolen, but Curtis refused to file a claim. He sent e-mails to Curtis requesting a meeting. Curtis put to him that he had not denied being asked not to involve SBSA but had denied that they had pleaded with him not to do so, and that he had told them they would not get away with what they had put him through. He responded that they sat as two adults and implored Curtis to consider his actions and their consequences. In the disciplinary hearing, he did not provide proof of damages or of the effects caused by the alleged misconduct. It was put to him that he had been upset during the disciplinary hearing when Curtis asked who the chairperson was, and he denied this. It was also put to him that, during the disciplinary hearing, Curtis stated that the relationship with SBSA was precarious due to several issues, including SBSA's involvement in internal matters. He denied this. It was also put to him that SBSA was cited as a respondent in the first two referrals to the CCMA and that the witness did not attend the first conciliation meeting held on 17 May 2023. He stated that SBSA was cited in all the referrals.
- [37] In re-examination, he stated that Curtis committed misconduct by involving SBSA in his dispute with Altron.

- [38] The fourth witness was Maphula Tebogo Gloria Mohlampe (Mohlampe). She was employed as a Senior HR Partner. Her duties included ensuring compliance with legislation and company procedures. She had dealings with Curtis regarding the vacancy at SBSA, but Curtis was not appointed because company policy required credit checks before confirmation. She formed the view that Curtis might not be aware of the processes and therefore decided to guide him. She and another employee, Jessica Mbacaza, telephoned Curtis and advised him not to involve a client. This was before the referrals to the CCMA. Curtis did not want to hear anything, believing he was right to involve a client. They also attempted to convene a meeting with Curtis, but he declined. Curtis referred disputes to the CCMA, citing SBSA as a respondent.
- [39] Under cross-examination, it was put to her that Curtis had been informed he had the job and had asked whether he was serious about it. She responded that she had no knowledge of the discussion. She denied telling Curtis that the debt review would not be a problem, as she knows the requirements for financial institutions. She attended the disciplinary enquiry, and the chairperson alluded to potential damage to the business and the client relationship. She could not recall that, during the disciplinary hearing, Van Deventer was upset that Curtis denied committing misconduct, and that Peters received a letter from SBSA stating that going to the CCMA was upsetting. In re-examination, she clarified that she was referring to the chairperson's findings after considering the mitigating and aggravating factors, as well as the finding that a client does not get involved in the recruitment process. She also referred to a CCMA referral form citing three SBSA employees.

Parties' respective closing submissions

- [40] Curtis prepared written closing submissions, which formed part of his bundle, in which he submitted as follows:

'The applicant would like to end his case by stating that it is the applicant's constitutional right as a South African citizen to do an affidavit and to complete application forms 7.11 and 7.13 as per the CCMA process.

These are proper and acceptable behavior and processes used to involve a NON-PREJUDICE, UNBIASED sitting between allegedly disputing parties and therefore cannot be deemed as misconduct according to section 187(1)(d) of the LRA. The disciplinary inquiry in question is automatically unfair and disregarded and the applicant submits the request for relief of 24 x months gross salary shown in the applicant's latest salary schedule as compensation including all expenses incurred.'

