



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

Signature

02 September 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No. JR1802/22

In the matter between:

CME PLANT CC

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

PIETERSON, D N.O.

Second Respondent

JANKIE RAMOROANE KELLA

Third Respondent

Heard: 27 August 2026

Delivered: 2 September 2026 (By uploading on *CaseLines* and/or circulation to the parties' legal representatives by email)

JUDGMENT

MAKHURA, J

- [1] The applicant, CME Plant CC (company), seeks to review and set aside the arbitration award issued by the second respondent commissioner under the

auspices of the first respondent (CCMA). In terms of the award, the commissioner found that the employee was dismissed, that his dismissal was substantively and procedurally unfair, and ordered the company to pay him R108 000.00, being an equivalent of 12 months' compensation.

- [2] The central issue before this Court is whether the commissioner correctly found that the employee was dismissed and, if so, whether the award of 12 months' compensation is susceptible to review. The company contends that the employee was not dismissed on the date alleged (18 March 2022) and challenges the reasonableness of the compensation awarded. The company does not, in the event the Court finds that the commissioner's decision that the employee was dismissed is correct, challenge the procedural and substantive fairness of the dismissal. Accordingly, the matter requires this Court to determine, first, whether the jurisdictional fact of dismissal was established and, secondly, whether the commissioner's exercise of discretion in awarding compensation falls within the bounds of reasonableness
- [3] The facts are uncontroversial. On 22 March 2022, the employee referred an unfair dismissal to the CCMA. He claimed that he was unfairly dismissed on 18 March 2018 for alleged theft of diesel without a hearing and a fair reason. He sought compensation for his unfair dismissal.
- [4] On 8 April 2022, the CCMA held a pre-conciliation hearing that failed to resolve the dispute. On the same day, the CCMA issued a notice of set down, enrolling the dispute for con/arb on 4 May 2022. The company filed an objection to con/arb. As a result, the proceedings on 4 May 2022 were confined to conciliation.
- [5] Before conciliation on 4 May 2022, the company served the employee with a notice to attend a disciplinary hearing on 3 May 2022, at which he was called to answer to the following allegations:

'a) Afwesigheid – Afwesigheid van die werk, sonder verlof, toestemming of goeie rede vanaf 18 Maart 2022

Alternatief

b) Drs/Awol – Derdat u afwesig is vanaf die Werkplek sedert 18 Maart 2022.'

- [6] The employee was accordingly charged with absenteeism without authorisation, alternatively desertion or absence without leave from 18 March 2022. The disciplinary enquiry proceeded in his absence, following which he was found guilty and dismissed on 9 May 2022.
- [7] The unfair dismissal dispute referred on 22 March 2022 was set down for arbitration on 23 June 2022. At the commencement of the proceedings, the company raised a point in *limine* in terms of section 192 of the Labour Relations Act¹, disputing that the employee was dismissed alleged by him.
- [8] The company contended that the referral was premature. It maintained that the employee had deserted the workplace on 18 March 2022 and that, when contacted thereafter, he said that the company should communicate with him through the CCMA. According to the company, the employee was only dismissed on 9 May 2022 following a disciplinary process. The employee, on the other hand, maintained that his employment was terminated on 18 March 2022. He alleged that the dismissal occurred the day after he had been assaulted by the company's owner and Operations Manager, Carinus Joubert (Joubert).
- [9] The arbitration commenced with the employee leading evidence on the existence of the dismissal. He testified that he commenced employment with the company on 2 July 2020. On Thursday, 17 March 2022, he learnt that the owner of the company, Joubert, wished to see him and that he should remain behind to await his arrival. He did so and later observe Joubert arriving at approximately 19h00, whereupon he proceeded to Joubert's office.

¹ Act 66 of 1995, as amended.

