



- (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

JR 1906/22

In the matter between:

AUSA OBO BEN BRUNSDON

Applicant

and

BONGE MASOTE N.O.

First Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second Respondent

SAA TECHNICAL (SOC) LTD

Third Respondent

Heard: 21 May 2026

Delivered: 07 September 2026

JUDGEMENT

WHITEAR-NEL, AJ

Introduction

- [1] This is a review application brought by the applicant to review and set aside an arbitration award issued by the first respondent under the auspices of the second respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA) under case number GAEK 10759-21, where the first respondent dismissed the applicant's claim for severance pay. The review application is opposed by the third respondent, who contends that the first respondent's award is unassailable and reasonable.
- [2] While the applicant, in the founding affidavit, refers to a review in terms of section 158 of the Labour Relations Act¹ (LRA), it is clear from the substance of the review papers that in fact this is a review in terms of section 145 of the LRA. Reviews of arbitration awards are brought under section 145, and reviews of rulings and the like are brought under section 158 of the LRA.²

Grounds of review

- [3] The grounds of the review are as follows:
- 3.1 That the commissioner had failed to determine the issue in dispute, and reached a conclusion not supported by the evidence.
 - 3.2 That the commissioner considered the incorrect dispute thus making an error of law.
 - 3.3 That the commissioner applied the incorrect legal test in relation to the application of section 41 (4) of the Basic Conditions of Employment Act³ (BCEA).
 - 3.4 That the commissioner approached the matter in a biased manner, favouring the third respondent.

¹ Act 66 of 1995, as amended.

² *Carephone (Pty) Ltd v Marcus NO and others* (1998) 19 ILJ 1425 (LAC) at para 26; *C Botma and A Van Der Walt*, "The role of reasonableness in the review of Labour arbitration awards" (Part 1) 2009 Obiter 328 at 342)

³ Act 75 of 1997.

3.5 That the commissioner ignored material evidence, which impacted on the commissioner's conclusions and distorted the ultimate outcome of the matter.

3.6 That the commissioner's award is unreasonable.

The factual background

- [4] The applicant was employed by the third respondent as a Senior Aviation Technician, and was earning R42 704,69 per month.
- [5] The aviation industry as a whole was severely damaged by the COVID-19 pandemic starting in 2020.
- [6] As a result, the third respondent was unable to pay employees, including the applicant, their full salaries. It was common cause that there was instability and uncertainty in salary payments, with only 25% of a normal salary paid in some months and varying amounts in others. The respondent testified however that by the time of the applicant's retrenchment he had been paid all the monies due to him.
- [7] The financial strain COVID-19 and subsequent developments placed on the applicant was extreme. He was severely indebted due to unpaid salary for an extended period. He had to sell assets, like a caravan, he was at his credit maximum at the bank and had had to borrow money to survive.
- [8] The third respondent undertook a retrenchment process in 2021, under which employees were required to apply for three positions they were interested in being placed in under the Neptune system. A directive from the third respondent notified them that if they did not avail themselves for alternative positions, they forfeited their right to severance pay. The respondent was keen to retain employees with key operational skills.
- [9] The applicant did not apply for his own position. The three positions he applied for were promotional positions, which did not indicate that they were

'ex patriate' (ex pat) positions, ie: positions which would require the successful incumbent to relocate outside of the Republic of South Africa. He would not have applied for an ex pat position as he was not willing or able to relocate outside South Africa, nor to maintain two households.

