IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1884 /2022

In the matter between:

ALBERT BRANDON SWART	**Applicant**
and	
T4 COMPUTER SYSTEM CC T/A FREEWAY FLEET MAINTENANCE	**First Respondent**
COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION	**Second Respondent**
COMMISSIONER LORRAINE MALOPE	**Third Respondent**

Heard: **20 May 2025**

Delivered: **19 June 2025**

Summary: CCMA arbitration proceedings – review of proceedings - review test considered – distinction between review and appeal restated. The Applicant's case falls short of the stringent threshold required for this Court to interfere with the Award. Review application dismissed.

JUDGMENT

CITHI, AJ

Introduction

[1] This is an application, in terms of section 145 of the Labour Relations Act[2] (LRA), brought by Albert Brandon Swart (Applicant) to review and set aside an arbitration award issued by Commissioner Lorraine Malope (Commissioner) dated 10 August 2022 and under case number GAJB7771-22 (Award), under the auspices of the Second Respondent (CCMA). The First Respondent (Company) does not oppose this application. In terms of her award, the Commissioner found that the Applicant's dismissal was procedurally and substantively fair.

Background facts

[2] The background facts will only be recounted to the extent that they are relevant to this application and the Applicant's grounds of review. The Company provides a comprehensive software system to manage fleet and other digital solutions. The Applicant commenced his employment with the Company on 1 March 2013. At the time of his dismissal, the Applicant was employed as an Implementation Manager, exclusively managing the relationship between the Company and Unitrans Passenger - reporting directly to Jonathan Ronaldo (Ronaldo), Head of Business Development and Implementation – Africa.

[3] Unitrans Passenger managed fuel as a stocked item. The Applicant was responsible for, *inter alia*, implementing a fuel management software system for Unitrans Passenger and providing training to it on the new system. The Company provided a training curricular document to all its consultants, which contained the fuel

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[2] Act 66 of 1995, as amended.

modules to reference during training. Crucial to the implementation of this project was the functionality called dip reading, which Unitrans Passenger required for reconciling, on a daily, weekly, or monthly basis, the amount of fuel held in inventory versus the amount of fuel that had been issued. As part of the implementation, the employee was required to provide training to Unitrans Passenger on dip reading.

[4] It is common cause that Unitrans Passenger operated numerous depots across the country. The initial phase of a new software implementation project was strategically launched at the Mega Express depot, a key facility within Unitrans' extensive network. This implementation aimed to enhance operational efficiency and streamline processes relating to fuel management. It was envisioned that this successful implementation would then be rolled out to other depots throughout the Unitrans Passenger network, further enhancing operational efficiency and streamlining fuel management processes nationwide. The implementation of the project was scheduled to go live on 1 April 2022.

[5] For this ongoing project, the implementation manager was responsible for accurately logging their billable hours on the Company's system called Zoho Project. Logging hours accurately was vital because Unitrans Passenger was quoted based on the estimated time for the system implementation and training. This project represented a capital expense for the client, not an operational one. Thus, precise time tracking ensured that Unitrans Passenger was billed appropriately, avoiding any discrepancies and maintaining financial transparency. It allowed the Company to meticulously monitor the actual time invested in the implementation and provided a clear record of resource allocation for the project.

[6] The failure to accurately log hours spent on the project could directly result in the Company losing significant financial resources, as unbilled time translates into unrecovered costs and potentially reduced profitability. Additionally, the Company further required the implementation manager to log their non-billable hours in order to maintain a comprehensive daily overview of their activities.

[7] The common cause evidence demonstrated that Ronaldo issued a clear

instruction to all implementation managers, including the Applicant, stipulating the regular recording of billable hours on Zoho Project for the purpose of accurately billing clients. Concurrently, it was commonly accepted that the Applicant had previously logged his billable hours whilst rendering services to other clients.