- [10] At his office, Joubert accused him of stealing diesel and remarked that the company was paying him generously. Before affording him an opportunity to respond to the allegation, Joubert allegedly assaulted him, among other things, by striking him with an open hand and kicking him. When the employee asked why he was being assaulted, Joubert informed him that he had photographic evidence proving that the employee had stolen diesel.
- [11] The employee further testified that, as he was leaving the office, Joubert kicked him, he fell, and Joubert told him not to remove his belongings at the accommodation provided by the company and to leave the premises². According to the employee, Joubert intended to continue the assault outside the office but desisted in the presence of a security guard
- [12] The employee testified that, following the incident, he returned to his room, collected his belongings and walked to his brother's residence. He informed his brother of the events that had transpired and the alleged assault by Joubert. His brother advised him to report the matter to the police.
- [13] The employee accordingly attended the police station that same evening and laid a criminal charge of assault against Joubert. According to his evidence, the police officer who attended to him advised him to report for duty on the following day. In support of his testimony that a criminal case had been opened, the employee produced a text message reflecting a case number. The commissioner read the contents of the message into the record. The message was sent at 00h16 on 18 March 2022.
- [14] The employee testified that he reported for duty on Friday, 18 March 2022. According to his evidence, upon his arrival at the workplace, Joubert instructed him to resign with immediate effect. The employee refused to do so. Joubert then

² His evidence was that Joubert said *"I must not sleep there, I must take my belongings and f#&k off"* from his yard before he killed him.

allegedly told him to collect his belongings and leave the premises.³ The employee, who had already taken his belongings the previous evening, then left.

[15] Following his departure from the workplace, he referred an unfair dismissal dispute to the CCMA. He expressed the view that the disciplinary charges were only instituted after the company was notified of the referral by the CCMA. According to the employee, the subsequent disciplinary process was an attempt by the company to rectify what he regarded as a dismissal on 18 March 2022.

[16] During cross-examination, the employee conceded that, although he alleged that Joubert had assaulted him, he had not sustained any visible injuries. The company's representative disputed that any assault had occurred and put it to the employee that there was no evidence to substantiate the allegation. He further suggested that, in assault cases, police officers would ordinarily accompany a complainant to confront the alleged perpetrator or otherwise take immediate investigative steps.

[17] The company's representative also put to the employee that his version was improbable because, as of June 2022, no police officer had approached, questioned or even telephoned Joubert in connection with the alleged assault. On this basis, it was suggested to the employee that his allegation of assault was not genuine and that no assault had in fact taken place. In response, the employee said:

'Okay, you are right what you are saying, that they were never approached, because I also went to the police station over 5 times to go and do follow ups, I need to know what is the delay with my case. That particular investigating officer informed me that he also has got many other cases and then that they also have a shortage of police vans.'

[18] The company's representative persisted in challenging the employee's allegation that he had been assaulted. He questioned the evidential value of the case

³ "f#&k off".

number relied upon by the employee and suggested that it did not establish that Joubert was the perpetrator. The representative put it to the employee that, without supporting documentation, the case number could relate to an unrelated incident involving another person. In this regard, he stated

'You know it's very, it's just, you talking about there is a certain case number, we don't have proof, it can be any, it can be someone else who has assaulted you, I don't know if it's my client, the respondent. You have got an affidavit here?'

[19] The thrust of the challenge was that the employee had not produced documentary proof, such as an affidavit or police statement, linking the criminal case number to his allegation that Joubert had assaulted him.

[20] The employee produced an affidavit, deposed to before a police officer at approximately 22h00 on 17 March 2022, as proof that he had opened a criminal case of assault against Joubert. The company's representative nevertheless continued to challenge his version of events. In particular, he took issue with the employee's evidence that Joubert had kicked him, causing him to fall. To this end, he referred to the contents of the affidavit, in which the employee stated that Joubert had been *"beating [him] with open hands, and he kicked [him] in the body so [he] ran away"*. It was put to the employee that the affidavit made no mention of him falling to the ground and that this aspect of his evidence had been fabricated.

