

**CCMA**

**IN THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION**

**DYPUSA obo Malete, D** **Case number: GATW9622-25**  
**Employee**  
**and**  
**Poultry Handling Services (Pty) Ltd** **Employer**

**Date of hearing: 24/02/2026**

**Closing Argument: 3/3/26**

**Date of award: 13/03/2026**

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**ARBITRATION AWARD**

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**Name of Commissioner: L.J Sikwane**

**APPROVED**

## Details of hearing and representation

1. This is the award in the arbitration between DYPUSA obo Malete, D (hereinafter referred to as “the applicant”) and Poultry Handling Services (Pty) Ltd (hereinafter referred to as “the respondent”).
2. The matter was referred to the CCMA in terms of section 191 (5) (a) of the Labour Relations Act 66 of 1995, as amended (hereinafter referred to as “the LRA”).
3. The respondent was represented by Ms. Samantha Brink, an Official of the Employers’ Organization- AHI, and the applicant, Mr. Malete D was represented by Mr. Bongani Mashaba, an Official of the Trade Union- DYPUSA.
4. Both parties submitted bundles of documents and they were accepted as what they purport to be.
5. The proceeding was conducted in English and was digitally recorded. Handwritten notes were also taken.

## Issues to be decided

6. I am required to determine whether the dismissal of the applicant by the respondent was both procedurally and/or substantively unfair. Should I find that the dismissal was unfair, I am required to grant appropriate relief in accordance with the provisions of the LRA.

## Background information

7. The applicant commenced his employment with the respondent on 1 May 2018, and he was dismissed on 2 June 2025. The applicant at the time of his dismissal occupied the position of a Supervisor and he was earning a basic salary of R13,041-00 per month. On 26 June 2025 the applicant through his Trade Union referred an alleged unfair dismissal dispute to the CCMA Tshwane region.
8. The matter was set down for a con/arb process that was scheduled to take place on 18 June 2025. The applicant’s representative objected to the con/arb process and as such the two processes were separated and held as conciliation only. The commissioner at the end of the conciliation proceeding issued a certificate of outcome indicating that the dispute remains unresolved.

9. On 23 July 2025 the applicant through his Trade Union lodged a request for arbitration and the matter came before me at arbitration on 24 February 2026.
10. The applicant placed both procedure and substance in dispute and he sought re-instatement as relief for what he considered an unfair dismissal.
11. The charges that led to the dismissal of the applicant were set out in the notification of the disciplinary hearing as follows:-

1. *Being under the influence of intoxicating liquor or drugs or any substance influencing work performance,*
2. *Breach of the trust relationship*

### **Preliminary matters.**

12. No preliminary issues were raised during the arbitration proceeding.
13. The applicant stated that his dismissal was unfair because the respondent is inconsistent in its application of discipline and that the respondent disciplinary code does not provide for a dismissal at first instance. It was not in dispute that the applicant was under intoxicating alcohol on the day in question.

### **Analysis of evidence and argument**

14. Section 188 (1) of the Act provides as follows: a dismissal that is not automatically unfair is unfair if the employer fails to prove:
- a) That the reason for dismissal related to the employee's conduct or capacity, or operational requirements.
  - b) That the dismissal was effected in accordance with a fair procedure.
15. It became common cause during the arbitration proceeding that applicant on 26 May 2025 reported on duty whilst under the influence of alcohol. The argument raised by the applicant's representative was that the applicant was not yet on duty when he was tested for alcohol. He indicated that the applicant's reporting time was 6:00am but he was tested for alcohol before his reporting time.

16. However, the evidence adduced shows that the applicant on 26 May 2025 arrived at work at 5:55am. On his arrival at the gate he was subjected to a breatherlyzer test like any other employee. The applicant tested positive for alcohol but he did not wait for the security officer to show him the result thereof.
17. The security supervisor, Mr. Lesiba Freddy Chuene testified that when he tried to stop the applicant from getting inside the premises he ignored him and rushed to his office. He wanted to stop the applicant from getting inside the premises because any one testing positive for alcohol is not allowed to get inside. He followed the applicant to his office and brought him back to the entrance gate.
18. Mr. Chuene's version that the applicant got inside the premises after he had tested positive for alcohol and that no one was not allowed to enter the premises whilst under the influence of alcohol was corroborated by Mr. Chris Mogwane. The evidence adduced further shows that the applicant was tested for the second time at 6:10 and the breatherlyzer came out with a reading of 0.16.
19. It is clear from the evidence presented during the arbitration proceeding that the applicant committed the misconduct that led to his dismissal. Section 188(2) of the Labour Relations Act provides that any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure must take into account any relevant code of good practice issued in terms of this Act.
20. The applicant was dismissed on 2 June 2025 prior the coming into being of the new Code of Good Practice: Dismissal. The new Code of Good Practice: dismissal came into effect on 4 September 2025 and as such it is not applicable in this matter.
21. I have taken the provisions of Item seven (7) of Schedule 8 of the Code of Good Practice into consideration in this regard. he said item provides that any person who is determining whether a dismissal for misconduct is unfair should consider amongst others the following:-

- a) Whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- b) If a rule or standard was contravened, whether or not-
  - i. The rule was a valid or reasonable rule or standard
  - ii. The employee was aware, or could reasonably be expected to have been aware, of the rule or standard
  - iii. The rule or standard has been consistently applied by the employer, and

- iv. Dismissal was an appropriate sanction for the contravention of the rule or standard.

