



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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SIGNATURE

DATE: 11 September 2026

Case No. 2023-019554

In the matter between:

SIBONAKALISO SIMON ZWANE

Plaintiff

and

**NATIONAL UNION OF METALWORKERS
OF SOUTH AFRICA**

Defendant

JUDGMENT

WILSON J:

- 1 The plaintiff, Mr. Zwane, sues the defendant, NUMSA, for breach of mandate. Mr. Zwane alleges that NUMSA failed to prosecute an application instituted in the Labour Court to review and set aside a bargaining council award. That award found that Mr. Zwane's dismissal from his former employer, Eagle Spring Manufacturers, was both procedurally and substantively fair.

- 2 In his particulars of claim, Mr. Zwane alleges that, had the review application been prosecuted, the award would have been set aside, and that he would have been reinstated and awarded R132 000 in compensation, being 12 months' salary. Mr. Zwane sued for that amount, and for a further R264 000 to which Mr. Zwane says he would have been entitled had he been reinstated. There was also an alternative claim for negligence, in that, Mr. Zwane alleged, NUMSA culpably failed to refer Mr. Zwane's dismissal to the Labour Court as automatically unfair. Had that been done, it was alleged, Mr. Zwane would have been reinstated with twenty-four months' salary in compensation, bringing his total compensable loss to R528 000.
- 3 At the end of the trial before me, however, Mr. Baloyi, who appeared for Mr. Zwane, confirmed that Mr. Zwane persists in neither the alternative claim nor in the claim that he was entitled to what he would have been awarded had he been reinstated. The sole question before me, therefore, is whether NUMSA failed to pursue Mr. Zwane's review application before the Labour Court when it could and should have done so, and whether, had it done so, Mr. Zwane would have been awarded R132 000, or any fraction of that, in compensation.

Mr. Zwane's dismissal

- 4 The facts are largely common cause. At the time of his dismissal from Eagle Spring, Mr. Zwane had been employed there for over 30 years. He had been a member of NUMSA for almost all of that time, and had become a union representative. There had been a dispute about the way that Eagle Spring's employees' working time had been recorded, and this apparently led to a confrontation between Eagle Spring's management, Mr. Zwane, and another

of Eagle Spring's employees, a Mr. Nkoana, who was also dismissed. The details of the confrontation are not important, save that, on the evidence before me, Mr. Zwane and Mr. Nkoana were said, amongst other things, to have threatened Eagle Spring's managing director with expulsion from the workplace after which the factory would be run by the workers alone.

5 The confrontation resulted in Mr. Zwane's summary dismissal. In a letter dated 27 May 2016, and delivered on 30 May 2016, Mr. Zwane was informed that his employment would end that day, and that the decision to terminate it was based on "serious grievances against you, that don't need to be investigated. This includes intimidation of employees and errant [sic] during the working hours". Other grievances were said to include: "not obeying the instruction of the Supervisor on the factory floor"; "instigating other workers for not clocking out or not clocking in when they running late [sic]"; [v]erbal abuse of staff"; "threatening physically the Director and his son" ; and "opening the letter's [sic] from the doctors with the health status of other workers".

6 Mr. Zwane appealed this decision internally, but the appeal was dismissed. His dismissal was then referred to arbitration under the auspices of the relevant bargaining council. The arbitration took an inexcusably long time to finalise. It ran for 18 days over 3 years. During the arbitration, Eagle Spring made an offer with prejudice to Mr. Zwane of compensation equivalent to one year's salary. This was in respect of what Eagle Spring appeared to accept was a procedurally unfair dismissal. Eagle Spring would not reinstate Mr. Zwane, however, and the offer was rejected. While neither Mr. Zwane nor NUMSA were entirely clear about why that offer was rejected, it seemed to me

from the general tenor of the evidence that Mr. Zwane would only accept Eagle Spring's total capitulation in the form of his reinstatement and an admission that his dismissal was unfair.