- [10] The evidence was that the advertisements on the Neptune system were vague and did not contain all the terms and conditions of employment on it.
- [11] The applicant testified that he applied for the promotional positions because he anticipated a salary drop if he were to be appointed to his old position. The applicant contended that nowhere in the Neptune system did it state that applicants had to apply for their own positions. All three of the third respondent's witnesses did testify that that was so.
- [12] There was substantial testimony in the arbitration about whether the employees, specifically the applicant, had been taught how Neptune worked. The evidence was contradictory: the applicant saying he didn't understand it, the respondent saying they had gone to great lengths to explain it to all staff. What was clear was that the applicant knew enough about the Neptune system to apply for three positions on it, and to testify that the positions did not indicate that they were ex pat positions, nor what the salary and benefits would be.
- [13] The applicant qualified for, but was not successful in, some positions, and was offered at least one of the positions for which he had applied. The position turned out to be an ex pat position, requiring that he relocate to Maputo, Mozambique. The applicant indicated he was not prepared to relocate and that he had indicated that and he therefore declined the employment offer.
- [14] The third respondent took the position that he had unreasonably refused a reasonable offer of alternative employment, and he was retrenched without severance pay in terms of section 41(4) of the BCEA.

- [15] Aggrieved, the applicant referred the matter to the CCMA. The arbitrator dismissed the applicant's claim for severance pay on the basis that he had unreasonably refused an offer of alternative employment.
- [16] The arbitrator also took the view that the applicant had not wanted to be retained by the third respondent, even knowing that he had an essential skill set that they wanted to retain, and that he had therefore attempted to manipulate the process so that he would not be offered an alternative position and could therefore collect the severance pay on his retrenchment. For example, the respondent pointed out that he did not apply for his own position, only for promotional positions.
- [17] The applicant then referred the matter to the Labour Court for review, on the basis that he was entitled to severance pay because the offer of alternative employment in Maputo was unreasonable and that he was therefore within his rights to turn it down without forfeiting his right to severance pay.

Test for review

- [18] The test for review was established in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*⁴. It is whether the commissioner's decision is one which no other reasonable commissioner would have reached.
- [19] In *Herholdt v Nedbank*⁵, the Supreme Court of Appeal held that:
- ‘...that test involves the reviewing court examining the merits of the case “in the round” by determining whether, in the light of the issue raised by the dispute under arbitration, the outcome reached by the arbitrator was not one that could reasonably be reached on the evidence and other material properly before the arbitrator.’
- [20] In *Goldfields Mining South Africa v Moreki*⁶, the Labour Appeal Court (LAC) held that:

⁴ (2007) 28 ILJ 2405 (CC).

⁵ [2013] 11 BLLR 1074 (SCA) at para 12.

⁶ (2014) 35 ILJ 943 (LAC) at p 944 G.

‘...A reviewing court must ascertain whether the commissioner considered the principal issue before him or her, evaluated the facts presented at the hearing, and came to a conclusion that was reasonable.’

[21] And

‘... Did the commissioner identify the dispute he or she was required to arbitrate? ... Did the commissioner understand the nature of the dispute he or she was required to arbitrate? ... Did the commissioner deal with the substantial merits of the dispute? ... Is the commissioner’s decision one that another decision maker could reasonably have arrived at based on the evidence?’⁷

[22] In *Head of Department of Education v Mofokeng and others*⁸, the court held:

‘...that it is not only the reasonableness of the outcome which is subject to scrutiny. As the SCA held in *Herholdt*, the arbitrator must not misconceive the enquiry or undertake the enquiry in a misconceived manner. There must be a fair trial on the issues.... Irregularities or errors in relation to the facts or issues, therefore, may or may not produce an unreasonable outcome or provide a compelling indication that the arbitrator misconceived the inquiry. In the final analysis, it will depend on the materiality of the error and its relation to the result. Whether the irregularity or error is material must be assessed and determined with reference to the distorting effect it may or may not have had upon the arbitrator’s conception of the inquiry, the delimitation of the issues to be determined, and the ultimate outcome. If but for an error or irregularity a different outcome would have resulted, it will ex hypothesi be material to the determination of the dispute....provided the right question was asked and answered by the arbitrator, a wrong answer will not necessarily be unreasonable...’

Review application: the law

[23] The dispute referred to the CCMA was regarding section 41 of the BCEA, particularly section 41(4). Section 41 provides that an employee who has

⁷ Ibid at p 944 I to p 945 A.

⁸ (2015) 36 ILJ 2802 (LAC) at para 31.

been retrenched is entitled to severance pay equivalent to one week's pay per completed year of service with the employer. Section 41 (4) reads as follows:

'(4) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of subsection (2).'