[8] On 14 April 2022, the Applicant was notified to attend a disciplinary hearing that was scheduled on 21 April 2022 to answer three allegations of misconduct levelled against him. The first charge pertained to the Applicant's failure to follow an instruction to log billable hours on the Unitrans Passenger project, which caused a monetary loss to the Company. It was further alleged that the Applicant failed to deliver the project on the stipulated date of 1 April 2022, as was agreed with Unitrans Passenger.

[9] The second charge related to dishonesty, specifically alleging that the Applicant falsely claimed to have trained Unitrans Passenger to use a stocktake when doing dip reading. This functionality was not part of the Company's offering, nor was it available of the Company's modules. The third charge asserted that the Applicant brought the Company's name into disrepute, given that the two preceding charges concurrently led to Unitrans Passenger expressing a desire to withdraw their business from the Company.

[10] At the conclusion of this disciplinary hearing, the Applicant was found guilty of all the above charges and was subsequently dismissed on 26 April 2022. Thereafter, the Applicant referred an alleged unfair dismissal dispute to the CCMA in terms of section 191 of the LRA for conciliation, failing that, arbitration.

[11] The arbitration between the parties that resulted in the Award being issued was held on 7 and 28 July 2022.

Arbitration award

[12] The main thrust of the Commissioner's reasoning in finding that the Company discharged its onus to prove that the Applicant was guilty of the charges levelled

against him is contained at paragraphs 28, 29 and 30 of the Award. At paragraph 29, the Commissioner considered the allegations pertaining to the Applicant's failure to follow a lawful instruction to log billable hours to the Unitrans Passenger project, which caused monetary loss to the Company. This charge also contained allegations that the Applicant failed to meet the deadline to go live on 1 April 2022 as per the undertaking given to Unitrans Passenger.

[13] The Commissioner observed that the Applicant conceded that he failed to log billable hours. The explanation the Applicant initially provided for this was a lack of training. However, the evidence adduced demonstrated that the Applicant had previously logged billable hours on the system. The Applicant's further defence was that he could not log billable hours because of the workload. The Commissioner observed that this defence could not avail the Applicant because he was only allocated Unitrans Passenger as a client after he complained about his workload. Accordingly, the Commissioner rejected the Applicant's defences.

[14] In respect of charge 2, the Commissioner reasoned that the Applicant admitted that he was not honest when he claimed that he had given training to Unitrans Passenger to use a stocktake to conduct dip reading. The Commissioner concluded that even if it was true that the Applicant had been advised by one Patrick Tandy that it was possible to use a stocktake to conduct a dip reading (a non-existent functionality), the claim that he provided such training to Unitrans Passenger was false. The Commissioner observed that the email received from Unitrans Passenger's Management underscored the client's dissatisfaction with the service from the Applicant.

[15] The Commissioner thus found the Applicant guilty of the misconduct for which he was dismissed. In dealing with the question of an appropriate sanction, the Commissioner concluded that dismissal was justified in the circumstances of this case.

[16] The Commissioner proceeded to deal with the Applicant's challenge on the procedural fairness of his dismissal. At paragraph 25, the Commissioner found that

the Applicant's allegations of bias against the chairperson lacked substance. During the arbitration proceedings, the Applicant failed to cross-examine the chairperson. Furthermore, the reasons the Applicant advanced for failing to fully participate in the disciplinary hearing were not based on any evidentiary foundation.

[17] The Applicant appears to have taken a stance that the disciplinary hearing was a tick box exercise because he was offered a mutual separation agreement before the disciplinary hearing. The Commissioner concluded that the Applicant was provided with the pack containing all the evidence before the commencement of the disciplinary hearing. Therefore, the Applicant could have asked for clarity if he did not understand the case against him. The Commissioner dismissed the Applicant's procedural challenge.

[18] Ultimately, the Commissioner concluded that the Applicant's dismissal was procedurally and substantively fair.

Grounds of review

[19] The Applicant contends that the Commissioner came to a conclusion that no reasonable decision maker could have come to, having regard to the material placed before him. In particular, the Applicant takes issue with the Commissioner's conclusion that he was guilty of failing to follow a reasonable and lawful instruction to log his billable hours, which resulted in a monetary loss to the Company.

