



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

Signature 07/09/2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no.: JR1302/23

In the matter between:

MEDIUM VOLTAGE SWITCH GEAR (PTY) LTD

Applicant

and

NUMSA OBO SANELE CHONCO

First Respondent

MANISHA SINGH NO

Second Respondent

METAL AND ENGINEERING BARGAINING COUNCIL

Third Respondent

Heard: 21 May 2026

Delivered: 07 September 2026

JUDGMENT

WHITEAR-NEL AJ

Background and grounds of review

[1] This is an application for the review and setting aside of the arbitration award issued by the second respondent under case number MEGA59684 on 30 June 2023.

- [2] The grounds of review are that the commissioner's award was unreasonable in that it could not have been properly reached on the evidence before her, and that she did not apply her mind to the material facts, in that:
- 2.1 The commissioner committed a gross irregularity by misconstruing the true nature of the matter. In this regard, the offense before the commissioner was not a time-keeping offense, but a dishonesty-related offence.
 - 2.2 The commissioner committed a gross irregularity by misconstruing and disregarding material evidence, in that she failed to take into account that the third respondent manually claimed for hours he had not worked, and that this was dishonest conduct which severed the employment relationship.
 - 2.3 It was unreasonable for the commissioner to interfere with the sanction of dismissal given the nature of the third respondent's misconduct.
- [3] The applicant is a manufacturer and supplier of medium voltage equipment and solutions in the Southern Hemisphere.
- [4] The first respondent was employed by the applicant from 8 May 2006 until his dismissal on 5 December 2022. The first respondent was a shop steward from 2013 and also held the position of deputy treasurer in the local union structure of NUMSA, at the time of the termination of his employment.
- [5] The applicant uses clocking machines to monitor employees' clock-in and clock-out times prior to departure, via facial recognition. The clocking information is continuously imported into the Jarrison Time and Attendance Software and thereafter the information is submitted to payroll.
- [6] An employee who forgets to clock in or out must complete and submit a manual time adjustment form, signed by their line manager or supervisor. The employee will ordinarily also receive a warning for his failure to comply with the clock-in and clock-out procedure. Should the employee repeat the offence, 15 minutes will be deducted from the time worked.

- [7] Manual time adjustment forms for missed clocking are due within one day of the missed clocking and should be submitted to the Human Resources Department for processing.
- [8] The Human Resources department's time and attendance clerk, Ms Snyman, submits hours worked in arrears for waged employees to payroll on a Monday morning. All overtime authorisation forms, leave forms, or manual time adjustment forms must be submitted to the Human Resources department by no later than Monday morning to be processed timeously for that day's payroll submission.
- [9] The first respondent was authorised to work overtime on Friday afternoon, 7 October 2022, from 13h00 to 17h50. Notwithstanding the authorized overtime, the first respondent only worked until 14h49, which is when he clocked out and left the site in his vehicle.
- [10] On Monday, 10 October 2022, the first respondent was told by the Human Resources department that he had a missed clocking for Friday, 7 October 2022. One explanation for this was that the timesheet was generated and sent by the system before the first respondent had finished work and clocked out on Friday 7 October and this was the reason it showed a missed clocking; the first respondent had not yet clocked out. Another explanation was that there had been clocking problems due to load shedding. No clarity was achieved on this point, but what was clear was that the Human Resources Department had been in error when they told the first respondent that he had a missed clocking on Friday, as he had clocked out at 14h49 on that day.
- [11] Following Human Resources's communication, the first respondent visited the Human Resources department on 10 October 2022 to resolve his 'missed clocking' for the afternoon of Friday 7 October 2022.
- [12] The first respondent was asked to go back to his department to complete the paperwork. His foreman, Mr Zwakele Ndwandwe, had only worked until 16h20 on 7 October 2022.

- [13] On his way back to his department, the first respondent met his supervisor for the 7 October 2025, Mr John Mashignana, and told him that Human Resources had told him that he had missed clocking which needed to be rectified. Mashignana told the first respondent that he had already submitted his manual forms and that he should go to Human Resources. On his way there, the first respondent met Xulu, who requested that the first respondent complete manual clocking record on the form, which he added to the missing clocking information he already had in respect of Mr Mbatha.
- [14] There was, in fact, no missing clocking for the first respondent, since the first respondent had clocked out at 14:49 on Friday 7 October 2022.
- [15] When the Human Resources Department contacted the first respondent about the inconsistency between the time he had actually clocked out on 7 October 2022 and the time he claimed for (being until 17h50) on Monday, 10 October 2022 via the manual adjustment sheet, the first respondent approached the Human Resources Department to attend to the matter. He wanted to destroy the manual clocking information that he had entered on the form. He was not successful.
- [16] An investigation was initiated, but the first respondent refused to provide a statement.
- [17] The first respondent was subsequently charged with dishonesty on the basis that he had supplied incorrect or falsified information on the manual adjustment form for 7 October 2022. He had put on the form that he clocked out at 17h50 (which was the same as the time Mr Mbatha had put on the manual form, immediately above where the first respondent wrote), whereas he actually clocked out at 14:49.
- [18] At the commencement of the disciplinary enquiry, the first respondent pleaded guilty to the charge of dishonesty. At the conclusion of submissions on the mitigating and aggravating factors, the chairperson imposed a sanction of summary dismissal, which was upheld at the conclusion of the appeal.