[24] It goes without saying that the reasonableness of the offer and the reasonableness of the refusal of the offer are intertwined. However, the language of section 41 (4) speaks of an unreasonable offer of alternative employment. The reasonableness of the refusal will depend on the reasonableness or unreasonable of the offer of alternative employment. In *SAA v Bogopa and others*⁹, the LAC held that section 41(4) has two conditions: an offer of alternative employment and an unreasonable refusal to accept it.

[25] It is established that the offer of alternative employment must come from the retrenching employer to trigger section 41 (4) of the BCEA. Alternative employment found by the retrenched employee does not trigger section 41 (4) of the BCEA¹⁰.

[26] In *Astrapak Manufacturing Holdings (Pty) Ltd t/a East Rand Plastics v CEPPAWU*¹¹, the court held that if a retrenchee were offered an alternative position that entailed a salary reduction, it would not be unreasonable to refuse it. The court also held that the court *a quo* erred in finding that severance pay should be paid in circumstances where some would have enjoyed increases in their wages had they accepted the offer of employment made by the appellant¹².

⁹ [2007] 11 BLLR 1065 (LAC)

¹⁰ See in this regard: *Purefresh Foods (Pty) Ltd v Dayal and another* [1999] 5 BLLR 518 (LC); *Bagshaw and Marriot Corporate Service* (2004) 25 ILJ 145 (CCMA), *Fidelity Supercare Cleaning (Pty) Ltd v Busakwe NO and others* [2010] 3 BLLR 260 (LC), *Servest Landscaping Turf Maintenance (Pty) Ltd v SACCAWU and others* (2023) 44 ILJ 380 (LC).

¹¹ (2014) 35 ILJ 140 (LAC)

¹² See also: *Pretorius v Rustenburg Local Municipality* (2008) 29 ILJ 1113 (LAC).

[27] In *Masuku and others v Assign Property Care Services (Pty) Ltd and others*¹³, it was held that:

‘Without being told the terms and conditions of the offer of alternative employment, an employee will not be able to exercise his/her choice of acceptance or refusal...the terms and conditions of employment are intertwined with the lives of workers in terms of where they live in relation to their workplaces ...terms and conditions of employment cannot be reduced to remuneration alone.’¹⁴

[28] In *Pama and others v CCMA and others*¹⁵ the court observed that:

‘... the first part of the enquiry into reasonableness is about objective factors such as remuneration, status and job security. In the second leg of the enquiry the employee’s circumstances play a greater role.’

[29] In *Gray Security Services (Western Cape) (Pty) Ltd v Cloete NO and another*¹⁶, MacRobert AJ expressed the view obiter that if employees turned down an offer of alternative employment on the grounds of family dislocation, family responsibility, travel, benefits etc ... such refusal would not be unreasonable within the meaning of s 196 (3) LRA.

[30] In *Irvin & Johnson Ltd v CCMA and others*¹⁷, the court held that section 41 (4) envisages 3 situations: 1) The employee unreasonably refuses alternative employment and forfeits the right to severance pay. 2) The employee reasonably refuses alternative employment and is entitled to payment of severance pay. 3) The employee accepts alternative employment and forfeits the right to severance pay.

Review application: arbitrator’s award

[31] The arbitrator correctly identified the dispute as being whether the applicant was entitled to severance pay in terms of section 41 (2) of the BCEA, or not in terms of section 41 (4) of the BCEA. He noted that he was required to

¹³ (2020) 41 ILJ 1237 (CCMA) at paras 63 and 64.

¹⁴ See also: *Moremi and Coldline Food Brokers cc* (2007) 28 ILJ 2871 (CCMA).

¹⁵ [2001] 9 BLLR 1079 (LC).

¹⁶ [2000] 4 BLLR 418 (LC).

¹⁷ (2006) 27 ILJ 935 (LAC)

determine whether the respondent's alternative offer of employment was reasonable or not, and, interlinked, whether the applicant's refusal to accept the offer was reasonable, in view of the reasonableness or unreasonableness of the offer.