[20] The Applicant further contends that the Commissioner committed a reviewable irregularity in dismissing his evidence relating to Patrick Tandy, which, according to the Applicant, showed that he was acting under his (Patrick Tandy) senior's instruction, who was an expert in the field. The Applicant contends that he provided the training in good faith. Accordingly, so reasoned the Applicant, his conduct in respect of charge 2 could not be construed as dishonesty.

[21] The Applicant further challenged the Commissioner's conclusion in respect of the procedural fairness of his dismissal.

The Review Test

[22] The applicable test on review in applications such as this one is now trite. In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[3] the Constitutional Court held that *"the reasonableness standard should now suffuse s 145 of the LRA, and that the threshold test for the reasonableness of an award was: … Is the decision reached by the Commissioner one that a reasonable decision – maker could not reach? …"*[4]

[23] In *Glencore Operations South Africa (Pty) Ltd v Taala and Others*[5], the Labour Appeal Court (LAC) per Van Niekerk JA restated the threshold for interference with a commissioner's arbitration award:

> 'The hurdles that the appellant was required to overcome on review were to establish some misdirection on the part of the arbitrator in his assessment of the evidence and, secondly, that the factual conclusions that he drew were untenable, rendering the award one to which no reasonable decision–maker could come. Implied in the Labour Court's finding is that the arbitrator had regard to relevant evidence, did not take irrelevant evidence into account, and arrived at a conclusion that fell within the bounds of reasonableness.'[6]

[24] In *Makuleni v Standard Bank of SA (Pty) Ltd & others*[7] the LAC per Sunderland JA indeed reminded this Court of the crucial distinction between a review and an appeal. The case highlighted instances where the Labour Court was "*misled into treating the case for a review as if it were an appeal"*. The learned Judge observed:

> 'The court asked to review a decision of commissioner must not yield to the seductive power of a lucid argument that the result could be different. The luxury of indulging in that temptation is reserved for the court of appeal. At the heart of the exercise is a fair reading of the award, in the context of the body of

[3] (2007) 28 ILJ 2405 (CC); [2007] ZACC 22.
[4] Ibid at para 110.
[5] [2025] ZALAC 23; [2025] 6 BLLR 559 (LAC).
[6] Ibid at para 25.
[7] (2023) 44 ILJ 1005 (LAC); [2023] 4 BLLR 283 (LAC).

evidence adduced and an even–handed assessment of whether such conclusion are untenable. Only if the conclusion is untenable is a review and setting aside warranted.'[8]

[25] In sum, this Court's review powers are limited to scrutinising the rationality and reasonableness of the decision–making process and outcome. They do not extend to it, re-adjudicating the merits of the case that was before a commissioner as if it were an appeal.

Analysis

[26] The evidence before the Commissioner unequivocally demonstrated that the Applicant failed to log billable hours for the implementation of the Unitrans Passenger project between the period 16 February to 25 March 2022. The total hours not logged and/or billed during this period equally 13:5 hours.[9] On the actual project timesheet between 1 February and 31 March 2022, the Applicant logged 18:12 billable hours[10]. During the same period (1 February – 31 March 2022), the Applicant logged 8:57 non–billable hours. His Manager, Ronaldo, logged 140:35 non–billable hours for the same period. Graham Klawansky (Klawansky), one of the Applicant's colleagues, logged 68:17 non–billable hours during the same period[11].

[27] The Applicant and Stefanus Willie (Willie) confirmed during their testimonies that Ronaldo gave them an instruction to log their billable hours. The existence, reasonableness and lawfulness of the instruction are common cause. In his defence, the Applicant attributed his failure to log his billable hours during the period in question to two primary factors: the absence of clear Standard Operating Procedures (SOPs) for billing at that time, and being overwhelmed by the substantial workload.

