



- (1) Reportable: No
(2) Of interest to other Judges: No

Signature

8 September 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2025-175286

In the matter between:

MFUNDISO DYONTA

Applicant

and

FADEL LOGISTICS SOUTH AFRICA (PTY) LTD

First Respondent

JACQUES BUITENDAG

Second Respondent

NATIONAL BARGAINING COUNCIL FOR THE ROAD

FREIGHT LOGISTICS INDUSTRY

Third Respondent

Date of Hearing: 2 September 2026

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date of handing down judgment is deemed to be 8 September 2026.

Summary: An application to review an award that upheld the dismissal of an employee for defying an instruction to drive a specific truck and insisting on driving a truck that had been allocated to other drivers. The instruction was lawful and

reasonable; the defiance was serious; and in the absence of remorse, dismissal was warranted.

JUDGMENT

GANDIDZE, J

Introduction

- [1] The applicant employee, Mr Dyonta, was dismissed by his employer, Fadel Logistics South Africa (Fadel), for gross insubordination after refusing to drive the truck he had been instructed to drive. With the assistance of his union, RETUSA, his attempts to challenge the dismissal before the National Bargaining Council for the Road Freight Logistics Industry (the Bargaining Council) were unsuccessful, as set out in an award dated 30 June 2025 in case number WCRFBC75547. The current application, brought in terms of section 145 of the Labour Relations Act¹ (LRA), seeks to review and set aside the award, and to substitute it with an order that his dismissal was substantively unfair.
- [2] As the application was filed late, the applicant also seeks condonation. The employer opposed both the review and the condonation applications.

Brief background facts and the arbitration proceedings

- [3] The background to the dispute is that the applicant was employed by Fadel as a long-haul driver, delivering beer for South African Breweries, which was Fadel's sole client.
- [4] On 7 October 2024, he was suspended and, on 23 October 2024, was called to a disciplinary hearing to answer a charge of gross insubordination for refusing to continue driving truck F94 as instructed. He was dismissed, and the dispute then proceeded to the Bargaining Council.

¹ Act 66 of 1995, as amended.

- [5] At the Bargaining Council, Fadel called Siphokhazi Sogiba (Sogiba), the Controller responsible for allocating trucks to drivers, as a witness. The applicant gave evidence in his own defence. The evidence established the following.
- [6] On 6 October 2024, the applicant began his shift as a long-haul driver. He was rostered to drive the F98 truck and appears to have done so for most of the time. However, Sogiba assigned him and a companion driver to truck F94 because they were short-staffed. The drivers who normally drove with the applicant and the companion driver were off.
- [7] The applicant and his companion driver drove F94, which offloaded in Boland. From there, the truck was intended to continue with loading and offloading. During the day, the applicant telephoned Sogiba to enquire about the whereabouts of truck F98. While the applicant testified that Sogiba informed him that the truck was on its way back to the depot, Sogiba testified that she received several calls from the applicant that day. At some point, she informed him that the truck was in George, and on another occasion, she did not respond to the applicant because she was unable to say where truck F98 was.
- [8] The applicant and his co-driver returned to the depot around 18H00. Sogiba asked them why they had returned to the depot when they were meant to continue with loads and offloading. The applicant requested a written instruction confirming that he had been assigned to drive F94, alleging that they were trying to remove him from truck F98 and that he was neither a local driver nor on standby duty. When he was not provided with the written instruction, he stated that he had already driven for 12 hours and that it was his rest time. He removed his belongings from truck F94 and went to rest in the driver's changeroom. His co-driver continued alone in truck F94 until 06H00 on 7 October 2024. Truck F94 stood unused on 7 October 2024 because he needed to rest after a 12-hour shift.
- [9] Sogiba testified that she was responsible for allocating drivers to trucks and that drivers did not choose which trucks to drive. She did not provide the applicant with a written instruction as requested because this was not the

practice. She also noted that on the morning of 6 October 2023, the applicant had not requested a written instruction to drive truck F94. She denied informing the applicant that, on the morning of 6 October 2024, he could assist the driver of truck F94 and, when truck F98 returned to the depot later that day, he could switch to it. She assigned the applicant to truck F94 until Friday 11 October 2024, when the co-driver for that truck would return to work. She confirmed that truck F98 returned to the depot after 18H00 on 7 October 2024. The applicant was suspended on 7 October 2024 and later charged.

