



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1610/24

In the matter between:

SIBANYE RUSTENBURG PLATINUM MINES (PTY) LTD

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION AND

First Respondent

ARBITRATION

DAVE HOWARD SMITH N.O

Second Respondent

UASA obo JURRIE JACOBUS VENTER

Third Respondent

Heard: 07 July 2026

Delivered: 10 September 2026

JUDGMENT

LEVIN, AJ

Introduction

- [1] The Applicant, Sibanye Rustenburg Platinum Mines (Pty) Ltd (Sibanye) brought this review in terms of Section 145 of the Labour Relations Act¹ (LRA) to review and set aside the whole Arbitration Award dated 2 August 2024.
- [2] Prior to dealing with the application, it is important to state that the representative for the Applicant is an erstwhile employee of the Honourable Acting Judge having been employed by the Honourable Acting Judge approximately 16 years ago. This was raised prior to proceeding with the matter and the Third Respondent's representative indicated that there is no objection to the matter proceeding.

The material background

- [3] The Third Respondent was employed by the Applicant in the position of Foreman Loco / Shift Foreman from 1 August 2026 until date of dismissal.
- [4] On or about 14 February 2022, during the routine inspection at the K2 offloading area, the Third Respondent was informed that a net was hanging underneath hopper 186 (the hopper) which was preventing the hopper from closing and latching.

¹ Act 66 of 1995, as amended.

- [5] Accordingly, the Third Respondent gave the instruction for the hopper to be pulled aside to inspect.
- [6] Upon inspection of the hopper, the Third Respondent went under the hopper and/or lay under the hopper and attempted to remove the netting. To assist him, the Third Respondent requested that Mr Mashuda Mphaphuli (Mr Mphaphuli) shine his torch.
- [7] The Third Respondent holds that he instructed Mr Mphaphuli to hold the torch at least 1.5 meters away from the hopper.
- [8] Mr Mphaphuli attended to climb on top of the hopper and attempted to pull the net. During this process, Mr Mphaphuli became trapped and was crushed by the hopper door.
- [9] Mr Mphaphuli succumbed to his injuries.
- [10] Following the above, the Third Respondent was charged with the following charges: -
- ‘During the month of February 2022, you allegedly: -
1. Deviated from company policies, rules, management directive, standards and/or procedures;
 2. Negligently failed to comply with the company policies, rules, management directive, standards and/or procedures; and
 3. Conducted yourself contrary to the values of the company.’
- [11] A disciplinary enquiry was convened and the Third Respondent was subsequently dismissed.
- [12] Following his dismissal, the Third Respondent referred a dispute to the First Respondent wherein the Third Respondent alleged that his dismissal was both procedurally and substantively unfair.
- [13] In respect of substantive fairness, the Third Respondent disputed that he had breached any standard, rule and/or policy. The Third Respondent maintained

that there was no valid justification for his dismissal and that his dismissal was substantively unfair.

- [14] In respect of procedural fairness, the Third Respondent held that the Applicant had acted inconsistently in applying discipline and that his dismissal was procedurally unfair.
- [15] Upon conclusion of the arbitration, it was determined that the Third Respondent's dismissal was procedurally fair but substantively unfair.
- [16] As a result, an Arbitration Award ordering the Applicant to re-instate the Third Respondent and make payment of back pay in the amount of R 1 093 262.50 (one million ninety-three thousand two hundred and sixty-two rand and fifty cents) by no later than 15 August 2024 was issued.
- [17] As stated above, the Applicant seeks to review and set aside the whole Arbitration Award.

The Rules and/or Standard

- [18] The Applicant has Operating Rules regulating the Maintenance and Operation of Surface Railbound Equipment (the Standard).
- [19] The aforementioned Standard is in accordance with the provisions of the Mine Health and Safety Act² (MHSA) and is applicable to all employees working and/or entering in the confines of the surface railways.
- [20] The Third Respondent was aware of and/or well-informed of the aforementioned Standard.

² Act 29 of 1996.