[32] The arbitrator noted that the applicant testified that he had never been relocated outside of the borders of South Africa. He had performed relief duties outside of the Republic, but the relief duties were only temporary. The arbitrator noted that the applicant's personal circumstances were as follows

32.1 he has been married for 23 years

32.2 He has two children, an 18-year-old doing matric at the time of the arbitration and an 11-year-old in Grade 9.

32.3 His children were studying in Afrikaans and would not be able to relocate, especially the child doing matric.

32.4 His wife works at Stellenbosch University, and there are benefits for the family in terms of tuition fees.

32.5 He could not afford the expenses of relocating to Maputo, nor of maintaining two households.

[33] The respondent's case was that the applicant would have been accommodated in respect of expenses, living conditions, allowances, school fees for the children (75%), cover for family relocation, free air travel and accommodative work-off periods. Air travel from Maputo to Cape Town is less than 4 hours, depending on connecting flights from Johannesburg to Cape Town. The arbitrator took note of this.

[34] The applicant was offered the Senior License Technician position but was also offered employment as a Station Engineer in Maputo, as he was qualified for the position and would require no further training. This was a promotional position and would have entitled the employee to a 13.21% salary increase. This was the position around which the dispute revolved. There was vague mention of an OR Tambo (SLT?) position that the applicant was offered, but

no details were provided. The arbitration, and this review centred around whether the offer of the Maputo position was unreasonable.

[35] On the applicant's version, the offer of the position in Maputo position was wrong because:

35.1 The advertisement did not state that it was an expatriate position. Had the applicant known that, he would not have applied for it. There was however undisputed evidence noted by the arbitrator indicating that the applicant did know the location of the position.

35.2 The advertisement did not specify details of his remuneration, and other terms and conditions of employment.

35.3 The applicant had stated that he was not available for relocation outside of South Africa, although he could do relief work.

[36] AUSA however raised no objection to the Maputo position. The applicant declined the position.

[37] The applicant was thus retrenched. The final notification of retrenchment was on or about 18 November, but was backdated to 18 October 2021, which was also his final date of employment. He received the letter of appointment to the position of Station Engineer in Maputo on 18 October 2021. The respondent asserted that the applicant was in fact retrenched on 10 December 2021

[38] The applicant was offered employment by SAFAIR on 15 November 2021, and started to work on 26 November 2021. The arbitrator notes that there was a difference of about 20 days between the last day at the respondent and starting at SAFAIR. The respondent contended that the applicant was only retrenched, after he commenced employment with SAFAIR, on 10 December 2021, and that the letter of retrenchment was backdated.

[39] The arbitrator concluded that it was evident that the reason why the applicant did not accept the alternative offer of employment from the respondent was because he had already found another job with SAFAIR, and this was before he was retrenched by the respondent.

- [40] He also found that the applicant had wanted to be retrenched so that he could collect the severance pay, that this was why he had not applied for his own position on the Neptune system and that this was the true reason he had refused the Maputo position.

Conclusion

- [41] The arbitrator correctly identified the issue before him, and the dispute he was required to determine.
- [42] The correct test was used to determine whether section 41 (4) of the BCEA applied to the scenario before the arbitrator or not. The reasonableness or unreasonableness of the refusal to accept the offer is intertwined with the reasonableness or unreasonableness of the offer of alternative employment.
- [43] The arbitrator notes at the commencement of his award that he had considered all the evidence and submissions but only deals with the material evidence in his award. The arbitrator traverses the important, material evidence in his award. He considers and applies his mind to it. There is nothing to suggest that 'massive amounts of material evidence' was ignored. There is also no evidence of bias on the part of the arbitrator. The arbitrator's award is one that falls within the band of reasonableness and is therefore unassailable.
- [44] In the premise the following order is made:

Order

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

NJ Whitear-Nel

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant : Ms A Davies of Pretorius Davies Inc.

For the respondent : Mr Zwane of Zwane Inc Attorneys.