



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



Signature

18/09/2026

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 2685/21

In the matter between:

SEKHUKHUNE LOGISTICS

Applicant

and

TASWU OBO MUSA KGOPUTJO MAILA

First Respondent

COMMISSIONER P.D. SEOPELA

Second Respondent

NATIONAL BARGAINING COUNCIL FOR THE

ROAD FREIGHT & LOGISTICS INDUSTRY

Third Respondent

Heard: 12 August 2026

This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Labour Appeal Court website, and released to SAFLII. The date for hand-down is deemed to be on 18 September 2026.

JUDGMENT

HEIDEMAN, AJ

Introduction

- [1] This is an application to review and set aside the award of the Second Respondent (the arbitrator) dated 24 November 2021 (the award). The award was handed down following arbitration proceedings held by the Third Respondent under case number LPRFBC61806. The application is opposed by the First Respondent.

Factual Background

- [2] The First Respondent had been employed by the Applicant as a truck driver from October 2019 until his dismissal for misconduct on 21 September 2020.
- [3] The First Respondent had been charged with four counts of damaging the Applicant's property, namely the trucks that he had been driving, allegedly due to his negligence. It was alleged that the First Respondent was responsible for the following:
- 3.1 Damage to the prop shaft of truck SK025 on 16 June 2020 when the prop shaft fell to the ground;
 - 3.2 Damage to the prop shaft and gear box of truck SK025 on 4 August 2020;
 - 3.3 Damage to the diff of truck SK027 on 31 August 2020;
 - 3.4 Burning the clutch plate on truck SK023 on 10 September 2020.
- [4] The second and third charges seem to also relate to damage caused when the prop shaft fell to the ground.
- [5] Regarding the first 3 charges, it was alleged by the Applicant that the damage was caused when the First Respondent failed to hear the noise made by the loosening prop shaft prior to it falling. It was alleged that the First Respondent ought to have heard the noise that the prop shaft was making prior to it falling to the ground and stopped the truck accordingly.

- [6] In the case of the second charge, it is common cause that the First Respondent brought the truck to a stop over a distance of 9 metres after the prop shaft had fallen. It is alleged that driving the truck the 9 metres caused further damage to the prop shaft and to the gearbox. There does not appear to be any allegation that the First Respondent drove the truck after the prop shaft fell for charges one and three.
- [7] After a disciplinary hearing held on 16 September 2020, the First Respondent was found guilty of all charges. The presiding officer's reasoning in coming to this conclusion is sparse, but he seems to have concluded that the damage had been caused because the First Respondent was "not a good driver".

The award of the arbitrator

- [8] At the arbitration proceedings, the arbitrator heard the evidence of the Diesel Mechanic and Route Planner on behalf of the Applicant, and the evidence of the First Respondent on his own behalf.
- [9] In his award, the arbitrator considers the evidence presented in respect of each charge in turn and concludes that the Applicant had not sufficiently established a causal connection between the conduct of the First Respondent and the damage caused to the trucks.
- [10] It was common cause between the parties that the prop shafts of the trucks driven by the First Respondent had fallen before. The arbitrator concludes that it was not the responsibility of the First Respondent to have prevented the prop shafts from falling: it was the responsibility of the mechanics to tighten the prop shaft bolts. The arbitrator further found that truck drivers were not trained to identify the sound of loosening bolts on the prop shaft.
- [11] Regarding charge 2 where the First Respondent brought the truck to a standstill over 9 metres, the arbitrator found that it was reasonable for him to do so in order to stop the truck safely.
- [12] Regarding charge 4, the arbitrator accepted the First Respondent's version that he reported that the truck had been losing power and he had been told

that the clutch plate had been burnt. Also of relevance is the fact that the Applicant operates night and day and another driver drives the same truck at night. In this respect, it had not been established that the First Respondent had caused the burnt clutch plate due to his bad driving.

- [13] The arbitrator therefore found the dismissal to have been substantively unfair and ordered the First Respondent's reinstatement as well as 3 months' backpay.