[28] In the Award, the Commissioner duly considered the Applicant's explanation

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[8] Ibid at para 4.
[9] See page 56 – 67 (Annexure B) of the paginated notice in terms of rule 7A (6).
[10] See page 68 – 69 (Annexure C) of the paginated notice in terms of rule 7A (6).
[11] See page 53 – 55 (Annexure A) of the paginated notice in terms of rule 7A (6).

regarding his failure to log billable hours but ultimately rejected it for two key reasons. Firstly, the evidence before him demonstrated that the Applicant had logged billable hours on previous occasions while working as an Implementation Manager on other projects. Secondly, the Commissioner found that the Applicant could not credibly complain of workload pressure, given that he was only responsible for the Unitrans Passenger project at the time.

[29] The Applicant's defence of being overwhelmed by work is, in my view, unsustainable on the objective facts. The actual project timesheet indicates the Applicant logged only 18.12 billable hours for the period 1 February to 31 March 2022. This is further compounded by the evidence showing that the Applicant logged a mere 8:57 non-billable hours for the period in question. The Applicant's prior record of logging both billable and non-billable hours, as demonstrated above, undermines his assertion that a SOP was necessary to comprehend the billing process. I am of the view that the Applicant used the absence of the SOP (for non-billable hours) as a diversion or pretext. Thus, the Commissioner's conclusion that the Applicant was guilty of failing to follow a lawful and reasonable instruction directing him to log billable hours is connected to the evidence (mostly common cause) adduced during the arbitration proceedings.

[30] The Applicant's challenge on the Commissioner's findings in respect of charge 2 is, in my view, equally without merit. On the common cause facts, the Applicant falsely claimed that he provided training to Unitrans Passenger to use a stocktake when doing dip reading. This functionality is not available on the Company's modules. Seen thus, the Applicant could not have trained Unitrans Passenger on a non-existent software functionality. During the arbitration proceedings, when questioned about his false claim, the Applicant was unable to provide a coherent explanation for his assertions. Self-evidently, the Applicant's statement was laden with dishonesty. Accordingly, the Commissioner's conclusion that the Applicant was guilty of this charge is consistent with the evidence that was before him.

[31] In his heads of argument, the Applicant contends that the Commissioner committed a reviewable irregularity in failing to appreciate that he acted on the

instruction of his superior (Patrick Tandy), who had advised him that it was possible to use a stocktake to do dip reading. Accordingly, so the argument goes, he provided the training in good faith and therefore cannot be guilty of dishonesty. This argument is, in my view, fundamentally illogical. The gravamen of the Company's complaint against the Applicant in this regard was his alleged provision of training to Unitrans Passenger on a non-existent functionality. The alleged instruction, pertaining to using a stocktake to do dip reading, does not in any way mitigate against the substance of the complaint against the Applicant. Even on the Applicant's own version, he was never instructed to lie about providing actual training to Unitrans Passenger on using a stocktake to do a dip reading.

[32] In any event, it was never the Applicant's case during the arbitration proceedings that such an instruction was given, nor was this version put to any of the Company's witnesses. That being the case, this manifestly contrived version ought to be dismissed.

[33] The Applicant further takes issue with the Commissioner's findings that his conduct brought the Company's name into disrepute. In the Award, the Commissioner reasoned that Unitrans Passenger's dissatisfaction with the service rendered was palpable from the email dated 14 April 2022. It was common cause that the Applicant was the responsible Implementation Manager for the Unitrans Passenger project. It is further common cause that after the meeting of 30 March 2022, it was apparent that the deadline of 1 April to go live was not attainable.

[34] The missed deadline of 1 April for the system to go live caused significant concern for the Unitrans Passenger's management, which prompted them to put the Company on terms to deliver the project by 1 May 2022 or face cancellation. The situation was compounded by the inadequate training that the Applicant had provided to Unitrans Passenger regarding the usage of the system. Thus, the conclusion reached by the Commissioner is perfectly justifiable on the above facts.