- [41] He also presented oral arguments in which he submitted that he exercised the right to refer the dispute to the CCMA, and that referring the matter to the CCMA did not constitute misconduct. He was informed in a meeting not to cite SBSA in referrals to the CCMA, but no formal instruction to that effect was issued. The employer did not suffer any damages, and instead, the damage was to him. He was unaware of the Agreement, which had not been disclosed to employees. All he was informed was that the employer needed to clear internal hurdles. There was no evidence that SBSA had rejected his application or that it stopped the process.
- [42] Mr Soldatos for Altron submitted that the narrow issue for determination was whether the dismissal was automatically unfair. Altron was entrusted with the entire SBSA infrastructure, and the contract with SBSA was jealously guarded, given that it was due for renewal in late 2023. If it was not renewed, more than 400 employees working on the SBSA account risked losing their jobs. Curtis was justified in feeling aggrieved that he was not promoted after a superior had prematurely told him the job was his, and in referring the dispute to the CCMA. However, he was not charged or disciplined for referring a dispute to the CCMA. He had previously referred a dispute to the CCMA and was not charged. He was charged for insisting on involving SBSA, even after he was specifically instructed not to. He was advised not to involve SBSA even before he went to the CCMA; therefore, he could not rely on the CCMA's advice to cite SBSA. He ought to have withdrawn the disputes against SBSA. He involved SBSA because it placed him under debt review and then closed the door on his promotion. He joined the SBSA to make life uncomfortable for Altron in order to secure the maximum settlement package, as he was unhappy with his employment. He abused the CCMA processes by citing

SBSA when no relief could be obtained against it. He remained defiant by citing the SBSA in the court proceedings, and it took a Judge to order him to withdraw the dispute against SBSA.

[43] He also submitted that the test to be applied is set out in *South African Chemical Workers Union and others v Afrox Limited*⁸ (*Afrox*). In this case, Curtis was dismissed for persisting in vexatious litigation against SBSA.

[44] As regards the pre-trial minute, Curtis is not an ordinary layman. He was employed in a senior position and was afforded the opportunity to read the pre-trial minute carefully before signing it.

The legal principles

[45] Section 187(1)(d) of the LRA provides as follows:

‘187 Automatically unfair dismissals

(1) A *dismissal* is automatically unfair if the employer, in dismissing the *employee*, acts contrary to section 5 or, if the reason for the *dismissal* is-

(d) that the *employee* took action, or indicated an intention to take action, against the employer by-

(i) exercising any right conferred by *this Act*; or

(ii) participating in any proceedings in terms of *this Act*;

[46] For the purposes of this dispute, the relevant portions of section 5 of the LRA provide as follows:

‘5 Protection of employees and persons seeking employment

(1) No person may discriminate against an employee for exercising any right conferred by this Act.

(2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following-

⁸ (1999) 20 ILJ 1718 (LAC).

(a)

(b) prevent an employee or a person seeking employment from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or

(c) prejudice an employee or a person seeking employment because of past, present or anticipated-

(iv) failure or refusal to do something that an employer may not lawfully permit or require an employee to do.

[47] Therefore, read with section 5, section 187(1)(d) of the LRA provides that a dismissal is automatically unfair if, in dismissing the employee, the employer acted contrary to section 5 of the LRA, or the reason for the dismissal was that the employee took action against the employer by exercising a right conferred by the LRA or by participating in proceedings under the LRA.

[48] In *National Union of Metalworkers of SA & Others & Aveng Trident Steel (A Division of Aveng Africa (Pty) Ltd) & Another*⁹ (*Aveng Trident*), the court commented on sections 5 and 187 of the LRA as follows:

[78] This requires courts to interrogate and determine, among various factors, what the cause of the dismissal is...

[79] The Labour Appeal Court in *Department of Correctional Services v Police & Prisons Civil Rights Union* held:

'The reason contemplated and to be sought by the court is the objective reason in a *causative sense*. The court must enquire into the objective causative factors which brought about the dismissal, and should not restrict the enquiry to a subjective reason, in the sense of an explanation from one or other of the parties.' (Emphasis added.)

[80] This requires the courts to determine the *probable cause* of the dismissal by examining the facts before them and assessing whether that cause is the main or dominant, or proximate, or most likely cause of the dismissal. As a result, there is no logical reason why the *Afrox* test, which in essence seeks to distinguish automatically unfair dismissals from those that are not automatically unfair, cannot similarly

⁹ (2021) 42 ILJ 67 (CC).

be applied in the context of s 187(1)(c). This is further buttressed by the fact that the section itself uses the language 'if the reason for the dismissal is', making it clear that establishing the true and dominant reason for the dismissal is paramount. In doing so, it clearly denotes that an examination of the reason, which can be ascertained through a causal analysis, must be established in order to determine whether or not the section has been contravened. Since the section itself implies a causation requirement, it is apposite to utilise the causation test as articulated in *Afrox*.¹⁰

[49] Therefore, the test for determining the true reason for the dismissal is the one set out in *Afrox* and approved by the Constitutional Court in *Aveng Trident*.

