

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

[redacted]

Signature

05 November 2026
Date

THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

Case no: C363/2024

In the matter between:

SOUTH AFRICAN MUNICIPAL WORKERS UNION (SAMWU) obo MORENA DOUSE — **Applicant**

and

OUDTSHOORN LOCAL MUNICIPALITY — **First Respondent**

SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL — **Second Respondent**

FRANCOIS VAN DER MERWE (N.O.) — **Third Respondent**

Heard: **29 April 2026**

Delivered: **05 November 2026**

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Summary (Review – dismissal for misconduct – senior employee – long service – serious insubordination and false claim of assault - arbitrator's decision within the band of reasonable outcomes on the available evidence – application dismissed)

JUDGMENT

LAGRANGE J

Introduction

[1] This is an opposed application brought in terms of section 145 of the Labour Relations Act 66 of 1995 ('the LRA') to review and set aside an arbitration award issued on 19 July 2024 by the third respondent ('the arbitrator') under case number WCP012402, under the auspices of the South African Local Government Bargaining Council ('the SALGBC'). In his award, the arbitrator found that the dismissal of the applicant's member, Mr M Douse ('Douse'), was both substantively and procedurally fair.

[2] The applicant seeks an order setting aside the award and substituting it with an order that Douse was unfairly dismissed, together with retrospective reinstatement. The first respondent ('the municipality') opposes the application, maintaining that the award is unassailable and one that a reasonable arbitrator could have reached on the evidence before him.

Outline Chronology of Events Leading to Dismissal

[3] Douse commenced employment with the municipality in 2005. At the time of the events giving rise to this dispute, he occupied the post of Senior Superintendent in the Parks Division, earning a gross monthly remuneration of R41 563,71.

[4] Following an internal restructuring and redesign process, Douse was redesignated and instructed to take up a placement at the Bergoord section. Douse lodged an internal appeal against this placement. It is common cause that he had still not reported to his assigned post at Bergoord, despite several

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interactions with the Municipal Manager, Mr W Hendricks ('Hendricks'), who had directed him to take up his duties there.

[5] On 3 May 2023, Hendricks convened a meeting in his office with staff of the Human Settlements Department. Douse and two colleagues, who had also been affected by the placement exercise, went to the office to attend the meeting. Hendricks informed Douse that he was not permitted to attend because he was no longer attached to the Human Settlements Department. He instructed him to return to his workstation and to wait outside.

[6] After the departmental meeting concluded and the attendees had exited, Douse went into the Municipal Manager's office. An altercation between Douse and Hendricks followed in the foyer to the office. Hendricks again instructed Douse to leave and go to his workstation, gesturing toward the door. Douse asserted that Hendricks pushed him and laid hands on him. Douse also made statements referring to a former municipal manager, one Mr R Lottering ('Lottering').

[7] Immediately following the incident, Douse and his two colleagues lodged a grievance with the executive mayor, alleging that Hendricks had acted in a rude, threatening, and intimidating manner and had committed an assault on Douse. They asked for Hendricks' dismissal. Douse was subsequently charged with three counts of misconduct, namely: dishonesty (falsely alleging that Hendricks assaulted him by pushing him), intimidation (acting aggressively and uttering threats toward Hendricks), and gross insubordination (refusing a lawful instruction to return to his workstation and challenging Hendricks). Following an internal disciplinary hearing and an unsuccessful internal appeal, Douse was dismissed on 29 December 2023.

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Arbitrator's Award

Summary of Factual Findings

[8] The arbitrator found that Douse committed all three counts of misconduct levelled against him. On the charge of dishonesty, the arbitrator found on the evidence that Hendricks did not push or assault Douse. He found that, at most, there had been a gentle touch to the shoulder while Hendricks was gesturing toward the door to usher Douse out of the office, and that in context this contact could not constitute an assault. Accordingly, the arbitrator found that Douse's allegation of an assault was false and dishonest.

[9] In respect of the charge of intimidation, the arbitrator found that Douse confronted Hendricks in an aggressive, defiant, and heated manner. He found that Douse's statement warning Hendricks that he would see what would happen to him, coupled with the express invocation of Lottering , who had been charged and dismissed, constituted a threat.

[10] Regarding the charge of gross insubordination, the arbitrator found that Douse failed to comply with a lawful and reasonable instruction from the Municipal Manager to leave and return to his workstation at Bergoord. The arbitrator found that Douse chose to remain behind to confront Hendricks, and that this insubordination was gross in the light of the history of the matter and Douse's persistent refusal to take up his assigned placement.

[11] On the question of parity, the arbitrator found that the municipality did not act inconsistently in disciplining only Douse and not his two colleagues. The evidence demonstrated that the two colleagues walked away once the altercation commenced and played no active part in the confrontation, uttered no threats, and did not disobey instructions.

Summary of Arbitrator's Reasoning

[12] The arbitrator narrowed the true dispute before him by separating the allegations of misconduct from background organisational disputes. He reasoned that the arbitration was not about whether Douse's placement at Bergoord was fair, whether his appeal had merit, or whether his director had told him to attend the meeting. The critical inquiry was simply whether Douse

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committed the misconduct on 3 May 2023 by virtue of his statements and actions.

[13] In weighing the conflicting versions regarding the alleged assault, the arbitrator had regard to the balance of probabilities and the absence of corroboration. Not a single witness called by Douse confirmed that Hendricks pushed him. By contrast, the municipality's witness, Mrs Jones, stated that Hendricks merely touched Douse's shoulder while ushering him out, and she had spontaneously refuted Douse's assertion of assault at the time of the incident.