22. *In this matter, there is no dispute as to whether the applicant contravened a rule, whether the rule contravened by the applicant was reasonable, whether the applicant was aware of the rule. The next stage now would be to consider the appropriateness of the sanction of dismissal.*

23. *The test pertaining to the appropriateness of the sanction is clearly spelt out in the CCMA's new guidelines: misconduct arbitration. Paragraph 93 of the said guidelines provides as follows-*

*"The test is whether employer could fairly have imposed the sanction of dismissal in the circumstances, either because the misconduct on its own rendered the continued employment relationship intolerable, or because of the cumulative effect of the misconduct when taken together with other instances of misconduct".*

24. *The applicant pleaded inconsistency as one of his defence, he indicated that one of the respondent's employee, Mr. Johannes Bonoko was issued with a final written warning for having committed similar misconduct. The first respondent's witness, Mr. B.J Van Rooyen testified that Mr. Bonoko was issued with a final written because he never got inside the premises after he had been tested positive of alcohol. He further testified that the applicant after testing positive for alcohol got inside the premises.*

25. The applicant in this matter was dismissed for allegedly having reported for duty under the influence of alcohol. What is being under the influence of alcohol? A person is said to be under the influence of alcohol when his/her mental or physical faculties are impaired to an extent that he/she is no longer able to safely perform ordinary tasks.

26. The respondent has entered into evidence a document entitled "Suspected Intoxication Report". The said document was completed by the security officer and it cannot be gainsaid that the said was in close contact with the applicant. The security officer in question indicated the following in the report:- that the applicant was not smelling of alcohol, his eyes were not reddish, his speech was normal, he was not talkative, his feet were not unsteady and that he was not aggressive.

27. It is clear from the security officer's report that the applicant was in total control of his mental and physical faculties. Mr. Chuene in his evidence-in-chief stated that there was nothing, from the applicant's appearance, to suggest that he was under the influence of alcohol. He further testified that the applicant was not staggering on the day in question. He never averred that the applicant was smelling of alcohol.

28. The applicant stated in his evidence-in-chief that he partook of a Dragon energy drink whilst on his way to work. It is a known fact that energy drinks have alcohol contents. Dragon energy has an alcohol volume of 7.5% to 8%. The breathalyzer test conducted on the applicant on the day in question indicated a reading of 0,15% and 0,16% of alcohol. When taking into consideration the recording of the security officer in the suspect intoxicating report referred to supra, one can safely say that the applicant was not impaired on the day in question.
29. The respondent's averment that the applicant did run to his office on the day in question is just ipse dixit not supported by any evidence. It is the word of the supervisor security versus that of the applicant. The respondent did not enter into evidence the CCTV footage covering the incident at the entrance gate to the premises.
30. It should be noted that, in the field of labour and employment law, dismissal is the ultimate sanction. It has to be arrived at after a thorough and totally unimpeachable enquiry, examination and analysis of the issues concerned. It has to be borne in mind that the security of employment is a core value of the Constitution that has been given effect to by the LRA [see **Sidumo v Rustenburg Platinum Mines (2007) 12 BLLR 1097 (CC)**] and **NEHAWU v University of Cape Town & Others (2003) 24 ILJ 95 (CC)**].
31. It is against the above backdrop that I find the dismissal of the applicant to be substantively unfair.
32. The applicant seeks re-instatement because he believes that the trust relationship between him and the respondent is not broken down at all.
33. In terms of section 193(2) of the LRA, *re-instatement or re-employ are the primary remedies for substantively unfair dismissal and must be ordered unless:*
- (a) *The employee does not wish to be re-instated or re-employed.*
  - (b) *The circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable.*
  - (c) *It is not reasonably practicable for the employer to re-instate or re-employ the employer; or*
  - (d) *The dismissal is unfair only because the employer did not follow a fair procedure."*
34. In **National Union of Mine Workers & Another v Commission for Conciliation Mediation and Arbitration & Other (207) 28ILJ 42 (LC)**, the Court referred to Section 193(2) of the Act and stated that:

*“the provisions of the act are clear. They are couched in peremptory terms and do not provide this Court or Arbitrator with discretion. Unless an employee does not seek to be reinstated or the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable or it is not reasonably practicable for the employer to re-instate the employee of the dismissal is only found to be procedurally unfair, the Court or Arbitrator must re-instate the employee. Evidence must be led by the employer to prove that the circumstances surrounding the dismissal are such that the continued employment relationship would be intolerable or that it is not reasonably practicable for the employer to re-instate the employee”.*


35. In Equity Aviation **Services (PTY) LTD v Commission for Conciliation, Mediation and Arbitration**, the Constitutional Court in its conclusive finding stated that reinstatement meant: *"To put the employee back into the same job or position he occupied before the dismissal on the same terms and conditions."* Reinstatement is the primary remedy in unfair dismissal disputes it is aimed at placing the employee in the position he would have been but for the unfair dismissal. It safeguards workers' employment by restoring the employment contract. Differently put, if employees are reinstated, they resume employment on the same terms and conditions that prevailed at the time of their dismissal ... and do not conclude an employment contract afresh ... The employer merely restores the position to what it was before the dismissal.

#### **Award**

36. I order the respondent: Poultry Handling Services (Pty) Ltd to reinstate the applicant: Derrick Maletle with retrospective effect from his date of dismissal on the same terms and conditions that were applicable but for the unfair dismissal.
37. The applicant is ordered to report for duty with effect from 1 April 2026.
38. The back pay that is payable in terms of this award is calculated as follows:

**R13,041-00 X 9 = R117 369-00**

39. The respondent is ordered to pay the applicant the aforesaid money by no later than 1 April 2026.



Signature:

Commissioner:

Sector

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**Lerato Sikwane**

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**Business**

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