[10] The applicant testified that on the morning of 6 October 2024, he agreed to drive truck F94 because truck F98 was offloading in George and he had been told it would return in the afternoon. The practice was that when a truck returned, the driver would be assigned to it. He left his clothes in his car so he could move them to truck F98 when it returned to the depot.

[11] When he drove to Boland, his co-driver was asleep 'the whole day'. Along the way, he stopped the truck and telephoned to enquire about the whereabouts of truck F98. He was informed that it was nearby and that he could drive to Newlands for a new load. Before leaving Newlands, he called Sogiba again, but she did not answer. He called the drivers of truck F98, who told him they were in Somerset. He decided to return to the depot before Sogiba finished her shift. He was instructed to continue driving truck F94. He requested written instructions for the 'changed instruction' as taught during training. She responded that she could not provide them and would contact Pedro, the supervisor. He went on to testify as follows:

...So, I told her based on the rules and regulations of the company each driver has to work 12 hours and I have worked my 12 hours. I am going to rest now. So, she said, I should continue. If I do not continue with the work or with the driving based on her instruction, she is going to go ahead and call Pedro, who is her supervisor.

So I said to her, yes, she can go ahead and make contact with Pedro, because I cannot work more than the 12 hours. They do give us an allowance to rest. So even if the driver that was driving the truck before confirms to me that he is tired, even if truck F98 was allocated to me, based on the 24 hours that I have already driven I am allowed to rest and in cases like this, if both drivers are tired based on the 12 hour

shift that they have worked, they do make contact with the office and they are allocated time to rest.'

[12] Regarding what he would have done had he been given written instructions to drive truck F94, he stated that he would have informed them that he was tired and needed to rest. He also stated that he needed the written instruction to protect himself. Sogiba had no power to change the roster and had agreed to allocate him to truck F98 once it returned to the depot. He stayed in the rest room the entire night, and the following morning he was suspended for refusing to work. He did not refuse to work.

[13] Under cross-examination, he agreed that the roster could be changed. While on shift, local drivers decided where to sleep, whereas long-haul drivers slept inside the truck. On 6 October 2024, his co-driver was sleeping in the truck. When F94 returned to the depot, he could sleep in the change room or in the truck. When asked again, he said he was supposed to rest in the change rooms. When it was put to him that there must be two drivers in a truck, one on duty and one resting, he responded as follows:

'MR JONTA: If the agreement is finalized, yes, but based on this situation I was stillbased on the situation that is what happened.'

[14] On the fact that when he arrived at the depot around 18H00, he was getting off, he agreed and stated:

'Yes. The 12th hour shift has ended based on the driving that has been done by my partner, and I will go ahead and rest.'

[15] When asked what was special about truck F98, he replied that there was nothing special about it. He was simply rostered to drive the truck.

[16] In re-examination, he explained that he is assigned a truck for 10 days and is off for 5 days.

The award

[17] In assessing the evidence, the commissioner referred to case law on insubordination and to the fact that item 4 of the Code of Good Practice lists gross insubordination as a dismissible offence, subject to each case being decided on its own facts. Thereafter, the commissioner noted that the

applicant initially complied with the instruction to drive truck F94 and did not request written instructions regarding the change. Later, however, he relied on the absence of written instructions in refusing to continue driving truck F94, even though this was not the practice. The commissioner also found that the instruction to change the truck the applicant was meant to drive made operational sense. The applicant's version that he would be allocated truck F98 later in the day was rejected as uncorroborated, and Sogiba's version that truck F98 had already been allocated to other drivers until Friday 11 October was not contested. The commissioner found that the instruction to continue driving truck F94 was reasonable and lawful, and that the applicant had no right to demand a written instruction in the face of the practice. Hence, he was grossly insubordinate.

- [18] The commissioner also relied on *TMT Services and Supplies (Pty) Ltd v CCMA and others*², in which the court held that insubordination involves defiance of authority, that such defiance can be proven by a single act, that the employer's prerogative to command its subordinates is the principle protected by the class of misconduct labelled "Insubordination", and addresses operational requirements of the organisation to ensure that managerial paralysis did not occur.
- [19] As regards sanction, the commissioner considered that, although the applicant had long service and this was his first offence, his lack of remorse and contrition was against him. With reference to *De Beers Consolidated Mines Ltd v CCMA & others*³, the commissioner relied on the court's statement in that matter that it would be difficult for an employer to re-employ an employee who has shown no remorse, as acknowledgement of wrongdoing is the first step towards rehabilitation.
- [20] The commissioner concluded that the applicant's dismissal was substantively unfair. Procedural fairness was not at issue.