[21] The cross-examination concluded with the following exchange:

RESPONDENT REPRESENTATIVE: Okay, I understand what you are saying, but then your statement at the police why do you bring labour relations stuff into that statement? (Inaudible other language) ... why do you say that here? Because it's got nothing, and then he sent you back and say go back the next day, but you were assaulted, you make a case opened, but the police sent you 20 back to your employer who assaulted you, that's very strange Sir.

...

INTERPRETER: I did not want to go back because I was afraid I was going to be assaulted again, however the police officer said to me, look it may be that the respondent was upset and angry so go back, it may be that he has now calmed down, but I did not want to go back but that's from the advice of the police officer, that's how I got back.

RESPONDENT REPRESENTATIVE: But why do you believe the police officer? You worked for 2 years, more than 2 years for this employer, for more than 2 years, so I think you know your employer very well.

...

INTERPRETER: Yes, you are correct, I know him very well, I went there at the advice of the police officer that's one, and secondly the respondent, he swears at us at work, he treats us bad at work but we don't have an option because we need the income in order to be able to eat.

COMMISSIONER: Okay, thank you.

RESPONDENT REPRESENTATIVE: Then I am going to stop Commissioner.'

- [22] The employee called Mogomotsi Joel Kgoa in support of his case. Kgoa testified that he was present with the employee on 18 March 2022 when Joubert addressed them. According to Kgoa, Joubert stated that he could not work with thieves and instructed them to leave his property immediately. Kgoa recalled Joubert telling them to "*vacate his premises*" and, in more forceful terms, "*##&k off*" out of his premises.
- [23] Joubert testified on behalf of the company. For the first time during the arbitration proceedings, he stated that the employee had approached him on 17 March 2022 requesting money. According to Joubert, he responded by asking the employee why he was seeking financial assistance when he had allegedly stolen and sold the company's diesel. Joubert denied that he had assaulted the employee. He further testified that he was unaware that the employee had opened a criminal case against him arising from the events of 17 March 2022.

[24] With regard to the events of 18 March 2022, Joubert advanced a version that had not previously been put to either the employee or Kgoa during cross-examination. He testified that, before midday on that day, the employee and Kgoa came to his office to discuss the allegations made the previous evening that they had stolen diesel from the company. The employee and Kgoa enquired whether they were required to clock in again, and he informed them that this was unnecessary because they had already clocked in earlier that morning. He further testified that he advised them that he intended to report the alleged diesel theft to the police and open a criminal case. Joubert maintained that he then told the employee:

‘to remove his stuff from my yard, he cannot stay in the yard anymore because uhm, a week before that his family came to see him with that same double cab that was in the photo, they came to see him and they drove into his hut, and I told my security, listen, tell Jankie he mustn’t drive into the yard because the gate was open at that time. Because let’s say for instance, something gets stolen all we will remember is his family bakkie is in the yard, so we will all blame him and, and, and that’s not the case.’

[25] Joubert testified that approximately an hour later, he left his office and was informed by individuals at the workplace that the employee and Kgoa had already left the premises.

[26] The commissioner first considered whether the employee had established that he had been dismissed. In addressing this issue, he accepted the evidence of the employee and Kgoa as credible and reliable. By contrast, he found Joubert to be an evasive witness whose evidence was unsatisfactory in material respects.

[27] The commissioner concluded that Joubert had assaulted the employee on 17 March 2022 and thereafter summarily terminated his employment. In reaching this conclusion, he rejected Joubert’s denial of the assault, finding it to be a bare denial unaccompanied by any cogent alternative account of the employee’s version.

[28] In relation to the events of 18 March 2022, the commissioner found that Joubert had dismissed both the employee and Kgoa when he informed them that he could no longer work with individuals whom he regarded as thieves and instructed them to leave his premises. The commissioner accepted the evidence of the employee and Kgoa that Joubert directed them to vacate the workplace and found that this conduct conveyed a termination of their employment on 18 March 2022.

[29] Having found that the employee had been dismissed, the commissioner turned to consider the fairness of the dismissal. He found that the company had failed to present any evidence to justify either the substantive or procedural fairness of the termination. He concluded that the company had not discharged its onus of proving that the dismissal was fair.