7 On 15 September 2019, the arbitrator, a Ms. Hambridge, delivered her award. She concluded that Mr. Zwane's dismissal was both procedurally and substantively fair. On the question of substantive fairness, Ms. Hambridge accepted the various allegations of threats and intimidation levelled at Mr. Zwane. She criticised Mr. Zwane for failing to put a version in response, and recorded that his position was that he need not do so, since he had been denied the right to put a version to a disciplinary inquiry held before his dismissal. Mr. Zwane's view was apparently that he would only answer the allegations against him once he had been reinstated and afforded such an inquiry. Ms. Hambridge rejected that approach, and found that Mr. Zwane's failure to put a version left her with no option but to accept the allegations against him.

8 On the question of procedural fairness, Ms. Hambridge decided that, though Mr. Zwane's summary dismissal was procedurally unfair, that unfairness was cured by the internal appeal hearing he was afforded after he was dismissed. For that reason, Ms. Hambridge found, she could not conclude that Mr. Zwane's decision was ultimately procedurally unfair.

The Labour Court review

9 On 8 November 2019, NUMSA, acting on Mr. Zwane's behalf, filed an application to review and set aside Ms. Hambridge's award on procedural grounds only. Whatever the merits of Ms. Hambridge's conclusions on the

substantive fairness of Mr. Zwane's dismissal, it appears that, by the time proceedings commenced in the Labour Court, those conclusions had been accepted. I accept that Mr. Zwane was party to the decision not to challenge Ms. Hambridge's conclusion that Mr. Zwane's dismissal was substantively fair. Accordingly, I must accept that the challenge to the substantive fairness of Mr. Zwane's dismissal fell away once the Labour Court review was initiated.

10 What remained were essentially two points: first that Mr. Zwane's dismissal was procedurally unfair because it took place in breach of the provisions of the Labour Relations Act 66 of 1995 that require consultation with a union before dismissing a union representative; and, second, that Mr. Zwane's dismissal without a hearing was in itself grossly unfair. NUMSA also raised the fact of Eagle Spring's settlement offer with prejudice, to which it alleged that Ms. Hambridge failed to have adequate regard.

11 The Labour Court Rules prescribe that, once a review is launched, the record of the proceedings under review must be filed. In Mr. Zwane's case, this raised some difficulty. The full record of the 18-day hearing could not be recovered. Nor, it seems, was any effort made to reconstruct it. NUMSA asked Eagle Spring's attorneys to consent to a compressed record containing only the material necessary to deal with the complaint of procedural unfairness. Eagle Spring insisted on the full record.

12 But a full record could not be located. If a full record is not timeously lodged, paragraph 11.2.3 of the Labour Court Practice Manual provides for a review to be deemed withdrawn. Predictably, once the deadline for the filing of the record had passed, Eagle Spring's attorney's seized the opportunity to ask the

Labour Court for an order deeming Mr. Zwane's review to have been withdrawn. Coetzee AJ issued such an order, apparently without opposition from NUMSA, on 28 July 2020.

NUMSA's performance of its mandate

- 13 Throughout this process, Mr. Zwane says that he was left in the dark. He says he was not informed of the fate of his Labour Court review until after it had been deemed withdrawn. NUMSA disputes this. It says that Mr. Zwane was kept fully informed through its regional and branch structures. However, nobody suggests that Mr. Zwane authorised NUMSA to discontinue the review, or that he acquiesced in its decision not to oppose Eagle Spring's application for an order that the review be deemed withdrawn. The case put to Mr. Zwane during cross-examination was not that Mr. Zwane's consent to abandon the review was given, but that it was not required.
- 14 Accordingly, I think that the principal question is not whether Mr. Zwane was informed of the various developments I have set out. It is whether NUMSA acted consistently with the mandate to pursue the review that it accepted from Mr. Zwane. Once NUMSA accepted Mr. Zwane's mandate to prosecute the Labour Court review, it was obliged to carry the mandate out "faithfully, honestly and with care and diligence". The content of that obligation was, at minimum, "to take such steps as were necessary" to have Mr. Zwane's case "determined in accordance with the provisions of the [Labour Relations Act]" (*Food & Allied Workers Union v Ngcobo* NO 2013 (5) SA 378 (SCA), paragraphs 45 and 47).

