



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

Signature

2 September 2026

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 142/23

In the matter between:

ADCOCK INGRAM CRITICAL CARE PROPRIETARY LIMITED

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE CHEMICAL
INDUSTRY**

First Respondent

LUYANDA OLOTA N.O

Second Respondent

GIWUSA obo SIPHIWE MADI

Third Respondent

Heard: 30 APRIL 2026

Delivered: 2 SEPTEMBER 2026

JUDGMENT

PEER, AJ

Introduction

- [1] This is a review application instituted by applicant, Adcock Ingram Critical Care Proprietary Limited (“Adcock”) in terms of section 145 (2) of the Labour Relations Act, 1995 (“LRA”) to review and set aside an arbitration award

issued under the auspices of the National Bargaining Council for the Chemical Industry (“the Council”) dated 21 November 2022 (“the Award”).

- [2] The application is opposed by the third respondent, General Industries Workers’ Union of South Africa (“Giwusa”), a registered trade union, who acts on behalf of an erstwhile employee of Adcock, Mr Sipiwe Madi (“Madi”).

Background facts

- [3] Adcock is a South African pharmaceutical manufacturer, which manufactures and distributes various health care products.
- [4] Mr Madi was employed by Adcock on 5 April 2015 as an operator. His duties involved cleaning facilities, and flushing and sanitising machines used for the manufacture of products by Adcock.
- [5] On 7 March 2021, Madi reported for duty and was scheduled to work from 19h30 to 03h30. The production supervisors in charge were Max Shai and Johnson Mazibuko.
- [6] It is common cause that Madi left his shift and Adcock’s premises prior to the completion of the shift. This was approximately two hours prior to the shift being scheduled to end. He did not inform the shift supervisor.
- [7] Madi’s explanation was that he had to attend to his pregnant spouse who was experiencing an emergency.
- [8] Arising out of this incident, Madi was charged with the following allegations of misconduct:

“1. Fraud/Forgery: it is alleged that you committed fraud in that on or about 8 March 2021 you misrepresented information to the Company when you signed the Department’s daily attendance register stating your working hours from 19h30 to 03h30, whereas these were not the hours that you worked.

2. Desertion of post: It is alleged that on or about 8 March 2021 you left work before the agreed time without authorisation from your Supervisor on shift”

- [9] Madi was found guilty of charge 2 with a recommended sanction of dismissal.
- [10] He subsequently appealed his dismissal internally, but his appeal was unsuccessful.
- [11] On 26 March 2021, Madi was dismissed for misconduct.
- [12] Following Madi's dismissal, Giwusa on his behalf referred an unfair dismissal dispute to the Council.
- [13] On 21 November 2022, the Commissioner issued the Award where he found Madi's dismissal to be unfair.
- [14] In arriving at this conclusion, the Commissioner's reasoning was as follows:
- 14.1 The breach of a workplace rule was not in dispute in that Madi admitted to leaving his post, and pleaded guilty to the allegation. The rule was a reasonable one.
- 14.2 While Madi may have panicked when he left his shift without authorisation, there was no actual emergency. However, according to the Commissioner, what came to light in the evidence was that Madi's pregnant partner was sick, and his conduct was attributable to this panic. On this basis Madi presented a justifiable reason for the breach of the rule.
- 14.3 In relation to sanction, while the time lost from work was found to be "slightly long", the Commissioner accepted the justification of panic causing Madi to act abruptly. This was consistent with the conduct of a reasonable person.
- 14.4 The Commissioner accepted that Adcock's policy prescribed a sanction for dismissal for a second offence of leaving one's post without permission and that Madi had a valid final written warning in place at the time. However, Adcock could not prove that it suffered any prejudice by absconsion.

14.5 The Commissioner rejected Madi's contention that he did not know about the warning as Madi himself previously conceded to receiving it, and conceded that it was his signature on it.

14.6 The Commissioner accepted that Madi was remorseful, he was willing to accept a sanction short of dismissal, the misconduct was not serious and it had no impact on the relationship of trust.

14.7 The Commissioner found that dismissal was too harsh a sanction

[15] The Commissioner accordingly ordered that Madi be re-employed, without back pay.

Review application

[16] Adcock subsequently instituted a review application to review and set aside the Award.

[17] Adcock relied on the following grounds of review, duly summarised in the heads of argument submitted on its behalf:

17.1 The Commissioner arrived at a conclusion which no reasonable decision maker could have reached on the evidence before her resulting in a gross irregularity in the conduct of the proceedings that found that Madi had a justifiable explanation for his absence.