[30] The commissioner further found that the disciplinary enquiry convened on 3 May 2022 was no more than an attempt to legitimise the dismissal that had already taken place on 17 and 18 March 2022. He regarded the enquiry as a belated effort at damage control designed to create the appearance of a fair process.

[31] On this basis, the commissioner concluded that the dismissal was unfair and awarded the employee compensation equivalent to twelve months' remuneration. The award of compensation was motivated as follows:

'Having considered the fact that Mr Kella was both humiliated in the dismissal and physically assaulted, I see no reason why the relief sought should not be granted. It is my finding that the degrading manner in which Mr Kella was dismissed, aggravates for a maximum penalty to be considered against the respondent.'

[32] The company advanced several complaints against the award. In essence, the review grounds, as articulated and summarised by Mr Grunlingh in his heads of argument on behalf of the company, are twofold: first, that the commissioner's finding that the employee had been dismissed was objectively incorrect; and second, that the award of 12 months' compensation was unreasonable.

Evidently, should this Court uphold the first ground of review, that would be dispositive of the matter, and the award would fall to be reviewed and set aside. Only if the first ground is rejected would it become necessary to consider the second.

- [33] Whether the employee was dismissed on 18 March 2022 as alleged is a question of fact and the decision is reviewable on the correctness test as set out in *SA Rugby Players Association & others v SA Rugby (Pty) Ltd & others*.⁴ The question is whether, objectively assessed, the commissioner's decision is correct.
- [34] The employment contract can be terminated at the instance of an employee (by resignation) or an employer. Section 186(1)(a) of the LRA provides that dismissal means that the employer has terminated employment with or without notice.
- [35] Where a dispute arises as to whether an employee resigned, the enquiry is whether the employee, through words or conduct, manifested a clear and unequivocal or unambiguous intention not to continue with the contract of employment. Such intention is assessed objectively with reference to the employee's words or conduct and must be such as would lead a reasonable person to conclude that the employee no longer intended to be bound by the employment contract.⁵
- [36] In this matter, the employee's case was that the company terminated his employment. As with a resignation, which is a unilateral act by an employee, the dismissal or termination of employment is a unilateral act by an employer. Its effectiveness does not depend on the employee's acceptance of the dismissal.

⁴ (2008) 29 ILJ 2218 (LAC); [2008] ZALAC 3 at paras 39 - 41; see also *Solidarity on behalf of Van Tonder v Armaments Corporation of SA (SOC) Ltd & others* (2019) 40 ILJ 1539 (LAC) at para 39, where the LAC held, '[a]s stated at the outset, the question for determination is whether the appellant was in fact dismissed. The existence of a "dismissal" is a jurisdictional fact necessary for the CCMA to determine the dispute by way of arbitration. If the jurisdictional fact is absent, the CCMA is not entitled to arbitrate the matter.'

⁵ See *Sihlali v South African Broadcasting Corporation Ltd* (2010) 31 ILJ 1477 (LC); [2010] 5 BLLR 542 (LC) at para 11; *Uthingo Management (Pty) Ltd v Shear NO and Others* (2009) 30 ILJ 2152 (LC) at para 16 – 19.

Therefore, the enquiry before the commissioner, and now before this Court, is whether the company, by its words or conduct, evinced a clear, unequivocal and objective intention to terminate the employment relationship and no longer be bound by the contract of employment.