Grounds for review

² (2019) 40 ILJ 150 (LAC).

³ (2000) 21 ILJ 1051 (LAC).

- [21] On review, it is submitted that, in concluding that the instruction to the applicant was reasonable and lawful, the commissioner ignored the provisions of the Basic Conditions of Employment Act⁴ (BCEA), that limit the number of hours an employee may work in a day.
- [22] The applicant also submits that the conclusion that his dismissal was substantively unfair is one no reasonable decision-maker could have reached, given that, at worst, he was insubordinate rather than grossly insubordinate. The submission is that a refusal to obey an instruction, on its own and in the absence of intention, does not sustain a charge of insubordination. The further submission is that gross insubordination requires the additional elements of seriousness and persistence.
- [23] The third ground of review is that dismissal was unfair, given his frame of mind after requesting written instruction, which was not provided, his clean disciplinary record, and the lack of evidence of a breakdown in the employment relationship.
- [24] Fadel's responses to the grounds of review will be addressed when the merits of those grounds are analysed.

Evaluation

- [25] There is a preliminary issue regarding the condonation application. This court may condone the late filing of a review application under section 145(1A) of the LRA, on good cause shown.
- [26] The award was received on 22 July 2025, so the review application was due on or about 3 September 2025. It was filed on or after 25 September 2025, about three weeks late. The applicant was advised by the union that he had 90 days from the date of service of the award to file the review application. That advice was incorrect, as section 145 of the LRA requires an application to review an award to be filed within six weeks of the date of service of the award. The applicant also alleges that he continued to follow up with the union. Only on 31 August 2025 did the union inform him that it would not file a review application, as he had no prospects of success. On 5 September 2025,

⁴ Act 75 of 1997, as amended.

he spoke to an attorney, who required a consultation fee, which he paid on 9 September 2025. He consulted on 16 September 2025. He paid the fees for the drafting of the review papers on 19 September 2025, and the application was filed on 26 September 2025. Although Fadel vigorously opposed condonation in its answering affidavit, its heads of argument do not address the issue. I will exercise my discretion and grant condonation, in the interests of justice, so that the application can be determined on its merits. It was not suggested that the applicant showed disinterest in challenging the award.

- [27] Turning to the grounds of review, the main submission was that the applicant's assertion that he rested because he had already worked 12 hours on 6 October 2024 referred to section 34 of the BCEA. Therefore, as a matter of law, because the applicant had worked 12 hours, he could not be compelled to work more than those hours under section 10(1A) of the BCEA, which provides as follows:

‘10 Overtime

(1) Subject to this Chapter, an employer may not require or permit an employee to work-

(a) overtime except in accordance with an agreement;

(b) more than ten hours' overtime a week.

(1A) An agreement in terms of subsection (1) may not require or permit an employee to work more than 12 hours on any day.’

- [28] Fadel submits that this argument was not raised during the arbitration proceedings and was first raised in the review application. It also submits that the applicant was required to work a continuous 10-day shift, comprising 12 hours of driving and 12 hours of rest, followed by 5 days of rest. He had done so for the two years he was employed by Fadel, as that was the nature of the job. The applicant was supposed to be in it for the long haul but instead abandoned ship in wanton defiance of authority.

- [29] There is merit in Fadel's submission that the argument regarding the alleged contravention of the BCEA in relation to overtime was raised for the first time in the review application.

[30] The version put to Sogiba in cross-examination was as follows:

'MR DUMA: Well I put it to you that Mr Jonta (sic) did not refuse to work on that day. The initial instruction that you have given to him was that, he was supposed to assist on 94 and he did drive in the morning up until [indistinct] and he drove the [background noise] until the evening up until you changed your agreement with him to say that he is going back on F98.

He then requested a note from you to say, because now you are changing and allocating me on that truck up until the 11th, as you say, give me a written note so that I know that I was on the truck up until this day.'

[31] Further on in cross-examination, Sogiba was also asked to read⁵ the following:

'MS SOGIBA: Under cross-examination, it was put to her that she made a deal with Mfundiso Jonta to return to the yard and wait for 98 that is why he returned and he refused to continue driving F94.'