[50] Another consideration is that in dismissal disputes, section 192 of the LRA requires the employee to prove that a dismissal occurred. Once a dismissal is established, the burden shifts to the employer to show that it was for a fair reason. In *Afrox*, the court stated that the employer's burden:

'[25] ...would include proving, in the case of an alleged automatically unfair dismissal under section 187(1), that the dismissal was not contrary to section 5, nor for any of the reasons set out in section 187(1)(a)-(f).'

[51] In *Afrox*, the question for determination was whether the employees were dismissed for participating in a protected strike (a prohibited reason) or for operational reasons (a fair reason). The court set out the test to be applied as follows:

'[31] The first enquiry in such a case would be to determine the reason for the dismissal of the striking employees. If that reason is for participation or support (or intended participation or support) of a protected strike, and not for operational requirements, the dismissal will be automatically unfair (section 187(1)(a)).

[32] The enquiry into the reason for the dismissal is an objective one, where the employer's motive for the dismissal will merely be one of a number of factors to be considered. This issue (the reason for the dismissal) is essentially one of causation and I can see no reason

¹⁰ See also para 81.

why the usual twofold approach to causation, applied in other fields of law, should not also be utilised here (compare *S v Mokgethi and others* 1990 (1) SA 32 (A) at 39D-41A; *Minister of Police v Skosana* 1977 (1) SA 31 (A) at 34). The first step is to determine factual causation: was participation or support, or intended participation or support, of the protected strike a *sine qua non* (or prerequisite) for the dismissal? Put another way, would the dismissal have occurred if there was no participation or support of the strike? If the answer is yes, then the dismissal was not automatically unfair. If the answer is no, that does not immediately render the dismissal automatically unfair; the next issue is one of *legal* causation, namely whether such participation or conduct as the "main" or "dominant", or "proximate", or "most likely" cause of the dismissal. There are no hard and fast rules to determine the question of legal causation (compare *S v Mokgethi*, above, at 40). I would respectfully venture to suggest that the most practical way of approaching the issue would be to determine what the most probable inference is that may be drawn from the established facts as a cause of the dismissal, in much the same way as the most probable or plausible inference is drawn from circumstantial evidence in civil cases. It is important to remember that at this stage the fairness of the dismissal is not yet an issue (see paragraph [33] below). Only if this test of legal causation also shows that the most probable cause for the dismissal was only participation or support of the protected strike, can it be said that the dismissal was automatically unfair in terms of section 187(1)(a). If that probable inference cannot be drawn at this stage, the enquiry proceeds a step further.'

[52] In *Aveng Trident*¹¹, the Constitutional Court stated the following about the test set out in *Afrox* for determining the true reason for dismissal:

'[70] Determining the reason for a dismissal is a question of fact and the enquiry into the reasons for the dismissal is an objective one. One of the ways this can be done is to apply the test in *Afrox*. ... I will demonstrate below that, in determining what the true reason for the dismissal is, the *Afrox* test is most useful.'

¹¹ Supra footnote 9.

[73] To resolve the issues that arise from the facts of this matter, the Labour Appeal Court relied on the *Afrox* causation test to determine the true cause for the dismissal. For those cases where it is not easy to determine what the true reason is, I agree that a useful analysis is found in the *Afrox* test.