[35] During their opening statement, the Applicant's representative at the arbitration articulated the Applicant's procedural challenges leading to his dismissal. However,

the Applicant's representative then inexplicably decided not to cross-examine the chairperson of the disciplinary hearing. This was consistent with the Applicant's approach during the disciplinary hearing, wherein he decided not to participate. That being the case, the Company's evidence on this aspect is incontrovertible. In any event, the Commissioner considered the Applicant's procedural challenge at paragraph 35 and concluded, reasonably so, that it was devoid of merit.

[36] The Applicant's contention that the Company's decision to propose a mutual separation agreement before the commencement of the disciplinary hearing meant that the disciplinary hearing was a tick box exercise is unconvincing. During the arbitration proceedings, Ronaldo testified that the Company opted for this approach because of the Applicant's service with the Company. I am of the view that the Commissioner's conclusions on the Applicant's procedural challenges are tenable.

[37] This brings me to the Commissioner's findings on sanction. Having set out factors that are relevant to the assessment of an appropriate sanction at paragraph 31 of the Award, the Commissioner concluded at paragraph 34:

> 'In this case, the Applicant showed no remorse or appreciation for the wrongfulness of his actions. Instead, he argued that the respondent had premediated his dismissal when it offered him a mutual separation agreement. But Mr Ronaldo explained that the offer was made in response to his failure to log billable hours. To avoid the potential negative shadow a dismissal could cast on him, it made the offer out of kindness. It is important to note that the mere existence of the offer in itself does not negate the existence of the misconduct nor taint the fairness of the dismissal. The fact remains that he committed the misconduct and although he had a clean disciplinary record, due to the seriousness of dishonesty and his lack of remorse, I find that the sanction was appropriate. Therefore, the dismissal was substantively fair.'

[38] It is trite that the determination of the fairness of the sanction-imposed entails

making a value judgment over which reasonable decision–makers will often differ[12]. The Commissioner's conclusion above falls within the band of reasonable decisions that a reasonable decision-maker faced with the same facts could reach. In my view, the Commissioner's conclusion above is further fortified by the fact that the Company suffered a monetary loss as a result of the Applicant's failure to log billable hours between the period 1 February – 31 March 2022.

[39] In addition, the Company's capacity to effectively utilise its resources was compromised due to the Applicant's failure to log his hours. This deficiency in record – keeping, in my view, directly impacts resource allocation and strategic planning. On the objective facts, the Applicant's conduct undeniably led to the breakdown of the employment relationship.

[40] In my assessment, once the Company discharged its onus of proof (as it did in this case) by demonstrating the employee's culpability for the alleged misconduct, the proportionality and fairness of the ensuing sanction of dismissal will inherently fall within the range of reasonable decisions available to the decision-maker - given the context and gravity of the employee's conduct. Accordingly, I am unable to conclude that the Commissioner's ultimate conclusion that dismissal was fair is unreasonable and susceptible to review.

Conclusion

[41] For all the reasons set out above, I am of the view that the Applicant has failed to demonstrate grounds of review to justify this Court's interference with the Commissioner's findings on guilt and sanction. The arguments advanced by the Applicant in support of this application do not, in my assessment, demonstrate any irregularity, irrationality, unreasonableness, or fundamental misconception in the Commissioner's ultimate conclusion. The Applicant's case thus falls short of the stringent threshold required for this Court to interfere with the Award.

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[12] See: *Quest Flexibility Staffing Solutions (Pty) Ltd (a Division of Adcorp Fulfilment Services (Pty) Ltd v Lebogate 44* [2015] 2 BLLR 105 (LAC) at para 25.

[42] Accordingly, I make the following order:

Order

1. The Applicant's review application is dismissed.
2. There is no order as to costs.

D. Cithi
Acting Judge of the Labour Court

Representatives:

For the Applicant:	Advocate A Grobler instructed
Instruct by:	Linton Van Niekerk Attorneys
For the First Respondent:	No opposition