[32] The question that was then put to Sogiba following the above was as follows:

'MR DUMA: Okay. Now in that statement it says that you had not made a deal with the witness Mfundiso Jonta (sic). Now I want to put it to you that the discussion of yourself and Mr. Jonta (sic) in the morning had indicated the very same statement that is written there in those minutes'

[33] The applicant's first defence was that he had an agreement with Sogiba that he would be allocated truck F98, and that Sogiba breached the agreement. Sogiba denied entering into an agreement with the applicant. This is the defence that the commissioner considered. He rejected the applicant's version of an agreement as uncorroborated and also found that Sogiba had advised that truck F98 would be with the other drivers until Friday 11 October 2024.

[34] The second defence was that Sogiba did not provide the written instructions the applicant requested, as this is what they were taught during training. The commissioner also rejected this defence, reasoning that on the morning of 6 October 2024, when the applicant was informed that he would drive truck F94 instead of truck F98, he had not requested a written instruction. Sogiba's

⁵ Presumably from the disciplinary hearing outcome.

version that she had the authority to roster drivers was not challenged in cross-examination and therefore had to be accepted.

[35] The issue of the 12-hour driving requirement was raised with Sogiba during cross-examination. It was put to Sogiba that the applicant's co-driver continued driving for another 12 hours after the applicant indicated he would not drive truck F94. She was asked how many hours a driver must drive in a day. She responded that local drivers drove for 12 hours and long-distance or long-haul drivers drove for 15 hours. It was put to her that the co-driver told her on the morning of 7 October that he had started at 18H00 on 6 October and therefore had driven for 12 hours. She responded that she would not know, as drivers have arrangements.

[36] It was also put to Sogiba that although drivers must drive 12 hours, before the applicant was assigned to truck F94 on the morning of 6 October 2024, the co-driver had been driving alone. She denied this, stating that he was assigned a co-driver, but that it was for the drivers to make their own arrangements for who drives while the other is off the truck.

[37] The cross-examination ended on this note:

'MR DUMA: I put it to you that Mister Jonta (sic) is the one that was driving that that truck from 06:00 to 18:00 up until he came back to the depot. Of which it gives him an allowance, according to operation that was supposed to be a rest day after those 12 hours.

MS SOGIBA: I am not going to argue with; but the place that he took a rest in, he was not supposed to rest there, and it was not him resting; it was him getting off the truck.'

[38] During re-examination, Sogiba testified that long-distance drivers rest in their trucks.

[39] Therefore, while it is correct that the applicant's case during the arbitration proceedings was that he had worked a 12-hour shift, the issue of overtime in contravention of the BCEA was not raised for the commissioner to determine.

[40] Sogiba testified that the applicant returned to the depot with truck F94 when he ought to have continued working on it. The charge's reference to refusing to continue driving does not cause confusion, as Mr Mtshemla emphasised in

oral argument. It simply meant that the applicant's co-driver, who had been asleep while the applicant was driving, would take over driving while the applicant rested. The applicant agreed that this was the practice, unless the drivers made a different arrangement allowing the off driver to rest elsewhere. The applicant testified that he had no arrangement with his co-driver, so he was required to rest in the truck. His claim that he could rest in the restroom was not supported by any credible evidence.

- [41] On his own version, he returned to the depot at 18H00 to work on truck F98, as agreed. He was therefore returning to the depot to continue working on truck F98 while on 'shift off', yet he testified that he would not have driven truck F98 but would have rested. However, when instructed to continue working on F94 and to rest on the truck, he declined to comply. This was despite the practice of driving for 12 hours and resting on the truck for the next 12 hours, which, as a long-haul driver, he was scheduled to do from 6 October 2024 until 11 October 2024, as he testified.
- [42] Neither in his exchanges with Sogiba nor in the arbitration proceedings did the applicant raise the issue that requiring him to work on truck F94, on 'shift off' after 18H00 contravened the BCEA. How was the commissioner to know that this was the case she was required to arbitrate unless it was stated in those terms? To require the commissioner to arbitrate a claim relating to an alleged contravention of the BCEA as it relates to overtime, when such had not been raised in evidence, would be to expect a commissioner to conceive of all possible causes of action based on a set of facts, even if not raised by the parties, and to decide the matter on those bases. This is too onerous a burden to place on commissioners, and it is not what the court in *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation Mediation and Arbitration and others*⁶ said commissioner should do when arbitrating matters.
- [43] Commissioners arbitrate disputes based on the issues raised before them, unless, of course, there is a point of law that a commissioner cannot ignore. It is not permissible for litigants, on review, to raise issues that never featured

⁶ (2014) 35 ILJ 943 (LAC) at para 16.

before a commissioner and to argue that an award falls to be reviewed and set aside because of that 'lucid argument' conceived after the arbitration proceedings. Whether an award is reasonable must be adjudicated on the material placed before a commissioner and the parties' contentions at the time.