[53] The case before the Constitutional Court in *Aveng Trident* concerned section 187(1)(c) of the LRA,¹² and relying on *Afrox*, the court reiterated the test for determining the true reason for a dismissal in the following terms:

[76] In such cases, the court would determine what the factual and legal causes of the dismissal were by first asking whether the dismissal would have occurred if the employees had not refused the demand. If the answer is in the affirmative, the dismissal does not amount to an automatically unfair dismissal. If the answer is in the negative, the second leg is necessary: is such refusal the main, dominant, proximate or most likely cause of the dismissal? This means, as the Labour Appeal Court found, that the merits of the employer's decision in such circumstances must be examined.

[77] The *Afrox* test has been endorsed and applied in various cases dealing with s 187(1) dismissals that are automatically unfair in contrast to s 189 dismissals for operational reasons that are not automatically unfair. Admittedly, some of these cases, like *Afrox*, concerned s 187(1)(a) versus s 189; not s 187(1)(c). In my view, it is not controversial to apply the *Afrox* test with equal force in the context of s 187(1)(c). This is supported by the string of cases that reveals how the *Afrox* test has been accepted and applied by the Labour Appeal Court in the context of other subsections of s 187(1). In any event, the *Afrox* test is employed more generally when the courts are required to ascertain the true reason for dismissals.

¹² Which provides that:

187 Automatically unfair dismissals

(1) A *dismissal* is automatically unfair if the employer, in dismissing the *employee*, acts contrary to section 5 or, if the reason for the *dismissal* is-

(c) a refusal by *employees* to accept a demand in respect of any matter of mutual interest between them and their employer;

[54] Commenting on factual causation, the court stated this:

[88] ...Factual causation, as I understand it, concerns a particular kind of link or connection between at least two facts or sets of facts. As with all facts, factual causation is something that either exists or does not. The court usually determines the test on the basis of evidence and probabilities before it. The Labour Appeal Court rightly enquired into the circumstances that led to the dismissal. In doing so it relied on the knowledge of the facts as well as reliable evidence. This approach resonates neatly with the *Afrox* test.'

[55] Later in the judgment, the court also stated this:

[91] Causation seeks the true cause for the dismissal and it does so by interrogating the reason for the dismissal. In this case the causation test seeks the ultimate cause of the dismissal — whether it is because of the refusal of a demand or due to operational requirements. The causation test accepts that in some scenarios there may be more than one possible outcome.'

[56] Therefore, determining the true reason for dismissal requires first establishing factual causation; if the answer is in the affirmative, the inquiry ends, as the dismissal will not be automatically unfair. However, if the answer to factual causation is in the negative, the second stage is to determine legal causation, which is the true, dominant, or proximate reason for the dismissal.

Evaluation

[57] The issue for determination is whether Curtis was dismissed for a reason that renders the dismissal automatically unfair under section 187(1)(d) of the LRA. While Curtis contended that he was dismissed for exercising his right to refer disputes to the CCMA and for challenging the decision not to promote him, the employer contended that he was dismissed for misconduct, namely, for involving SBSA in the dispute he referred to the CCMA. Therefore, the question is whether he was dismissed for taking action against the employer by exercising a right conferred by the LRA, namely, by referring disputes to the CCMA.

- [58] Applying the causation test as set out in *Afrox*, the first step is to determine factual causation by asking whether the referral of the disputes to the CCMA was a prerequisite or a *sine qua non* for the dismissal. Put differently, would Curtis have been dismissed if he had not referred the disputes to the CCMA? The answer to that question must be no. Accordingly, the second stage, determining legal causation, must be undertaken to establish whether the dismissal was automatically unfair.
- [59] The second stage requires the court to ask whether the referral of the disputes to the CCMA was the "main", "dominant", "proximate", or "most likely" cause of the dismissal. The court must determine the most probable inference that may be drawn from the established facts as the cause of the dismissal, or the probable cause of the dismissal.
- [60] I am unable to find that the referral of the disputes to the CCMA was the proximate or probable cause of Curtis's dismissal. This conclusion rests on the undisputed evidence that Curtis was advised of his right to challenge the decision not to promote him, subject only to the condition that he not involve the SBSA.
- [61] Although Curtis initially denied being instructed not to involve the SBSA, he conceded during Van Deventer's cross-examination and in his closing submissions that he had been instructed as alleged. He sought to argue that there was no formal instruction and that they did not plead with him. The meaning of a "formal instruction" was not clarified, and, as the employer, Altron did not have to plead with him not to involve a client in an internal matter. The facts established that he was instructed not to involve the SBSA, and he chose to ignore that instruction. Therefore, the pre-trial minute accurately records the issue as common cause.
- [62] There is merit in the contention that his intentions in involving the SBSA were *mala fide*, as he knew or ought reasonably to have known that no relief could be granted against SBSA, which was not his employer. Even if he believed that SBSA was 100% to blame for failing to grant the promotion he was promised, he was told that SBSA was not his employer and therefore should

