



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

03/08/2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1580/23

In the matter between:

MAHIKENG LOCAL MUNICIPALITY

Applicant

And

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL (SALGBC)

First Respondent

DAVID SMITH N.O.

Second Respondent

IMATU obo L.L DABULA

Third Respondent

Heard: 30 July 2026

Delivered: 30 July 2026

Written Judgement delivered on: 31 July 2026

EX-TEMPORE JUDGMENT

MAHOMED, AJ

Introduction

[1] This is an application in terms of section 145 of the Labour Relations Act 66 of 1995 (the LRA)¹, to review and set aside an arbitration award issued by the Second Respondent, David Smith N.O. (the commissioner), under the auspices of the First Respondent, the South African Local Government Bargaining Council (SALGBC). In the award, the commissioner found that the dismissal of Mr L L Dabula (the employee), a fire prevention officer employed by the Applicant for approximately fifteen years, was substantively unfair, and reinstated him retrospectively.

[2] The employee was dismissed following a disciplinary enquiry on three charges: first, that he contravened the Code of Conduct for Staff Members in Schedule 2 to the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act)², by being a director of a private company without the prior consent of the council; second, that he solicited, or intended to solicit, private payment from a member of the public (the complainant) in connection with the issuing of a fire clearance certificate she required in order to occupy premises as student housing; and third, that he exceeded his authority by signing and issuing a venue clearance certificate in respect of a public venue, Dika Park.

[3] The dispute was referred to arbitration under the SALGBC. The commissioner found the employee not guilty on all three charges, found the dismissal substantively unfair, and ordered the employee's retrospective reinstatement. The Applicant now seeks to review that award.

The test on review

[4] An arbitration award is reviewable if the decision reached is one that a reasonable decision-maker could not reach on the material that was before the commissioner. The review court examines the merits of the matter "in the round", and material errors of fact, or the weight attached to particular evidence, will only found a review if their effect is to render the ultimate outcome unreasonable³.

Charge 1: the undisclosed directorship

¹ Act 66 of 1995.

² Act 32 of 2000.

³ See *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* (2007) 28 ILJ 2405 (CC); *Herholdt v Nedbank Ltd* [2013] 11 BLLR 1074 (SCA) at paras 12 – 25.

[5] It is common cause that the employee was, at the relevant time, a registered director of a private company intended for use in his wife's farming enterprise, and that he later resigned as director in her favour. It is also common cause that he neither sought nor obtained the prior consent of the council to hold that directorship, and that he had not, before the investigation, disclosed it.

[6] The commissioner found the employee not guilty on two bases: first, that the charge as put concerned "conducting a business" rather than a failure to disclose an interest; and second, that there was no evidence that the company had traded or conducted any business — it was, on the evidence, a dormant company that had filed no annual financial statements and had issued no certificates and done no work.

[7] Schedule 2 to the Systems Act, under the heading "Personal gain", provides in section 4(2)⁴ that, except with the prior consent of the council of a municipality, a staff member may not — (a) be a party to a contract for the provision of goods or services to the municipality, or for the performance of any work for the municipality, otherwise than as a staff member; (b) obtain a financial interest in any business of the municipality; or **(c) be engaged in any business, trade or profession other than the work of the municipality.**

[8] The difficulty with the commissioner's reasoning is that section 4(2)(c)⁵ does not require that the business in question be actively trading and does not qualify "business" with the word "active". The Third Respondent's argument, both before the commissioner and in this Court, in substance asks that the word "active" be read into the section. That is not a permissible exercise of interpretation: neither a commissioner nor this Court may import into a provision a qualification the legislature has not enacted. On a plain reading, being registered as a director of a company is, without more, being "engaged" in a business within the meaning of section 4(2)(c)⁶, whether or not that company was, at the time, conducting active trade.

[9] Nor can the employee's asserted ignorance of the obligation to obtain consent, or to disclose, assist him on the question of whether a contravention occurred, as opposed to the question of an appropriate sanction for it. He had, in his letter of

⁴ Act 32 of 2000.

⁵ Act 32 of 2000.

⁶ Act 32 of 2000.

appointment dated 16 January 2008, undertaken in writing to familiarise himself with, and abide by, the Systems Act, his conditions of employment, the relevant staff regulations, and the disciplinary code. *Ignorantia rex non excusat*. The evidence of the investigator, Mr Malo, that management had failed to cascade the disclosure requirement to staff below senior management level, and that the employee was accordingly unaware of the practice of annual declarations, bears on the fairness of any sanction for the contravention; it does not bear on whether the contravention occurred.

[10] I am accordingly satisfied that the finding that the employee was not guilty of any contravention arising from the undisclosed directorship is not one a reasonable decision-maker, applying section 4(2)(c) of Schedule 2 correctly, could have reached on the material before the commissioner. To that extent, the award falls to be interfered with.

Charges 2 and 3

[11] I am not persuaded that the same can be said of the commissioner's findings on charges 2 and 3.

