



**THE LABOUR COURT OF SOUTH AFRICA  
AT JOHANNESBURG**

Not reportable

**case no: J1849/2022**

In the matter between:

**BIDVEST STEINER (PTY) LTD**

**Applicant**

and

**THE COMMISSION FOR  
CONCILIATION, MEDIATION &  
ARBITRATION**

**First Respondent**

**LIVHU NENGOVHELA N.O.**

**Second Respondent**

**NASA WORKERS obo CHRISTINA  
MANYATHELA**

**Third Respondent**

**Heard:** 23 October 2024

**Delivered:** 21 November 2024

**Summary:** (Review – arbitrator misconstruing nature of the charge of misconduct - inconsistency finding not tenable on the facts)

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**JUDGMENT**

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**LAGRANGE, J**

### Introduction

- [1] This is an application to review and set aside an award in which the arbitrator found that the third respondent, Ms C Manyathela ('Manyathela') was dismissed on a substantively unfair basis and awarded her reinstatement with backpay. She did not contest the procedural fairness of her dismissal.

### Brief outline of factual scenario

- [2] The business of the applicant ('Steiner') is to render hygiene services to clients in diverse industries.
- [3] Manyathela was employed as a help desk administrator until her dismissal on 19 April 2021. She had worked for the Applicant for more than 11 years at the time of her dismissal. The current general manager for the Florida branch, where she worked, Mr W Ford ('Ford') testified that the help desk, was a crucial business function and that Manyathela was the first contact point for clients. Her task was to open a 'ticket' (a form of job card) for each customer query and to follow up on the completion of the task, so the ticket could be 'closed' within 48 hours of the query being logged.
- [4] Manyathela's job description listed "handling all *ad hoc* related queries" as the key objective of her job. Amongst the tasks she had to perform to attain the objective were: liaising with clients on faulty equipment and ensuring complaints were dealt with immediately; logging tickets; checking and investigating any overdue tickets on a daily basis; escalating tickets and providing feedback on escalations to three other staff and handing in daily reports on overdue tickets. The operational staff were responsible for resolving the various 'open' tickets and a ticket could only be closed when the job was done.
- [5] In July 2020, Manyathela received a final written warning for negligence relating to overdue tickets she was responsible for. The warning was valid for one year expiring on 7 April 2021. It also cautioned her that any further

disciplinary action during the currency of the warning could result in her dismissal. The disciplinary finding read:

*“Negligence*

*A review of our branch for the period 07 February 2020 and 1 July 2020, indicated that 306 tickets for which you were responsible were overdue. 76 of these tickets were overdue for a period of longer than a month.*

*The ticket register for which you are responsible, is not kept updated.*

*You have failed to ensure that the tickets are signed for by the relevant staff members, no record/date that tickets were issued.*

*You have not recorded or closed completed tickets that were handed back from staff members.”*

*(sic)*

- [6] By the end of March 2021, Manyathela was again sitting with a large number of incomplete tickets. On 24 March, her former general manager, Mr A Snyman (‘Snyman’), sent her the following email:

*“Hi Christinah*

*Your work output has escalated to unacceptable levels. Attached is various correspondence with regards to tickets that have still not been closed. The Ad-Hoc Tickets alone on anything 3 days and older has escalated to 133, you have a total of 157 tickets not closed and this does not include tickets raised on NCC level and tickets raised by Service audits.*

*At no stage have you raised concerns with me that you need assistance or support to have your tickets resolved. For more than a month I assisted you by having morning meetings and basically advised and helped you on how to close your tickets, I have even dedicated a maintenance team to assist you with dealing with tickets. The last month I focussed on client visitations and was hoping that*

*you have learned from what I have been trying to guide you on, but it seem that you cannot effectively complete your responsibilities unsupervised.*

*Please treat this as a formal instruction to have all your tickets resolved by 31 March 2021. Failure to adhere to this instruction will necessitate me to call for a disciplinary hearing.*

*Should you need assistance please make sure that you and William discuss this with me.*

...

(sic)

This prompted Manyathela, on the same day, to send her own email to various operational staff merely stating: *"Please find attached tickets to be close by Friday as per Andre."* She did not respond to Snyman's email or give any indication that she disputed his claim that he had been assisting her and that she had not asked for help.

- [7] On 12 April 2021, she was charged and found guilty of gross negligence, because 168 tickets for which she was *"responsible"* for during the period 3 February up to and including 24 March 2021 *"were overdue"* and a number of those were overdue for longer than 59 days. In addition, she had not kept ticket registers, for which she was responsible, updated. Based on this, and the fact that her previous final written warning was still current, she was dismissed.

#### The arbitrator's reasoning

- [8] The arbitrator found that Manyathela's duties described above were common cause. She noted that Manyathela had sent an email to the operations team to finalise jobs so tickets could be closed by 31 March 2021, and concluded that it was up to the operations team members to complete their jobs and revert to Manyathela. However, Manyathela did not have supervisory power over the operations staff whereas her direct manager Mr W Ford, and Snyman did. The arbitrator could not understand why they did not give warnings to the operations staff, or why Ford could



not “lift a finger” to help when he could see on a weekly basis from emails and meetings that the backlog was growing.