not involve them in the dispute. The fact that two other named employees worked for both Altron and SBSA did not mean that Curtis was also an employee of SBSA. He was also made aware that SBSA threatened not to renew the contract, which would have put hundreds of other employees' jobs at risk. Even this did not prompt Curtis to reconsider his approach. His intentions in involving the SBSA officials were to embarrass Altron, which justified charging him. Once again, the pre-trial minute correctly recorded the issue as common cause. For these reasons, it is unnecessary to make any findings on the settlement negotiations or on whether Curtis sought to obtain the maximum settlement package from Altron by involving its client.

- [63] The proximate cause of the dismissal was the insistence on involving SBSA in the dispute against Altron, rather than referring the disputes to the CCMA. His own account was that things soured when SBSA officials were issued subpoenas to appear before the CCMA. Therefore, the referral of the disputes to the CCMA was not the proximate cause of his dismissal.
- [64] Curtis was informed of the alleged misconduct during the disciplinary hearing, yet he persisted in asserting that he had done nothing wrong by bringing both the employer and the SBSA before the CCMA.
- [65] Previously, he had referred a dispute to the CCMA, challenging the final written warning he had received. He faced no reprisal for making the referral. In this case, he was specifically encouraged to refer the dispute to the CCMA but not to involve SBSA. He ignored the instruction at his own peril.
- [66] The contention that he cited SBSA as a respondent on the CCMA's advice is rejected. The evidence established that, even before he went to the CCMA, Curtis was advised and instructed not to involve SBSA in the dispute. He therefore made a conscious decision to involve SBSA before approaching the CCMA, because he strongly believed that both Altron and SBSA were at fault for his non-promotion. He made this clear when he alleged that the CCMA referral forms were protected by his constitutional right to lodge a dispute regarding wrongdoing by both Altron and SBSA. His attempts, in closing argument, to present a different case, namely that SBSA did not stop his

promotion and that Altron was solely to blame because it should not have agreed to the Agreement, contradict the pleaded case that both Altron and SBSA were to blame for the decision not to promote him. The submission was carefully presented in a last-minute attempt to distance himself from having involved SBSA in the matter, and it is rejected.

[67] Even after the CCMA dismissed the discrimination claim, Curtis referred a dispute to this court, citing SBSA as a respondent. An order was issued for him to withdraw the dispute against SBSA, and he complied. Despite this, in these proceedings he insisted that SBSA be joined as a party, even though it was not an employer. This further proves that he was intentional in citing SBSA in his referrals to the CCMA, rather than acting on the CCMA's advice.

[68] The contention that Altron involved the SBSA in the dispute has no merit. Altron did not contend that the SBSA should be joined to the proceedings against it. The contrary is true. Altron engaged the SBSA regarding Curtis's debt review status because all appointments at the SBSA were subject to, *inter alia*, credit checks. Based on the evidence, I accept that Altron was aware, or reasonably ought to have been aware, of Curtis's debt review status before he applied for the promotional position. However, this fact alone did not entitle Curtis to be promoted under the terms of the Agreement. Even if Curtis learnt of the Agreement only at the CCMA, he was informed that he could not be appointed as the SBSA Team Leader because he was under debt review. It was a term and condition of his employment that he be subjected to credit checks.

