



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT CAPE TOWN**

Case no: C617/2022

In the matter between:

CITY OF CAPE TOWN

Applicant

and

IMATU obo ROBIN MAHARAJ

First Respondent

ROBIN MAHARAJ

Second Respondent

COMMISSIONER GORDON EDWARDS N.O.

Third Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Fourth Respondent

Date of Hearing: 29 January 2025

Date of Judgment: 4 June 2025

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 and time for handing down judgment is deemed to be 10h00 on 4 June 2025.

Summary: (Application to review an arbitration award – unfair labour practice relating to promotion – candidate meeting shortlist requirements but not shortlisted – award reasonable – application dismissed).

JUDGMENT

LESLIE AJ

Introduction

- [1] This an application to review and set aside the arbitration award (“the award”) issued by the third respondent (“the arbitrator”) under the fourth respondent’s case number WCM072206 on 11 October 2022.
- [2] In the award, the arbitrator held that the applicant (“the City”) had committed an unfair labour practice in relation to promotion by failing to shortlist the second respondent (“Maharaj”) for a promotion post. The arbitrator awarded compensation equal to two months’ remuneration in the amount of R188000.
- [3] The dispute is a narrow one. The relevant facts may be summarised as follows:
- 3.1 Maharaj is employed by the City as a Principal Professional Officer: Water and Sanitation. In April 2022, he applied for the advertised post of Manager: Public Transport Systems. Had he been successful, this would have been a promotion.
- 3.2 Maharaj was not shortlisted for the post. The stated reason for not shortlisting him was that he did not meet one of the core requirements for the post, namely, *“Experience in managing a complex public transport system”*.
- 3.3 In the arbitration proceedings under review, Maharaj’s complaint was that he did in fact meet this requirement and that this was readily apparent from his CV. The City disputed this.

- [4] The arbitrator upheld Maharaj's complaint, on the ground that the requirement of managing a public transport system indeed appeared from his CV.
- [5] On review, the City disputes this finding. On the *Sidumo*-reasonableness test,¹ in order to succeed the City must establish that the arbitrator's finding is so unreasonable that no reasonable person could have made it.

Analysis

- [6] The primary question for determination is whether the arbitrator's finding, that it was apparent from Maharaj's CV that he had "*Experience in managing a complex public transport system*", was an unreasonable one.
- [7] Maharaj's CV recorded that he had previously held two positions at Transnet. In the capacity of Manager Engineering: Telecommunications,² Maharaj was based in the Facilities Department, which is "*responsible for all end user services in the rail environment which includes access control and ticketing systems ...*". Specifically, his CV records that one of his functions was to "*Manage capital projects for Transnet and SARCC now known as PRASA*" (emphasis added).
- [8] From June 2001, Maharaj was promoted to the post of Senior Manager: Facilities and Engineering. In this post, his CV records that he was *inter alia* responsible for "*Maintenance management and support for Passenger information systems and TIMS (Ticket issuing management systems) commuter rail*".
- [9] In short, it is clear from Maharaj's CV that, during his tenure at Transnet, he had acquired management experience in relation to a complex public transport system.
- [10] In response to his enquiry as to why he had not been shortlisted, Maharaj was informed by Mr White-Phillips (a member of the selection panel) that "I

¹*Sidumo v Rustenberg Platinum Mines Ltd* [2007] 12 BLLR 1097 (CC).

² A post he held from September 1998.

did not see Metrorail mentioned in your CV. I noted that you worked for Transnet. Hence I did not identify any public transport experience."

[11] It appears that Mr White-Phillips was not aware that Metrorail³ had previously been part of Transnet. He assumed that Transnet was only engaged with freight rail and not passenger rail. However, it ought to have been apparent from Maharaj's CV (including from the portions of his CV referred to above) that his functions had included management of passenger rail systems.

[12] In his evidence, Mr White-Phillips testified that the reason for excluding Maharaj from the shortlist was that he (and Mr Carl Stroud, another member of the selection panel) could not find any public transport experience mentioned in Maharaj's CV.

[13] When it was pointed out to him in cross-examination that the CV referred to SARCC now known as PRASA, the following exchange took place:

"Mr White-Phillips: Okay, so I'm aware of a company called Transnet, my understanding is that Transnet is a freight moving company, dealing with ports, and railing goods across the City. I'm not sure what SARCC is. PRASA I've heard the acronym, I know about it, I'm not quite sure what PRASA is. I think they've got something to do with the rail as well. But I don't know for sure.

Commissioner: Seriously you don't know what PRASA means?

Mr White-Phillips: I don't know what the acronym stands for. But I know it's got something to do with rail.

Commissioner: Passenger Rail Services Agency.

Mr White-Phillips: Okay, I didn't know that."

[14] From this passage, it is apparent that Maharaj was excluded from the shortlist only because the selection panellists tasked with making up the shortlist were ignorant of key public rail terminology. (It is curious that *both* members tasked with shortlisting process did not know that PRASA was a passenger rail service). Had they possessed a rudimentary working

³ Metrorail was the predecessor to PRASA.

knowledge of the relevant terminology, Maharaj would have been shortlisted.

[15] Accordingly, the conclusion reached by the arbitrator cannot be faulted. His finding, that Maharaj had in fact met the shortlisting requirements and that his exclusion was therefore unfair, was not only reasonable but correct.

[16] The review application therefore falls to be dismissed.

[17] Fittingly, neither party sought costs.

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

Order

[1] The application is dismissed.

[2] There is no order as to costs.

A handwritten signature in black ink, appearing to be 'L. MacRobert', is written over a horizontal line.

Leslie AJ
Acting Judge of the Labour Court of South Africa

Representatives –

For the applicant: **S Mbobo, instructed by John MacRobert Attorneys**

For the first and second respondents: **N Geldenhuys (IMATU official)**