- [9] Turning her attention to the requirements of Item 7 of the Code of Good Practice: Dismissal<sup>1</sup>, she found that the rule that tickets should be closed within 48 hours was an established valid rule and Manyathela was aware of it. However, there was no evidence that she had not failed to close a ticket when a job had been done. The arbitrator found that Ford and Snyman should have approached the operations team to solve the problem of jobs not being completed rather than focussing on Manyathela’s role. For example, they could have asked the operations team why a certain job was not finalised after 45 days.
- [10] The arbitrator also noted that Snyman had not testified and therefore there was no evidence to show how he had allegedly assisted Manyathela. She also highlighted that the overdue tickets went back to the beginning of 2020 and that the only time the problem was temporarily solved was when there were strongly worded emails issued by Snyman instructing staff to finish outstanding jobs and hand them to Manyathela for closure. The arbitrator concluded that Manyathela’s job was mainly to open and close tickets. She also followed up with all other departments so that they could finish the required tasks which would allow her to close the tickets. However, she was not able to close any ticket until the departments have done their job and have notified her as such. The arbitrator commented that Manyathela was not in full control of tickets that had been opened by the National Call Centre and Snyman’s secretary.
- [11] The arbitrator concluded that the real problem Steiner was having was failure to jobs by the staff responsible for remedying queries and not the closure of the tickets, as such. Manyathela was only responsible for closing a ticket once the work had been done. She could not close a ticket before that happened and could not be held responsible for the operational staff neglecting their duties. Accordingly, she was not guilty of the charge.

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<sup>1</sup> Schedule 8 of the Labour Relations Act, 66 of 1995.

[12] Manyathela had also complained that Steiner had been inconsistent in taking disciplinary action, because Snyman's secretary should have been disciplined and dismissed too but had not been because of an alleged improper relationship the latter had with Snyman. The arbitrator acknowledged that disciplinary proceedings had been instituted against the secretary but commented that such steps had only been instituted three months after charging Manyathela. However, the secretary's disciplinary process did not proceed because she resigned in July 2021. The arbitrator found that disciplinary charges against the secretary had not been pursued with the same enthusiasm that charges had been brought against Manyathela. In the absence of evidence to show that the secretary had also been charged and dismissed by Steiner, there was inconsistency in the application of discipline.

#### Grounds of review

[13] Essentially, Steiner contends that the arbitrator could not have found Manyathela not guilty, and her conclusion to the contrary was one that no reasonable arbitrator could have arrived at given the following alleged material errors in her reasoning:

13.1 The arbitrator misconstrued the misconduct for which Manyathela was dismissed, namely of failing to maintain ticket registers and failing to take appropriate steps once an open ticket had not been closed within the 48-hour period, including referring the issue to senior management.

13.2 The arbitrator misunderstood that Manyathela had a remedy if the operational staff had not finished the work assigned in the 48-hour period, namely, to escalate the issue. As such, it was irrelevant that the responsible individuals were not under her line supervision.

13.3 The arbitrator failed to appreciate that, in so far as Snyman's secretary ought to have faced disciplinary action and assuming the charges were similar, the arbitrator could not make a finding in circumstances

where the secretary had resigned before the disciplinary procedure had commenced.

13.4 The arbitrator failed to appreciate that Snyman's testimony was not required as the contents of the letter complaining about the number of outstanding tickets was not disputed by Manyathela at the time it was issued, nor at the arbitration hearing.

### Evaluation

- [14] The first two grounds of review both relate to the arbitrator's conception of the charge Manyathela faced. In the first place, Steiner argues that the arbitrator failed to appreciate that Manyathela failed in performing her role by not keeping registers up to date and secondly, she was not expected to order the operational staff to finalise the open tickets but was expected to raise and escalate outstanding tickets with her line manager.
- [15] It is common cause Manyathela was not directly responsible for supervising staff who were responsible for performing the work required to close off each ticket. It is also true, as the arbitrator emphasised, that she could not close off tickets until operational staff advised her that the work was done. The arbitrator's conception of Manyathela's role was that it was a relatively passive one, in terms of which she had done what was expected of her provided she closed off tickets when the jobs were done. But her job was to monitor open tickets and to ensure that customer queries were dealt with promptly. Her job description required her to check tickets daily and investigate those which were overdue. Overdue tickets had to be escalated daily. In short, her role was to ensure that queries were not left unattended and tasks which were delayed were promptly referred to management to deal with the problem. When making an opening statement at the arbitration hearing, Manyathela's representative said she would give evidence that she made numerous attempts to remind the responsible staff to finalise open tickets, which confirms she was aware that the import of the charge concerned what she had done to try and rectify the backlog of



outstanding tickets. As it happened, she gave no evidence of her alleged efforts to chivvy the responsible staff to complete outstanding work.