- 15 I do not think that NUMSA acted in accordance with this standard. In its plea NUMSA frankly admits that it allowed to review to fail (see especially paragraphs 4.11 and 5.2 to 5.7). It was not forced to do so. The failure to produce the record on review was by no means the end of Mr. Zwane's case. Assuming that the record really was unsalvageable, NUMSA could and ought to have acted in terms of paragraph 11.2.4 of the Practice Manual, which provides that: "[i]f the record of the proceedings under review has been lost, or if the recording of the proceedings is of such poor quality to the extent that the tapes are inaudible, the applicant may approach the Judge President for a direction on the further conduct of the review application. The Judge President will allocate the file to a judge for a direction, which may include the remission of the matter to the person or body whose award or ruling is under review, or where practicable, a direction to the effect that the relevant parts of the record be reconstructed". It seems to me that it would also have been within the Judge President's power to direct that the record be compressed, as NUMSA had suggested, to only that material necessary to determine the complaint of procedural unfairness.
- 16 NUMSA neither approached the Judge President, nor took any action to oppose Eagle Spring's efforts to obtain an order deeming the review to have been withdrawn. In paragraphs 5.6 and 5.7 of its plea, NUMSA confirms that it could have taken further steps to pursue the review application on a limited record. It simply chose not to do so.
- 17 NUMSA's case at trial proceeded as if the non-availability of the record was the end of the line for Mr. Zwane. But that was not so. NUMSA's apparent

failure to act in terms of the relevant parts of the Practice Manual, or to put up any opposition when Eagle Spring applied for an order deeming the review to have lapsed, was inconsistent with its mandate. To discharge that mandate, NUMSA needed to act diligently. Any diligent mandate-holder would have acted in terms of the Labour Court's rules of practice to prevent the review from being deemed withdrawn. In failing to pursue Mr. Zwane's case with the requisite diligence, NUMSA acted in breach of its mandate.

NUMSA's case at trial

18 While NUMSA did not explicitly acknowledge this breach, its principal arguments were all directed at excusing its failure to pursue the review rather than arguing that the review was properly pursued.

19 It was first suggested that the review stood very slim prospects of success. I do not agree. Mr. Zwane's dismissal without a hearing was plainly unfair. Ms. Hambridge's conclusion that this unfairness was cured by the internal appeal hearing was not one a reasonable decision maker could have reached (on the assessment of a bargaining council award see, generally, *Sidumo v Rustenburg Platinum Mines* 2008 (2) SA 24 (CC)). Ms. Hambridge accepted that the fact of an internal appeal is in itself enough to cure the absence of a pre-dismissal hearing. In this she was mistaken. It is trite that Mr. Zwane was generally entitled to an opportunity to put his case before he was dismissed. A post-dismissal hearing may nevertheless cure unfairness caused by the failure to hold a hearing before the dismissal, if that post-dismissal hearing is itself fair, in the sense that it is a genuinely independent inquiry into whether the dismissal was justified.

- 20 In this case, the internal appeal was no more than “an *ex post facto* rationalization of the earlier decision” to dismiss Mr. Zwane (*Samancor Tubatse Ferrochrome v Metal & Engineering Industries Bargaining Council* (2010) 31 ILJ 1838 (LAC), paragraph 17). The internal appeal ruling, which was introduced as exhibit “L” before me, was produced by an unnamed “human resource representative” employed at Eagle Spring. It simply reiterated the employer’s position. It is tendentiously written, and does not appear to have been produced with the benefit of hearing from Mr. Zwane himself. To save Eagle Spring’s manifestly flawed process, the internal appeal would have to have afforded Mr. Zwane a genuine opportunity to say why he should not have been dismissed before an independent chairperson capable of reversing the employer’s decision. Ms. Hambridge did not consider whether the internal appeal met these requirements. Had she done so, it would have been plain to her that the internal appeal did not cure the absence of a pre-dismissal hearing. For these reasons, in my view, Mr. Zwane’s review would have succeeded.
- 21 In any event, weak prospects of success would not have excused NUMSA from its mandate. The mandate it accepted from Mr. Zwane was to have the review determined, not to win it. Mr. Zwane’s prospects on review may be relevant to the quantum of damages due to him for the breach of his mandate, but they could never excuse the breach itself. Once the review was instituted pursuant to the mandate NUMSA accepted from Mr. Zwane, NUMSA’s duty was to pursue the matter to finality, even if it thought Mr. Zwane’s prospects of success were slim.