17.2 The Commissioner arrived at a conclusion which no reasonable decision maker could have reached resulting in a gross irregularity in the conduct of the proceedings which found that dismissal was too harsh a sanction.

Submissions by parties

[18] In respect of the first ground of review, Adcock submits that after correctly finding that there was no sudden emergency, the Commissioner ought to have concluded that Madi did not have a justifiable and reasonable explanation for his unauthorised absence. The Commissioner accepted the justification on the basis of panic by Madi.

- [19] However, according to Adcock, it was not Madi's evidence that he had panicked. Instead, his evidence was that he pushed most of his work and would explain the absence to his supervisor when he returned.
- [20] According to Adcock, this conclusion was not one a reasonable decision maker could have reached on the evidence before her.
- [21] Further, this had a material effect on the outcome of the arbitration proceedings, resulting in the unfair dismissal finding. In this regard, Adcock submits that the Commissioner committed a gross irregularity in the conduct of the proceedings.
- [22] In respect of the second ground of review, Adcock submits that the Commissioner reasonably concluded that there was a final written warning issued to Madi, that the rule not to abandon one's shift without authorisation was reasonable and that Madi had breached the rule.
- [23] However, according to Adcock, the Commissioner made five unreasonable findings, namely, that Adcock had not suffered any prejudice as a result of Madi having left early, that Madi displayed remorse, that unauthorised misconduct is not serious, that Madi had a justifiable reason for his absenteeism and that the sanction of dismissal was too harsh.
- [24] Adcock submits that all of these findings had a material effect on the outcome. This resulted in an irregularity in the proceedings.
- [25] On the other hand, Giwusa submits that in relation to the first ground of review, the existence of a medical emergency did not impact on Madi's subjective belief that there was concern for his partner and her state of pregnancy. Madi's partner testified that she contacted Madi to inform him that she was experiencing difficulties similar to a time when she had a miscarriage. Giwusa further submits that Madi "likely panicked".
- [26] Further, Adcock misinterpreted the Commissioner's reference to "justification" for breach of the rule. This did not exonerate Madi of guilt, but

merely mitigated the blameworthiness, rendering the dismissal as an excessive sanction.

- [27] Giwusa submits that the core reason for finding that Madi's dismissal was unfair is that Adcock failed to consider mitigatory circumstances under which the rule was breached. This was a reasonable outcome.
- [28] In relation to the second ground of review, Giwusa submits that given the circumstances, the finding that the sanction was too harsh was reasonable. The circumstances mitigated the seriousness of the misconduct.
- [29] Further Adcock did not identify any actual harm caused by Madi's misconduct. Therefore, it could not prove any prejudice suffered. It only referred to the potential harm where it stated that Madi performed critical functions and his conduct could have resulted in contamination. However, no evidence to this effect was led.
- [30] The Commissioner did not apply the default remedy of reinstatement nor awarded back pay, because Madi was guilty of misconduct. The Award also noted that Madi was out of salary for 18 months which was a sufficient sanction on its own. These considerations led to a reasonable outcome.
- [31] Giwusa states that in relation to Madi's denial of the final written warning, the fact that the Commissioner did not make an adverse finding against Madi does not mean that the Commissioner did not consider all material evidence before her.

Legal principles

- [32] The established and now trite test for review applications is whether the arbitrator's conclusion is one that falls within a range of decisions that a reasonable decision maker could make.¹

¹ *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] ZACC 22; (2007) 28 ILJ 2405 (CC) at para 110.

[33] It has been held that the review court must ascertain whether the arbitrator considered the issue in dispute, evaluated the facts presented at the hearing, and came to a conclusion that is reasonable.²

[34] In *Securitas Specialised Services (Pty) Ltd v Commission for Conciliation Mediation and Arbitration and Others*³ it was restated that the test for review is as follows:

[19] “Is the decision reached by the arbitrator one that a reasonable decision maker could not reach?” To maintain the distinction between review and appeal, an award of an arbitrator will only be set aside if both the reasons and the result are unreasonable. In determining whether the result of an arbitrator’s award is unreasonable, the Labour Court must broadly evaluate the merits of the dispute and consider whether, if the arbitrator’s reasoning is found to be unreasonable, the result is, nevertheless, capable of justification for reasons other than those given by the arbitrator. The result will be unreasonable if it is entirely disconnected with the evidence, unsupported by any evidence and involves speculation by the arbitrator.