- [44] If the applicant's issue was with the practice of requiring drivers to work 12 hours and rest 12 hours on the truck, that is the issue he should have raised during the proceedings. He was represented by a union representative who could have raised it. This was not done, and the commissioner correctly confined himself to the question of whether the applicant was insubordinate.
- [45] Mr Mtshemla submitted that legal points may arise only during review proceedings, as legal representation is not automatic in misconduct arbitrations. That an employer is contravening the BCEA is not a point of law beyond the familiarity of union representatives. It is not open to the applicant to raise the issue for the first time on review.
- [46] The decision in *Maneche and Others v Commission for Conciliation, Mediation and Arbitration and others*⁷ (*Maneche*), relied upon by the applicant, does not, in my view, assist his case, primarily because the issue of excessive overtime was raised during the arbitration proceedings. The court said this about the employer's contentions during those proceedings:

'[12] At the hearing of this application, there was no appearance for the respondents. To the extent that they may have contended, as they did at the arbitration proceedings, that the company's operational requirements or the nature of its business require that the limits on overtime imposed by the BCEA be varied, the Act provides mechanisms (such as a compressed working week or averaging of hours of work) to accommodate an employer's flexibility demands. Alternatively, it is for the company to reorganize work or its shift patterns so as to ensure that employees did not exceed the maximum working hours prescribed by the Act.'

⁷ (2007) 28 ILJ 2594 (LC).

- [47] In this case, the issue of excessive overtime was not raised, so it is unknown what Fadel's response would have been had such an argument been advanced. As I have found above, the applicant was represented by a union representative, and the union declined to pursue review proceedings on the basis that they lacked a reasonable prospect of success. Surely the union would have pursued the case if it believed Fadel's practice of requiring drivers to work 12 hours and rest on the truck for 12 hours contravened the BCEA. Mr Mtsemla's submission that this judgment would stop Fadel from requiring drivers to work beyond 12 hours is not a call that will be heeded in a review application, as it was not raised before the commissioner.
- [48] It is ironic that Mr Mtshemla went to great lengths to remind the court that the case must be decided on the issues the parties contended were at stake in the pleadings and to ignore Fadel's submissions, which had not been pleaded, yet he called on the court to determine an issue that had never been raised before the commissioner. In any event, that the drivers worked 12 hours was not new ground of opposition that had not been pleaded, as argued by Mr Mtsemla. It is precisely what was put to Sogiba under cross-examination, except that it was never suggested that the 12-hour rest on the truck constituted a contravention of the BCEA.
- [49] The submission regarding the applicant's alleged frame of mind and his claim that he did not intend to disobey an instruction is an afterthought and cannot be taken seriously. He made a conscious decision to rest rather than remain on the truck while his companion driver continued driving alone. Truck F94 stood still on 7 October 2024 because the co-driver had completed his 12-hour shift and could not continue driving. The conduct was wilful and serious; therefore, he was grossly insubordinate, as found by the commissioner.
- [50] This was not a case of a single act of defiance of an instruction. The defiance was persistent. He returned to the depot against Sogiba's instructions and insisted on driving truck F98, although he could offer no valid reason other than that the roster had been changed. Both trucks were long-haul trucks. The commissioner found that the changes were operationally required given the short staff, and it cannot be said that no reasonable decision-maker could have reached that decision.

[51] The instruction to continue working on truck F94 was lawful and reasonable, and the applicant was required to comply. He deliberately defied the instruction.

[52] The applicant's lack of a history of misconduct did not render dismissal inappropriate. He had just over two years' service. The employer submitted, and the commissioner accepted, that the applicant's refusal to show remorse justified dismissal. It cannot be said that no reasonable decision-maker could have reached that conclusion.

[53] In this court, costs do not follow the result and are awarded in accordance with the requirements of law and fairness. Although his legal representatives raised new issues not placed before the commissioner, it was suggested that the review application was frivolous.

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

Order

1. The late filing of the review application is condoned.
2. The review application is dismissed.
3. There is no order as to costs.

T. Gandidze

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr N Mtshemla

Instructed by: Lingani and Partners Inc

For the Respondent: Mr C Athman

Instructed by: Clifford Athman Attorneys

LABOUR COURT