- 22 NUMSA then relied upon its constitution, section 5 (g) (i) of which requires NUMSA to “provide legal assistance to [its] members . . . where the Union deems this to be appropriate”. The argument seems to have been that this provision empowered NUMSA to decline to pursue the review at any time, without consulting Mr. Zwane, should the Union deem such conduct appropriate.
- 23 But that cannot be. NUMSA’s constitution entitles NUMSA to decline to take on a member’s case. It does not entitle NUMSA to refuse to carry out a mandate to represent one of its members once that mandate has been accepted. Nor did it entitle NUMSA to pursue the mandate it had been given without the requisite diligence. In other words, NUMSA could have refused to pursue the Labour Court review, but, once it accepted responsibility to do so, its constitution required it to see the review through faithfully, honestly and with care and diligence (in this respect see *Food & Allied Workers Union v Ngcobo* NO 2014 (1) SA 32 (CC), paragraphs 33 to 40).
- 24 It was finally argued that the cause of Mr. Zwane’s loss, if any, was not NUMSA’s failure to carry out its mandate, but Mr. Zwane’s rejection, allegedly against NUMSA’s advice, of the settlement offer Eagle Spring made during the proceedings before the bargaining council. I do not think that follows. In the full knowledge of Mr. Zwane’s prior rejection of the offer with prejudice, NUMSA accepted a mandate to review Ms. Hambridge’s award in the Labour Court. NUMSA might conceivably have declined to pursue the review in circumstances where what it might get for Mr. Zwane from the Labour Court would be no better than the offer Mr. Zwane had already rejected. But once

NUMSA accepted the mandate to pursue the review, it was obliged to do so diligently.

25 It was NUMSA's failure to do so that caused Mr. Zwane's loss – together, of course, with Ms. Hambridge's plainly erroneous conclusion that Mr. Zwane's dismissal was procedurally fair. Had Mr. Zwane accepted Eagle Spring's offer, he would have obtained compensation. But that is not the same as saying that his rejection of the offer caused NUMSA's failure to seek similar compensation from the Labour Court, having accepted a mandate to do so. There is simply no causal connection between the two events.

26 It follows that Mr. Zwane's complaint that NUMSA breached its mandate is sound, and that he is entitled to be compensated for the loss he sustained as a result of the breach.

Mr. Zwane's damages

27 On the facts before me, the procedural unfairness of Mr. Zwane's dismissal was manifest and egregious. Taking into account the complete failure to afford Mr. Zwane any form of pre-dismissal hearing, the transparent masquerade of the internal appeal, and Mr. Zwane's lengthy service of over 30 years, it seems to me that Mr. Zwane would probably have succeeded in a claim for the maximum amount available under the Labour Relations Act for a procedurally unfair dismissal: an amount equivalent to twelve months' salary.

28 Mr Zwane's payslip for June 2016 reveals that he was remunerated at an hourly rate of R60.8022 for working a 45-hour week. That yields a notional

annual remuneration of just over R142 000. This is in excess of R132 000 he claims in these proceedings, which is the amount I intend to award.

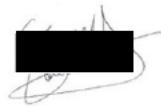
Order

29 Costs will follow the result, with counsel's costs to be taxed on scale "B".

30 Accordingly –

30.1 The defendant is directed to pay the plaintiff R132 000, plus interest at the prescribed rate, to run from 2 March 2023, to the date of final payment.

30.2 The defendant will pay the plaintiff's costs, including the costs of counsel, which may be taxed on scale "B".



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 11 September 2026.

HEARD ON: 18 and 19 August 2026

SUBMISSIONS: 24 and 28 August 2026

DECIDED ON: 11 September 2026

For the Plaintiff: CS Baloyi
Instructed by Godfrey Nchaupa Attorneys

For the Defendant: K Phuroe
Instructed by CN Phukubje Attorneys