- [37] The company criticised the commissioner's finding on the basis that he effectively found that the employee had been dismissed twice. That criticism is misplaced. It is common cause that the employee's case was that he was dismissed on 18 March 2022, and the commissioner ultimately found that the dismissal occurred on that date.
- [38] The employee returned to the workplace on 18 March 2022 on the advice of a police officer. Whatever ambiguity may have arisen from the heated events of the previous evening was removed when Joubert informed the employee and Kgoa that he could not work with "thieves", instructed them to leave the premises, and reiterated to the employee to vacate the accommodation provided by the company. These statements and actions were plainly inconsistent with a continuing employment relationship and constituted a termination thereof.
- [39] I should add that the company did not challenge the evidence of the employee and Kgoa regarding the events of 18 March 2022. Their account of what transpired on that day was therefore left uncontested. In the absence of any challenge to that evidence, it must be accepted as presented. The commissioner was accordingly correct in finding that the company terminated the employment relationship on 18 March 2022.
- [40] Importantly, the employee did not allege that he had been dismissed on 17 March 2022. Accordingly, it is of no consequence that the commissioner may have understood the evidence to indicate that the dismissal had, in fact, already occurred on that date. What is material is that the commissioner ultimately found that the employee had been dismissed on the very date alleged in his case, namely 18 March 2022. In those circumstances, the challenge to the commissioner's finding lacks merit and falls to be rejected.

[41] The company does not seek to impugn the commissioner's finding that the dismissal was substantively and procedurally unfair. Its review challenge is directed solely at the award of compensation. It contends that:

'The [employee] was not even employed for a period of two years and the arbitration award was made just over 3 months after his alleged dismissal. The [employee] either presented no, or insufficient evidence of the financial loss suffered by him. The compensation awarded to him by the [commissioner] is thus not connected to any financial loss he may have suffered, which is in any event disputed.'

[42] The question is whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach.⁶ In terms of section 194(1) of the LRA, compensation awarded to an employee whose dismissal is found to be procedurally or substantively unfair, or both, must be determined on a basis that is just and equitable in all the circumstances, and may not exceed the equivalent of 12 months' remuneration, calculated at the employee's rate of remuneration as at the date of dismissal.

[43] Mr Grundlingh, who appeared for the company, submitted that a just and equitable compensation would have been three months, which is the period from the date of dismissal to the end of June 2022. He submitted further that the employee did not prove that he suffered any financial loss of more than three months and that he was only employed for a short period of 21 months.

[44] In *Johnson & Johnson (Pty) Ltd v Chemical Workers Industrial Union*⁷ (Johnson), the LAC held that:

'[37] In my view the concession by Mr Pretorius about the rigidity of the formula for compensation expressed in s 194(1) was properly made. Even if it is accepted that compensation means '*a sum of money for something lost*', the '*something lost*' under s 194(1) is the employee's right to a fair hearing or

⁶ *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] ZACC 22; (2007) 28 ILJ 2405 (CC).

⁷ (1999) 20 ILJ 89 (LAC).

procedure prior to dismissal and not necessarily the actual losses suffered by the employee as a result of the dismissal ... That kind of non-patrimonial loss is not foreign to South African law ...

[41] The compensation for the wrong in failing to give effect to an employee's right to a fair procedure is not based on patrimonial or actual loss. It is in the nature of a *solatium* for the loss of the right, and is punitive to the extent that an employer (who breached the right) must pay a fixed penalty for causing that loss. In the normal course a legal wrong done by one person to another deserves some form of redress. The party who committed the wrong is usually not allowed to benefit from external factors which might have ameliorated the wrong in some way or another. So too, in this instance. The nature of an employee's right to compensation under s 194(1) also implies that the discretion *not* to award that compensation may be exercised in circumstances where the employer has already provided the employee with substantially the same kind of redress (always taking into account the provisions of s 194(1)), or where the employer's ability and willingness to make that redress is frustrated by the conduct of the employee.'

[45] Although *Johnson* was decided before the amendment of section 194, effective from 1 August 2002, the principle articulated in the above passage remains fully applicable under the current statutory framework. Indeed, the amendment has put paid to Mr Grundlingh's contention that an employee must prove actual financial loss and that compensation should be limited to the remuneration the employee would have earned between the date of dismissal and the conclusion of the arbitration proceedings.

[46] The employee was not required to establish any patrimonial loss as a prerequisite for an award of compensation. Compensation in terms of section 194 serves to redress the infringement of the employee's statutory right not to be unfairly dismissed. In the present matter, that right was infringed not only procedurally but also substantively.