Analysis

- [14] The Applicant would have this court review and set aside the award of the arbitrator on the basis that the arbitrator failed to apply his mind to the evidence before him and his findings were not those of a reasonable decisionmaker. No authority is provided for these propositions, but it seems implied that the Applicant is relying on the test laid out in the case of *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*.¹
- [15] In support of its contention, the Applicant refers this court to various parts of the transcribed record, mostly to the evidence of the Applicant's witnesses. But none of the references to the record made by the Applicant adequately address the arbitrator's finding of a lack of causation.
- [16] At best, the Applicant alleges that the First Respondent did not dispute his involvement in all four charges. But the reference to the record in support of this contention shows only that the First Respondent concedes that all damage to truck 025 was caused by the prop shaft falling. This is not the same as admitting his involvement in all four charges. On the contrary, the record shows that the First Respondent admitted the damage caused by the falling prop shafts, but he alleged that the prop shafts had fallen before, and he denied that the blame for prop shafts falling should be placed on him.

¹ 2008 (2) SA 24 (CC) at para 110.

- [17] The Applicant's own mechanics admitted in evidence that the prop shafts were held on by four bolts which required tightening from time to time, and that the prop shafts fell frequently.
- [18] Taken as a whole, the arbitrator's findings that the Applicant had not shown sufficient causation between the conduct of the First Respondent and the falling prop shafts on which charges one to three are based is entirely reasonable. The high watermark of the Applicant's case in this regard is a bald allegation from its mechanics that the First Respondent ought to know and identify the sound of loosening prop shaft bolts against the roar of a truck engine and know to stop the truck immediately on hearing the loosening bolts. The arbitrator found that the mechanics ought to have tightened the bolts, not the driver. Given the evidence before him, this is entirely reasonable.
- [19] Regarding the First Respondent bringing the truck to a standstill over 9 metres in charge two, the arbitrator's finding that it was reasonable is also supported by the version of the First Respondent: namely that it was necessary in order for the truck to be stopped safely.
- [20] The arbitrator's finding with regard to charge four is also fully supported by the fact that it is common cause between the parties that the truck in question was driven by another driver as the business operated day and night. On the facts before the arbitrator, it could not be shown that the burnt clutch plate was caused by the First Respondent's alleged "bad driving".

Progressive discipline

- [21] The final issue is that of progressive discipline. The arbitrator finds that the Applicant allowed four charges to accumulate between June and September 2020 before charging the First Respondent. The Applicant has alleged that a reasonable arbitrator would not have made this finding.
- [22] But the relevance of the arbitrator's finding on the lack of progressive discipline, read in context, is not a finding on procedural unfairness. Rather, it adds weight to the arbitrator's finding that the First Respondent could not have been expected to know what a loosening prop shaft sounds like.

- [23] Nowhere in the transcribed record or in the papers before this court does the Applicant dispute the arbitrator's finding that it did not do anything to help the First Respondent after the first incident. Had the Applicant applied progressive discipline and provided some training to the First Respondent after the first incident, this finding may have been different.
- [24] The arbitrator's finding on progressive discipline is therefore, once again, wholly supported by the record and adds weight to the arbitrator's finding that the First Respondent's dismissal was substantively unfair.
- [25] The Applicant has therefore failed to show that a reasonable arbitrator could not have come to the decision made by the Second Respondent based on the evidence before him.

Costs

- [26] The final issue to be considered is that of costs. The Applicant's case for review has not only failed, but it is also sparsely and poorly set out. This on its own may not be sufficient to warrant a costs order, but there are another two factors which give this court pause to consider it.
- [27] Firstly, it bears mentioning the timeline of this matter. The First Respondent was dismissed on 21 September 2020. The arbitrator found the dismissal substantively unfair and awarded the First Respondent reinstatement on 24 November 2021. This review application was brought in time, and all papers including the replying affidavit were filed by 6 July 2022. But the Applicant failed to file heads of argument and apply for a hearing date. It was the First Respondent's legal representatives who applied for a hearing date on 9 February 2023 in order to bring finality to the matter. The Applicant then only filed heads of argument on 28 March 2023.
- [28] Making matters worse, the Applicant has not provided this court with security in terms of subsections 145(7) and (8) of the Labour Relations Act 66 of 1995 (LRA). Given the reinstatement award, the Applicant ought to have furnished security equivalent to 24 months' remuneration.