[20] This court has eschewed a piecemeal approach to a review application by the Labour Court. The proper approach is for the Labour Court to consider the totality of the evidence in deciding “whether the decision made by the arbitrator is one that a reasonable decision-maker could make”.

[35] This court has said that it is not for the review court to intervene only because it would have come to a different conclusion on the same evidence. The additional requirements of unreasonableness of the decision set out above must be met.⁴

² *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and others* [2013] ZALAC 28; (2014) 35 ILJ 943 (LAC).

³ [2021] ZALAC 5; [2021] 5 BLLR 475 (LAC) at paras 19 – 20.

⁴ *Tactical Reaction Services v Thompson Colleen Clevis and others* (JR 1054/2018) [2023] ZALCJHB 187 19 June 2023 at para 7.

Analysis

- [36] In the first instance, I believe that it was material that Madi repeatedly denied the final written warning at the arbitration, despite admitting receipt of the warning and that the signature appended to it was his. This was material dishonesty on the part of Madi, which the Commissioner failed to take into account. I agree with Mr Van As on behalf of Adcock that this should have all but confirmed that the relationship of trust between the parties had broken down. I am further of the view that such dishonest conduct in the course of arbitration proceedings may be taken into account in considering the viability of the continued relationship. In this case, such dishonesty had rendered any continued relationship intolerable.
- [37] Secondly, I agree with Adcock that once the Commissioner found that there was no sudden emergency, the Commissioner ought to have interrogated the basis on which Madi abandoned his shift with greater scrutiny. I find it astonishing that the Commissioner could have found that Madi was in a state of panic, when firstly this was not Madi's version and second and more importantly, on the way to attend to his distressed spouse, Madi had all the time to meet a fellow colleague, offer him a lift home and drop him off, prior to attending to his spouse. However, he was seemingly too panicked to be able to inform his shift supervisor of his need to leave. The inferred state of panic is not consistent with the evidence that was before the Commissioner. Instead, the evidence reflects someone who was fully aware and in control of the situation with all the time and opportunity to ensure that he was properly excused from his shift. What is worse is that Madi's own evidence was that he had finished all his work and he would explain himself at a later stage to his supervisor. This appears to be a calculated decision to leave early without authorisation. Mr Shai, his supervisor, testified that he afforded Madi three days to report his early departure from his shift which Madi failed to do. There was certainly no panic in the days that followed the shift.
- [38] Giwusa's response falls short, where it contends that Madi's subjective belief reflected a state of panic. This is not consistent with the evidence that was before the Commissioner. Madi's conduct at the time contradicts any inferred

subjective state of panic. This ought to have been taken into account by the Commissioner which would have materially affected the finding that Madi's unauthorised abandonment of his shift was justified.

- [39] This error was unreasonable and material.
- [40] Thirdly, in respect of the harshness of the sanction, the evidence does not support the Commissioner's finding that the sanction was too harsh.
- [41] Mr Poriazis for Giwusa could not disagree on the ineffectiveness of progressive discipline, after Madi had already received a final written warning for similar misconduct committed previously. The Commissioner failed to take into account that this warning had failed to elicit a change in behaviour and that there were little alternatives available. This was more so when Adcock's disciplinary policy recommended dismissal for a second offence of leaving one's post without authorization.
- [42] The Commissioner's finding of remorse was also not consistent with the evidence. Aside from pleading guilty, the record did not reflect an ounce of remorse, and worse, Madi's dishonesty regarding the existence of the final written warning is inconsistent with any contended remorse.
- [43] In relation to the finding that there was no prejudice suffered and the misconduct was not serious, the Commissioner and Giwusa are correct that there was no prejudice ultimately suffered, notwithstanding the potential harm that could have been caused by way of contamination. However, this does not mean that Madi's desertion of his shift was not serious. Madi left his shift without informing a supervisor, for the second time, and worse, remained silent for three days until he was confronted about it. This denied Adcock the opportunity to make arrangements in order to ensure that the sanitisation of the machines were attended to, to avoid the risk of contamination. In my view this is not trivial. Further Giwusa itself admitted that the misconduct was serious, but that there were mitigating circumstances.

Appearances:

For the Applicant:

Mr MJ van As

Instructed by:

Werkmans Attorneys

For the Third Respondent:

Trade Union Representative

Mr K. Poriazis, GIWUSA

LABOUR COURT