- [21] The Standard provides the following with regards to the observation of obstructions during offloading: -

‘When offloading hoppers at the receiving bins and the Train Driver Assistant notices obstructions sticking out on top of the ore (timber, gwalas, steel sheeting, or similar robust items) which could cause delays further down the process line, he/she should inform the Train Driver immediately. The Train Driver must take the necessary arrangements to put the hopper off to allow for the safe removal of the object by suitably qualified Engineering personnel. Under no circumstances may any Train Driver or Train Driver Assistant climb on a loaded hopper in an attempt to remove these items.’

- [22] The Standard further provides:

‘when offloading hoppers on bins and problems encountered with doors not closing, hopper to be pulled off bins and if any obstacles found in door it can be removed under no circumstances will a person moved under a open door to remove obstacles.’

- [23] In the instance that the hooper becomes defective on route, the train driver must report the defects to the transport controller, who must decide whether it is safe to continue or whether the hopper should be detached at the next inter loop.

- [24] Should doubt exist as to whether it is safe to continue, the train driver must request authority to proceed and the conditions thereof.

Reading of the Standard

- [25] The Standard expressly states that the Train Driver or Train Driver Assistant must make the necessary arrangements to put the hopper off to allow for safe removal of objects by suitably qualified engineering personnel.

- [26] Whilst the Standard confines this rule to the Train Driver or Train Driver Assistant, the Court holds that the Third Respondent, being in a position of seniority and having worked for the Applicant since 2026, ought to have been aware of this rule and the rule extends to him in his role of Shift Foreman.

- [27] The Court is of the view that a purposive interpretation of the Standard requires that the rule be extended to the Third Respondent in the performance of his duties as Shift Foreman, notwithstanding that it expressly refers to the Train Driver or Train Driver Assistant.
- [28] To confine the Standard / rule to Train Drivers or Train Driver Assistant exclusively would not be appropriate in these circumstances. Such an interpretation would unduly restrict the application of a safety rule that is intended to ensure the safe removal of objects from hoppers and prevent injury and/or possible death.
- [29] When considering and/or interpreting the Standard, it must be borne in mind that the Third Respondent is well-aware of the fact that he is not qualified engineering personnel and further, is well-aware of the rule regarding removal of obstacles such as the netting, from the hopper.
- [30] Whether the Third Respondent was under the impression that this rule was not applicable to him, is not of relevance. Any reasonable person would appreciate that safety procedures and standards applicable to a role (such as Train Driver or Train Driver Assistant) operating in the same environment and under the same and/or similar circumstances would likewise apply to persons performing the same or substantially similar activities. The Third Respondent could not reasonably have believed that compliance with those safety standards was confined solely to employees occupying a particular position (such as Train Driver and/or Train Driver Assistant) wherein the nature of the work and associated safety risks is materially the same.

Procedural fairness

- [31] The Third Respondent held that the Applicant acted in an inconsistent manner when applying discipline as more senior employees (Coetzee, Steyl, and De Wet) were not dismissed despite being present on the date of the incident.
- [32] Steyl is a Train Driver and senior to the Third Respondent. In this regard, the Third Respondent argued that seniority should impact sanctions and that

Steyl should have been dismissed as he was present on the date of the incident and did not intervene.

- [33] The Third Respondent further argued that Coetzee should have put procedures in place for key control and that De Wet as maintenance foreman, should have ensured the maintenance was attended to.
- [34] In this regard, the Applicant explained that Steyl was a Train Driver and as such, the Rule / Standard was applicable to him and not the Third Respondent. Further, the Third Respondent held that disciplinary action should have been taken against Coetzee and De Wet).
- [35] Steyl, De Wet and Coetzee were given written warnings for their conduct. However, the Third Respondent, being under the hopper specifically differentiated his conduct and as such, it was justifiable that he was subject to a different sanction.
- [36] Procedural fairness was dealt with as per the Award wherein it was ruled that the dismissal of the Third Respondent was procedurally fair. The Court is in agreement with this decision reached and as such, this judgment does not expand further thereon.
- [37] Accordingly, the dismissal of the Third Respondent is held to be procedurally fair.