- [29] No application has been made by the Applicant to exempt it from furnishing security. Rather, the Applicant has included prayers in its Notice of Motion asking that the award be stayed pending the outcome of the review application and that “the Applicant be exempt in terms of Section 145(8)(b) of the Act, from furnishing security”. In support of this prayer, the deponent to the Applicant’s founding affidavit baldly states “[t]here is no reason for the Applicant to be denied any opportunity of utilising funds for its day to day operations”. There is no other averment which attempts to justify its exemption from the statutory security requirement.
- [30] But failing to provide security and asking retrospectively that the arbitrator’s reinstatement award be suspended pending the outcome of the review application in the review application itself has made the entire issue academic: the award has effectively been stayed and the Applicant has exempted itself from furnishing the security required in the Act simply by its conduct and failing to adhere to the prescripts of the LRA.
- [31] In the meantime, the First Respondent has been unable to enjoy the benefits of his reinstatement award for almost five years. He has had to obtain legal representation to defend a hopeless review application, and one where the Applicant has been dilatory in obtaining a hearing date. Then, adding further insult to injury, the First Respondent does not even have the benefit of security having been provided by the Applicant for two of the five years’ worth of backpay owed to him while the Applicant has granted itself a stay in the enforcement of the award.
- [32] In *Panorama Park Retirement Village v Commission for Conciliation Mediation and Arbitration and Others*² this court lamented this very practice as an affront on the very purpose of the provisions of section 145(7) and (8) of the LRA – that purpose being “to dissuade employers in particular from bringing frivolous review applications with no prospects of success and ensure that they are timeously and expeditiously prosecuted”. In that case the employee had been

² (2020) 41 ILJ 1200 (LC) paras 8-9.

represented by their union, and on that basis the court found no reason to order costs against the employer.

- [33] More recently, however, the Labour Appeal Court has had occasion to provide guidance on the interpretation of sections 145(3), (7) and (8) of the LRA in the case of *Italsafaris CC t /a Viva Safaris v NUFBWSAW obo Members and Others*.³
- [34] In this case, the LAC confirmed the principles established in *City of Johannesburg v SA Municipal Workers Union on behalf of Monareng and another*,⁴ namely that should an employer wish to suspend the enforcement of an arbitration award pending the outcome of a review application and be absolved from furnishing security, an application must be made to the Labour Court and a proper case must be made out. The court held that it follows that, as a general rule, an employer is obliged to provide security in accordance with section 145(8) of the LRA unless the Labour Court orders differently.
- [35] The LAC in *Italsafaris* further considered the intention of the legislature behind the introduction of section 145(7) and (8) as articulated in the memorandum to the Labour Relations Amendment Act 6 of 2014, finding that the purpose is “to dissuade employers from launching unmeritorious review applications aimed at hindering or delaying compliance with arbitration awards, and...to engender prompt prosecution of review applications”.⁵
- [36] The conduct of the Applicant in this matter appears to be precisely the mischief the amendment sought to address. And yet the Applicant has managed to circumvent the application of sections 145(7) and (8) without consequence – paving the way for other employers to do likewise and for the purpose of the amendment to be completely undermined. This cannot be allowed.
- [37] In these circumstances, law and fairness dictate that a punitive costs order is warranted.

³ (2024) 45 ILJ 2004 (LAC).

⁴ (2019) 40 ILJ 1753 (LAC) paras 7-9.

⁵ At paragraphs 16 and 17.

[38] In the result, the following order is made:

Order

1. The review application is dismissed.
2. The award of the Second Respondent dated 24 November 2021 is upheld in that the Applicant is ordered to re-instate the First Respondent in its employ on terms no less favorable to him than those that governed the employment relationship immediately prior to his dismissal, with retrospective effect, and to pay the First Respondent backpay equivalent to three months' salary.
3. The First Respondent is to tender his services to the Applicant on 20 October 2026.
4. The remuneration due to the First Respondent as a result of the retrospective operation of the reinstatement together with the three months' backpay awarded by the arbitrator amounts to R 671,000.00 (six hundred and seventy-one thousand rand) before deductions. This is calculated as 58 months for the period 20 December 2021 to 20 October 2026, together with the additional three months' backpay awarded by the arbitrator, totalling 61 months, at a monthly salary of R11,000.
5. The amount in order 4 above is to be paid to the Third Respondent before 20 October 2026.
6. The Applicant is to pay the costs of the review application on the attorney and client scale.



V. J. Heideman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Yusuf Nagdee Attorney

For the First Respondent : Higgs Attorneys Inc

LABOUR COURT