[47] In *SA Revenue Service v Commission for Conciliation, Mediation & Arbitration & others*⁸, the Constitutional Court held that:

‘[52] In terms of our law compensation is not automatic. It is a discretionary matter. A whole range of factors must be taken in to account to determine whether compensation has to be paid and if so, for how many months. In this regard one of the key factors is the need to ensure that employers are not inadvertently encouraged by the non-payment of compensation to adopt a shotgun approach of dismissing employees without affording them the opportunity to be heard. Employees are ordinarily vulnerable because, unlike employers, they do not often have the resources necessary to vindicate their rights by prosecuting cases all the way up to this court. Condoning the flouting of laws that govern the fate of people’s livelihood is a matter so serious that it always requires greater sensitivity and care. Relevant factors are, of course, the marked deviation from procedure by the SARS Commissioner when he dismissed Mr Kruger. The impact of the gross misconduct that Mr Kruger is guilty of on the employer and its workplace environment is an important factor to help decide on compensation.’

[48] The commissioner has provided reasons for his decision. He found that the employee was physically assaulted and humiliated. The company’s contention that the employee was not assaulted was correctly rejected by the commissioner as a bare denial. The company did not produce any proof of theft. The employee was candid and testified that he had no visible injury. The assault on 17 March 2022 and consequent eviction from the accommodation prove the vulnerability of the employee. He had to walk during the evening to his brother’s residence and later reported the assault to the police. He was at the police station at 22h00. It also bears emphasising that the compensation was awarded not merely for a procedural infringement, but for a dismissal that was found to be both procedurally and substantively unfair.

⁸ (2017) 38 ILJ 97 (CC).

- [49] The company's decision to institute disciplinary proceedings on the basis that the employee absconded from work, notwithstanding Joubert's own evidence that he instructed the employee to leave the workplace and accommodation, was a poorly conceived attempt to undo the egregious dismissal that had already occurred. The company's conduct was inherently contradictory. Having directed the employee to leave the accommodation and workplace, it could hardly thereafter contend that his resulting absence constituted desertion. The disciplinary charges were therefore contrived and an afterthought, devised in an effort to retrospectively justify the employee's dismissal on 18 March 2022.
- [50] For all these reasons, there is no basis to interfere with the commissioner's award of compensation. The commissioner's conclusion that compensation equivalent to 12 months' remuneration was just and equitable and cannot be said to be unreasonable. The company has failed to establish any basis upon which this Court may interfere with the exercise of the commissioner's discretion. Accordingly, the challenge to the compensation award must fail.
- [51] Mr Mkhonto, who appeared on behalf of the employee, sought a costs order on the attorney and own client scale. Costs do not follow the result automatically in this Court and must be determined in accordance with the requirements of law and fairness. However, the present application is so devoid of merit that it would, in my view, be unfair to deny the employee his costs. The employee has been compelled to wait for more than three years for payment of the compensation awarded to him. He is not represented by a trade union, and his success does not restore the employment relationship but is confined to a compensatory remedy.
- [52] A further relevant consideration is the company's conduct. Having dismissed the employee, it sought to mask that dismissal through a contrived disciplinary process based on allegations fundamentally inconsistent with its own version of events. It then persisted with that stance throughout these proceedings despite the obvious difficulties confronting its case. That conduct has unnecessarily

prolonged the dispute and delayed the employee's enjoyment of the compensation awarded to him.

[53] In these circumstances, considerations of law and fairness favour an award of costs in the employee's favour. That said, I am not persuaded that the company's conduct warrants a punitive costs order on the attorney and own client scale. While the review application lacks merit, the threshold for such an order has not been met. I accordingly exercise my discretion by awarding costs against the company on the ordinary scale

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

Order

1. The review application is dismissed with costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr R. Grundlingh

Instructed by: Lange Carr & Wessels Inc.

For the 3rd Respondent: Mr M.D. Mkhonto

c/o MD Mkhonto Attorneys

LABOUR COURT