[12] On charge 2, the complainant did not testify at the arbitration, and the email she is alleged to have sent was never produced. The Applicant's own investigator, Mr Malo, found her version improbable and untruthful. It is common cause that the employee did not, in the end, issue her with a fire clearance certificate — that was done by the Chief of Fire. What was placed before the commissioner was the employee's own evidence, unchallenged in cross-examination, that he told the complainant only that private consultants typically charged roughly R1 000 to R2 000, and that the municipality could not guarantee a turnaround over a weekend or public holiday. There was accordingly a rational and evidential basis for the commissioner's finding that this charge was not established, and I can find no basis to interfere with it.

[13] On charge 3, the uncontested evidence was that the Applicant had no standard template for a venue clearance certificate, that the employee was in the process of drafting one, that such a certificate served only to confirm that an open space was safe for use and did not require an engineering report, and that the employee issued the certificate for Dika Park using his own established template, in his capacity as a fire

prevention officer and using the resources of his office — not in a private capacity, and not for private gain. He accepted from the outset that this may have been an administrative error and undertook to be guided differently going forward. On this evidence, a finding that the employee acted in good faith, in an area of genuine institutional uncertainty as to procedure, rather than dishonestly or for personal gain, was reasonably open to the commissioner.

[14] See *Impala Platinum Ltd v Jansen and Others*⁷, where the Labour Appeal Court emphasised that a commissioner's factual and credibility findings, reasonably arrived at on the evidence actually before him, are not lightly to be disturbed on review merely because another decision-maker might have weighed the evidence differently.

Consistency

[15] The Applicant's submission that consistency was not properly raised, and need not therefore have been considered at all, cannot be accepted as a complete answer where, as here, no credible evidence of any comparable, unpunished contravention by another employee was placed before the commissioner in any event. In the result, the consistency principle does not materially assist either party: there was simply no comparator case for the commissioner to weigh. However, the factors set out in *Sidumo*, guide a commissioner in determining the fairness of the sanction.

Sanction

[16] What remains, then, is a single, limited contravention: the employee was, without the prior consent of the council and without having disclosed it, a registered — albeit non-trading — director of a private company. He was not shown to have used his position for private financial gain, to have acted dishonestly, or to have competed with the business of the Applicant. He had approximately fifteen years of unblemished service. He was not suspended at any stage during the investigation or the disciplinary process and continued to perform the full duties of a fire prevention officer — including the very inspection and certification functions said to be compromised — throughout. The Applicant's own conduct in allowing him to continue in that role sits uneasily with the submission that the trust relationship had irretrievably broken down. And the failure

⁷ 2017 (4) BLLR 325 (LAC).

to disclose, such as it was, occurred against the backdrop of the Applicant's own failure to cascade its disclosure requirements to staff below senior management level, a fact confirmed by its own investigator.

[17] In these circumstances, dismissal was a disproportionate response to the one contravention actually established. The commissioner's ultimate conclusion — that the sanction of dismissal rendered the dismissal substantively unfair — was, in the result, one a reasonable decision-maker could reach, notwithstanding that his reasoning on charge 1 was, for the reasons given above, flawed. The misdirection on charge 1 does not, of itself, render the outcome on substantive fairness unreasonable.

Remedy

[18] The position is different in relation to remedy. Section 193(2) of the LRA⁸ requires reinstatement in the ordinary course, but an order of reinstatement may be made to operate from any date not earlier than the date of dismissal — retrospectivity is a matter for the exercise of discretion, not an automatic incident of a finding of substantive unfairness. Given that the employee was, on the record, guilty of a contravention of section 4(2)(c) of Schedule 2 to the Systems Act⁹, however limited its consequences, it was unreasonable for the commissioner to have exercised that discretion in favour of full retrospective reinstatement with full back pay, as though the employee bore no responsibility whatever. The award is reviewable, and falls to be substituted, only to that limited extent.

Costs

[19] Both parties have achieved a measure of success. Applying the requirements of law and fairness in terms of section 162 of the LRA¹⁰ and having regard to the continuing employment relationship between the parties, I make no order as to costs.

[20] In the result, I make the following order:

⁸ Act 66 of 1995.

⁹ Act 32 of 2000.

¹⁰ Act 66 of 1995.

Order

1. The arbitration award of the Second Respondent, issued under arbitration case number NWD 122206, is reviewed and set aside.
2. The award is substituted with the following: the dismissal of the employee, L L Dabula, was substantively unfair.
3. The Applicant is ordered to reinstate the employee, L L Dabula, into its employment on terms and conditions no less favourable than those that applied prior to his dismissal, such reinstatement not to operate retrospectively, and is without any order for backpay.
4. There is no order as to costs.

**MAHOMED AJ**

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Kwaro

Instructed by: Motshabi and Associates Inc Attorneys, Mahikeng

For the Third Respondent: Denise Retsinas, IMATU Official

Instructed by: IMATU o.b.o L.L Dabula.