Substantive fairness

- [38] The Applicant established a Standard / Rule in relation to the removal of objects from the hopper, as cited above.
- [39] The Third Respondent breached the aforementioned Standard / Rule.
- [40] The Third Respondent should not have enlisted Mr Mphaphuli to assist. In this regard, the Standard / Rule expressly states that removal of obstructions should be attended to by '*suitably qualified Engineering personnel.*'

- [41] Mr Mphaphuli was not a qualified engineer and/or engineering personnel and as such, should not have been instructed by the Third Respondent to assist in any capacity whatsoever inclusive of holding a torch from 1.5 metres away.
- [42] The Court holds that the Third Respondent took an unnecessary risk and deviated from the Standard / Rule which resulted in loss of life. This is an offence of a very serious nature.
- [43] The Court interprets the Standard / Rule in a wider sense and deems that it is applicable to the Third Respondent. Accordingly, the Third Respondent deviated from the Standard / Rule and as such there are grounds for dismissal.
- [44] Accordingly, the dismissal of the Third Respondent was substantively fair for the reasons advanced above.

Ground of review

- [45] The Third Respondent contends that the Applicant's failed to establish a reviewable irregularity under Section 145 of the LRA. The Court does not agree with this assertion.
- [46] The Court holds that the ground of review is valid.
- [47] The Applicant's ground of review is as follows:
- 47.1 The commissioner misconstrued the nature of the enquiry by focusing on only a narrow interpretation of Sibanye's Operating Rules Surface Equipment Standard (Rules) and in doing so failed to have regard to the totality of the evidence presented.
- [48] The Second Respondent interpreted the rules / the Standard in a narrow sense. In this regard, the Second Respondent held that the Standard was only applicable to Train Drivers of Train Driver Assistants.
- [49] The Second Respondent failed to consider the Standard as a whole and instead interpreted the Standard in such a narrow manner which resulted in

an unreasonable conclusion – that the Standard does not apply to the Third Respondent, being reached.

[50] Due to the narrow consideration, the Second Respondent failed to consider whether the Third Respondent was in fact guilty of negligence through his conduct. This is despite the fact that the Second Respondent acknowledged that the Third Respondent was well-aware of the Standard.

[51] The Court in *Duncanmec (Pty) Ltd v Gaylard NO and Others*³ held that in dealing with the reasonableness test in reviews: -

‘This test means that the reviewing court should not evaluate the reasons provided by the arbitrator with a view to determine whether it agrees with them. That is not the role played by a court in review proceedings. Whether the court disagrees with the reasons is not material.

The correct test is whether the award itself meets the requirement of reasonableness. An award would meet this requirement if there are reasons supporting it. The reasonableness requirement protects parties from arbitrary decisions which are not justified by rational reasons.’

[52] The determination here is whether the commissioner, with the evidence presented, arrived at a reasonable decision.

³ (2018) 39 ILJ 2633 (CC) at paras 42 and 43.

[53] The Court holds that the Second Respondent did not arrive at a reasonable decision in this matter as a reasonable Commissioner would have interpreted the Standard in a wider sense and noted that same is applicable to the Third Respondent.

Costs

[54] On the issue of costs, an order that each party pay its own costs is in accordance with the requirements of law and fairness as set out in Section 162 of the LRA.

[55] In the results the following order is made:

Order

1. The Arbitration Award dated 2 August 2024 under CCMA case number NWRB1555-23 is reviewed and set aside.
2. The Commissioner's finding that the Third Respondent's dismissal was substantively unfair is reviewed and set aside and replaced with the following: -

'The Applicant's dismissal was substantively fair'.
3. No order as to costs.

C.B LEVIN

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Mr Jayson Kent

Instructed by : Solomonholmes Attorneys Inc

For the Respondent : Mr Tshilidzi Sadiki

Instructed by : UASA Trade Union