- [19] The matter was then referred to the relevant Bargaining Council. At the Bargaining Council, it was agreed that the facts of the case were not in dispute, but that the only issue to be decided was whether the sanction of dismissal was appropriate in the circumstances and whether there was consistency in the application of discipline (however, no evidence was provided in respect of the inconsistency challenge). The parties agreed to submit a single bundle of documents to the commissioner for her perusal and to make written submissions on the material (which they had a right to reply to but did not exercise). Implicit in the agreement on the manner the arbitration was to be conducted was the agreement that any hearsay evidence would be admissible in terms of section 3 (1) (a) of the Law of Evidence Amendment Act¹.
- [20] The Bargaining Council found in favour of the first respondent and found his dismissal to have been substantively unfair. He was reinstated, with the reinstatement being retrospective to the date of dismissal, but with no back pay to be paid.
- [21] Aggrieved at the decision, the applicant lodged these review proceedings.

Appropriateness of sanction: legal principles

- [22] The Code of Good Practice: Dismissal, Schedule 8 of the Labour Relations Act² (LRA) provides that it is not appropriate to dismiss an employee for a first offence, except if misconduct is serious and impacts the continuity of the employment relationship. The Code further provides that in deciding whether to impose the penalty of dismissal other factors must be considered including the employee's years of service, disciplinary record, personal circumstances, the nature of the job and the circumstances of the infringement itself. In addition, the nature and extent of the dishonesty and the context of the offence are to be considered. The sanction should be proportionate to the offence committed. Mitigating and aggravating circumstances must also be considered.

¹ Act 45 of 1988

² Act 66 of 1995, as amended.

[23] In *Sidumo v Rustenburg Platinum Mines Ltd and Others*³ the court held that:

‘In approaching the dismissal dispute impartially, a commissioner will take into account the totality of circumstances. He or she will necessarily take into account the importance of the rule that had been breached. The commissioner must of course, consider the reason the employer imposed the sanction of dismissal, as he or she must take into account the basis of the employee’s challenge to the dismissal. There are other factors that will require consideration. For example, the harm caused by the employee’s conduct, whether additional training and instruction may result in the employee not repeating the misconduct, the effect of the dismissal on the employee, and his or her long service record. This is not an exhaustive list.’

Test for review

[24] The test for review is well established: Is the decision reached by the commissioner one that a reasonable decision maker could not reach? Section 145 of the LRA is suffused by the constitutional standard of reasonableness.⁴

[25] The reasonableness of an award is determined with reference to the evidence that was placed before the arbitrator. It is not enough for the arbitrator to merely have committed a gross irregularity – it must be one that renders the award unreasonable.

[26] In *Gold Fields Mining South Africa Pty Ltd (Kloof Gold Mine) v CCMA and Others*⁵ the court stated that:

“In short: a review court must ascertain whether the arbitrator considered the principal issue before him/her, evaluated the facts presented at the hearing and came to a conclusion which was reasonable to justify the decision he or she arrived at.”

Application of the test

[27] The applicant contends that the commissioner misconstrued the nature of the enquiry by failing to take into account that the first respondent pleaded guilty

³ (2007) 28 ILJ 2405 (CC) at paras 78 and 79.

⁴ See: *Sidumo* (ibid)

⁵ [2014] 1 BLLR 20 (LAC) at para 16.

to a charge of dishonesty. However, the commissioner is well aware of that fact, and clearly it weighed in her deliberations. In the arbitration award she states:

‘The Applicant pleaded guilty to the charge of dishonesty in that he had supplied incorrect or falsified information in respect of his clocking out time.’ She says at para 46 of the award: ‘It is the respondent’s evidence that the applicant was not charged with a time-related offence but rather dishonesty related thereto...’⁶

[28] The commissioner then proceeds to correctly examine the law relating to determining the appropriate sanction. She notes that while dishonesty is generally categorised as a serious offence justifying dismissal at the first instance, the Code provides for the totality of relevant factors to be considered⁷.

[29] The commissioner then held that in taking into account the nature of the dishonest time-related offence, she does not believe that the first respondent had the necessary intent to deceive or defraud the applicant⁸. She states:

‘There was no evidence that the applicant wanted to steal or defraud the applicant, thus it is probable that it was an error on his part.’

[30] The commissioner then considered the impact of the misconduct on the applicant, and the fact that the first respondent had 17 years’ clean service. She concludes that *“considering these factors alone would point to a less harsh sanction.”*

[31] She further finds that the applicant did not deny the transgression and showed remorse (as did the disciplinary chair and the chair of the appeal). She points out that once he learned of the discrepancy, he tried to return to Human Resources to correct the error.

[33] The commissioner took into account that, as a shop steward, the first respondent should lead by example. She considered whether the sanction

⁶ Arbitration award at para 45.

⁷ Arbitration award at para 49.

⁸ Arbitration award at para 55.

was proportional to the offence and concluded it was not. She considered whether the trust relationship had been severed and concluded that it had not (hence the order of reinstatement).

Conclusion

- [32] In a nutshell, the commissioner took account of all the considerations relevant to determining whether the first respondent's dismissal was appropriate and substantively unfair or not.
- [33] While she may not have expressed herself as eloquently as she could have, there can be no doubt that the commissioner did not misconstrue the nature of the task before her and that she considered all the relevant evidence.
- [34] While she ordered reinstatement, she took into account that the first respondent did not have clean hands, he had erroneously claimed more overtime than he should have, thus did not order him to be paid backpay.
- [35] It can therefore confidently be said that the commissioner's award is not assailable as it falls within the band of reasonableness as contemplated in *Sidumo*.
- [36] In the premise the following order is made:

Order

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

N.J Whitear-Nel

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Norman Hornby Incorporated

For the Respondent : Minnaar Nieuhouse Attorneys

LABOUR COURT