[14] In evaluating the threatening statements, the arbitrator rejected Douse's explanation that he was merely making a passing observation about the expiry of fixed-term contracts of municipal managers when he mentioned Lottering. The arbitrator reasoned that this version lacked the ring of truth and that an aggrieved employee engaged in an argument was, on the probabilities, issuing an intimidatory warning.

[15] In determining the appropriateness of the sanction of dismissal, the arbitrator considered Douse's long service since 2005 and clean disciplinary record, but concluded that these factors did not outweigh the gravity of the misconduct. He reasoned that insubordination toward the accounting officer, aggravated by threats and a false assault claim, materially compromised the relationship of trust, respect, and confidence required in the workplace. Consequently, from a risk management perspective, dismissal fell within the band of reasonable penalties.

Grounds of Review

[16] The applicant advances four main grounds of review against the award.

[17] Firstly, the applicant contends that the arbitrator committed a gross irregularity in finding Douse dishonest. It is argued that because it was common cause that Hendricks touched Douse on the shoulder, Douse held an honest and genuine belief that he had been assaulted, particularly while voices were raised. The applicant further criticizes the arbitrator for failing to make an adverse credibility

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finding against Hendricks, who maintained in his testimony that he never touched Douse at all.

[18] Secondly, the applicant argues that no reasonable arbitrator could have found that Douse's statements constituted a threat. It is submitted that the reference to Lottering was a statement of fact concerning an accounting officer who had been dismissed, and that what Douse meant, was that if his grievance succeeded, Hendricks would suffer the same fate. The applicant contends that the arbitrator failed to evaluate the statement holistically.

[19] Thirdly, the applicant argues that the arbitrator erred in finding that Douse committed gross insubordination. It is argued that Douse had reason to believe he was entitled to attend the meeting while challenging his placement, and that the interaction was characterized by mutual annoyance rather than gross defiance.

[20] Fourthly, the applicant challenges the sanction of dismissal as shockingly inappropriate, having regard to Douse's 18 years of service, clean record, and the fact that colleagues who signed the same grievance were not charged.

Evaluation

[21] It is trite that a review under section 145 of the LRA is not an appeal. The review court does not ask whether the arbitrator's decision was correct, but whether the conclusion reached is one that a reasonable decision-maker could reach on the evidence before them. In *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation & Arbitration & others*,[1] the Labour Appeal Court emphasized that the inquiry must be conducted on the totality of the evidence and not on a fragmented, piecemeal analysis that assumes the form of an appeal.

[22] The applicant's first ground of review is essentially a challenge to the arbitrator's evaluation of the conflicting versions and credibility. The charge of dishonesty was based on Douse's initial claim that Hendricks had aggressively

[1](2014) 35 *ILJ* 943 (LAC)

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pushed and shoved him out of the office. Not a single witness supported the version that a push occurred. The arbitrator accepted that Hendricks made light physical contact with Douse's shoulder while showing him out. The arbitrator was fully entitled to find that an administrative guiding gesture did not constitute an assault, and that Douse's escalation of the incident into a formal complaint of criminal conduct against the Municipal Manager was dishonest. That finding was reasonable on the material before the arbitrator.

[23] In respect of the threatening remarks, Douse admitted making the statement referencing Lottering and warning Hendricks that he would see what would happen to him. The arbitrator was faced with two competing interpretations of those words. Given that the words were uttered during a confrontational exchange in which Douse was shouting and angry, the arbitrator's conclusion that the statement was intended to intimidate Hendricks is a sensible and probable inference. An arbitrator is entitled to reject self-serving, benign reinterpretations of confrontational statements that lack credibility.

[24] Turning to the charge of insubordination, it is undisputed that Hendricks instructed Douse to leave and go to his workstation. Douse did not comply. Instead, he remained in the foyer to confront Hendricks and declared that he would not report at Bergoord. Whatever Douse's views may have been regarding his placement appeal, he was not entitled to defy a direct and lawful instruction issued by the head of the administration. Defiance of managerial authority can be established by a single act of defiance. In this instance, the defiance was displayed openly in front of office staff, and the arbitrator's categorization of the misconduct as gross was not unwarranted on the evidence.

[25] Finally, on the question of sanction, the arbitrator was required to take into account all the relevant circumstances. The parity argument raised by the applicant is without merit because the two colleagues in question were not similarly situated. They walked away when the altercation began and did not engage in insolent, threatening, or insubordinate conduct. While Douse had 18 years of service and a clean disciplinary record, long service did not immunise him against dismissal in circumstances where, as an employee in a senior

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supervisory position, he displayed sustained defiance, uttered threats, and fabricated an assault charge against the accounting officer. The arbitrator's finding that the employment relationship had been materially damaged and that dismissal was a fair sanction is entirely within the range of reasonable outcomes.

Conclusion

[26] In the circumstances, the applicant has failed to establish that the arbitrator committed any gross irregularity in the conduct of the arbitration or that the award is one that a reasonable arbitrator could not reach on the record. The application must accordingly be dismissed.

[27] On the question of costs, this Court has a broad discretion in terms of section 162 of the LRA. The applicant trade union litigated in good faith on behalf of its member, and the requirements of law and fairness do not warrant a costs order in this instance.

Order

1. The application to review and set aside the arbitration award issued by the Third Respondent under case number WCP012402 is dismissed.

2. There is no order as to costs.

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R Lagrange

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	--- E Geldenhuys from Macgregor Erasmus Attorneys Inc
For the Respondent:	--- A Erasmus
Instructed by:	--- Van Rooyen Inc

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