- [16] Ford was Manyathela's direct line manager and testified that she had never come to him in person or emailed him to request the escalation of an outstanding ticket. Manyathela did not dispute this during his cross-examination, which focussed largely on whether all the outstanding tickets referred to the charge, were Manyathela's responsibility.
- [17] What is particularly telling, was Manyathela's tepid email response to Snyman's email of 24 March 2021, in which Snyman effectively gave her an ultimatum to get up to date by the end of the month or face disciplinary action. Her email conveyed no sense of the importance or that she needed help to do.
- [18] It was also never put to Steiner's witnesses that the accusations about the backlog in open tickets and the assistance given to her, which Snyman had made in his letter, were false. Even if he was not called as a witness, having left the company, it was necessary for her to demonstrate, when Steiner's witnesses were questioned that she disputed the claims made in the letter. Her own failure to promptly dispute or contest the allegations in his letter is also inexplicable given the serious situation she was facing.
- [19] When Manyathela was asked in her evidence in chief, how she responded to the accusation that she did not follow up outstanding work, her response was that: *"Every day I would "sit down. I even called our Service Manager [Snyman]. If he is not present I will discuss with Andre [Ford]. Then I will report that so and so – I am still waiting for their tickets."* If indeed she was raising matters for escalation in this manner on a regular basis, it stands to reason she would not have simply let Snyman's claims in the letter go unanswered and at the very least would have been put to Ford under cross-examination.
- [20] Had the arbitrator not misconstrued the real nature of Manyathela's duties, he would have been compelled to decide if she had successfully rebutted the evidence that she had allowed a large number of overdue open tickets to remain unresolved, and had not systematically escalated them to her



managers, when the 48-hour period was up. She also did not challenge Snyman's accusation that she did not ask for help to close the backlog of outstanding tickets. In this regard she could only refer to one email sent out in August 2020 by another manager, calling on staff to co-operate with her so she could close tickets. It is correct that on 1 April 2021, she did ask Snyman to sit down with her to discuss his secretary's outstanding tickets, though she only did this after the expiry of the deadline in his letter.

- [21] On the charge itself, Manyathela did contest that some of the open tickets were not her responsibility but did not dispute that she was responsible for most of them. She did not provide any evidence of investigations she had undertaken to discover the reason for an overdue ticket remaining unresolved, nor did she identify any overdue ticket that she had specifically escalated to Ford or Snyman to address. In the circumstances it is difficult to escape the conclusion that she had not done what was expected of her to close open tickets. It is also noteworthy that Manyathela herself did not so much try and dispute the veracity of the misconduct charge but argued that she should have been demoted instead of dismissed.
- [22] Manyathela had also been issued with a severe warning for the same misconduct and must have been alive to the fact that if it recurred she could face dismissal. Under these circumstances, it cannot be said that her dismissal was substantively unfair. The fact that management might have tackled the problem differently, or that better solutions to the outstanding ticket issue could have been devised, does not detract from this.
- [23] On the question of inconsistency, there was no concrete evidence to show that the non-performance component of the charges pending for Snyman's secretary was comparable with the misconduct Manyathela was charged with. In any event, the secretary's resignation led to the abandonment of the charges, so there was no lesser disciplinary sanction for similar misconduct to compare with Manyathela's case. The fact that Steiner did not act as quickly as the arbitrator thought it should have to discipline the secretary, is a very slender basis on which to found a claim of unfair dismissal which relies, in part, on inconsistency. An employer has a choice whether to accept a resignation or insist on proceeding with an enquiry during the

notice period. It would very onerous and somewhat absurd to require an employer to proceed with an enquiry during a notice period of an employee who had handed in their resignation, just for the sake of demonstrating it would have treated a similar disciplinary infraction in the same way as a matter in which an enquiry had been concluded. In my view, this cannot be the basis of a claim of inconsistent treatment, even assuming the facts of the two cases were plainly very similar, which was not evident here.

- [24] The arbitrator also misconstrued the significance of Snyman not testifying. Manyathela had ample opportunity to provide detailed evidence about her interactions with Snyman, but made only the vaguest statement in that regard. She made no attempt to directly dispute the allegations made in his letter either at the time or in the arbitration, nor was any indication given in the arbitration when the letter was referred to in evidence that its content was a matter of dispute.
- [25] In the circumstances, the review application succeeds and the arbitrator's finding must be substituted with an order that Manyathela's dismissal was substantively fair.

#### Order

1. The arbitration award of the Second Respondent dated 11 August 2022, issued under case number GAJB10011-21 ('the award') is reviewed and set aside.
2. The award is substituted with an award that the Third Respondent's dismissal by the Applicant was substantively fair.
3. No order is made as to costs.



R Lagrange

Judge of the Labour Court of South Africa.

Representatives:

For the Applicant: L Hutchinson

Instructed by: Soldatos Copper Inc Attorneys

For the First respondent: M Booyesen from NASA Workers

LABOUR COURT