[69] The court is satisfied that the involvement of the SBSA was the most pressing consideration¹³ in deciding to charge Curtis. That was the proximate cause of Curtis's dismissal. Therefore, Altron has discharged the burden of proving that Curtis's dismissal was not for a prohibited reason.

[70] That must be the end of the matter, as Curtis did not allege that the dismissal was unfair for a reason that is not automatically unfair. Although he raised issues about the fairness of the disciplinary process, the only pleaded claim is

¹³ See *Aveng Trident* at para 97.

for an automatically unfair dismissal. In *Motor Industry Staff Association & Another v Great South Autobody CC t/a Great South Panelbeaters; Solidarity on behalf of Strydom & Others v State Information Technology Agency SOC Ltd*¹⁴, the court made it clear that procedural fairness does not arise where the pleaded claim is for an automatically unfair dismissal. It stated this:

[128] ... The effect of s 188, read with s 187, is that a dismissal cannot be rendered automatically unfair simply because a fair procedure was not followed by the employer but a dismissal that is not automatically unfair will be unfair on either a substantive ground only or on a procedural ground only or on both substantive and procedural grounds.

[129] The opening part of s 188 expressly excludes an automatically unfair dismissal when the section places upon the employer the burden to prove that the dismissal was effected in accordance with a fair procedure. Therefore, it can be said with confidence that the unfair dismissal regime or dispensation that the LRA created does not require that an employer proves that an automatically unfair dismissal was effected in accordance with a fair procedure. That requirement only applies to the other dismissals dealt with under s 188. In my view, that is the law as it presently stands. The constitutionality of the LRA's exclusion of the requirement of a fair procedure in respect of automatically unfair dismissals was not challenged in the present case. It is, therefore, not necessary to express a view on its constitutionality. Therefore, it seems to (sic) that rightly or wrongly the LRA does not impose on an employer the duty to comply with a fair procedure where a dismissal is for a reason that would ordinarily render the dismissal automatically unfair.'

[71] Therefore, the court need not determine whether the dismissal was procedurally unfair.

[72] The claim for correction of the UI forms was not pleaded in clear terms, thereby preventing the court from understanding the nature of the required

¹⁴ (2025) 46 ILJ 481 (CC).

corrections. If the correction relates to the 'reason for termination', the order sought cannot be granted given what is set out above.

- [73] Curtis also pleaded that he was owed leave days and notice pay. As he was summarily dismissed, he was not entitled to notice pay. The claim for leave pay was not substantiated, and Curtis led no evidence in support of it. Accordingly, the claim cannot be granted.

Costs

- [74] In this court, costs do not follow the result. An appropriate order, in accordance with the requirements of law and fairness contemplated in section 162 of the LRA, is that each party pay its own costs. It cannot be said that Curtis's pursuit of the claim was frivolous, given that his line manager told him that 'between them' the job was his, only for Altron HR to later deliver the bad news that, because he was under debt review, the Agreement did not allow him to be appointed to render services to SBSA. Mr Soldatos correctly conceded that Curtis's anger at the decision was justified.
- [75] The costs incurred by Curtis in hiring a labour consultant to 'guide and train' him are not recoverable in this court. As for the costs of travelling to Cape Town to institute proceedings, these could have been avoided by e-mailing the documents to the Registrar and sending the originals by registered mail. The trial proceedings were held virtually, at Curtis's request. Accordingly, no costs order will be made in favour of Curtis.

- [76] In the premises, I make the following order:

Order

1. The applicant's claims are dismissed.
 2. There is no order as to costs.
-

T. Gandidze

Judge of the Labour Court of South Africa

Appearances

For the applicant: In person

For the Respondent: Mr Soldatos

Instructed by: Soldatos Cooper Inc Attorneys