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Munnick and Another v National Bargaining Council for Chemical Industry and Others (PR126/18) [2026] ZALCPE 23 (17 September 2026)

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THE LABOUR COURT OF SOUTH AFRICA, GOEBERHA

Case No. PR126/18

(1) Reportable: Yes/No

(2) Of interest to other Judges: Yes/No

(3) Revised

17/09/2026

In the matter between:

RODERICK MUNNICK

First Applicant

DENVER ROBILE

Second Applicant

NATIONAL BARGAINING COUNCIL
FOR THE CHEMICAL INDUSTRY

First Respondent

CHAROUX, L.N.O.

Second Respondent

PHARMACARE LTD t/a ASPEN PHARMACARE

Third Respondent

Heard: 10 September 2026

Delivered: 17 September 2026 (By circulation to the parties and/or their legal representatives by email)

JUDGMENT

MAKHURA, J

Introduction

[1] This application is pursued solely by the first applicant, Roderick Munnick (Munnick). He seeks an order in terms of section 145 of the Labour Relations Act (LRA)^[1] reviewing and setting aside the arbitration award issued by the second respondent commissioner on 10 April 2018. In addition, Munnick seeks an order declaring his dismissal substantively unfair and for retrospective reinstatement. In the alternative, he seeks an order remitting the unfair dismissal dispute to the first respondent for a hearing *de novo* before a different commissioner.

[2] Munnick further seeks condonation for the late filing of the review application. The review is opposed by Pharmacare Ltd trading as Aspen Pharmacare (company), the third respondent in these proceedings. The company does not, however, oppose the application for condonation and confines its opposition to the merits of the review application.

[3] The applicants explained that, although the arbitration award is dated 10 April 2018, it was only received on 19 April 2018. The six-week period prescribed for the institution of review proceedings accordingly expired on 31 May 2018. The review application was filed on 11 June 2018, resulting in a delay of approximately 11 calendar days beyond the prescribed period. In my view, the delay is insignificant, has been satisfactorily explained, and is not of such a nature as to warrant the refusal of condonation. In the circumstances, condonation for the late filing of the review application is granted.

The charges and reason for dismissal

[4] On 8 September 2016, the company notified Munnick in writing of the outcome of the disciplinary proceedings and advised him that it had accepted the chairperson's recommendation that his employment be terminated. The letter recorded that Munnick had been found guilty of the charges levelled against him and that dismissal was deemed the appropriate sanction. The charges and the reasons for his dismissal were set out in the letter as follows:

- 'Gross misconduct:
- Participation in unprotected Industrial Action. It is alleged that on 19 &/ 20 May 2016 you participated in an unprotected and unlawful protest / picket which conduct you participated in despite numerous warnings and ultimatum from the company, & which conduct had to be interdicted at the Labour Court.
 - Inciting employees to participate in an unlawful picket on 19 & 20 May 2016.
 - Inciting employees to refuse to stagger lunch from 20 May 2016 that resulted in a loss to the company amounting to approximately R337 536.00.'

[5] It is common cause that Munnick pleaded guilty to charge 1 - participation in an unprotected protest. Although the dismissal letter records that he was dismissed on the basis of all three allegations set out above, the findings of the chairperson reveal a different position. In his determination, the chairperson made the following findings in relation to the charges against Munnick:

'In summary – the employee will receive a final warning for his first offence; he is not found guilty of the third charge; but, on the second charge he is found guilty.'

[6] Accordingly, Munnick's dismissal was based on the finding that he had incited employees to participate in an unlawful picket on 19 and 20 May 2016.

Material facts

[7] The material facts giving rise to the charges and, ultimately, Munnick's dismissal were largely common cause. At the time of his dismissal, Munnick was employed by the company as a Production Technician and was a member of the South African Chemical Workers Union (SACWU).

[8] On 19 May 2016, at approximately 08h59, Ester Wolmarans ("Wolmarans"), the company's Group Leader: Human Resources, sent an email to various recipients requesting an urgent meeting with the SACWU shop stewards. In that email, Wolmarans requested that the shop stewards be released from their duties to attend the meeting. She further specifically requested that Munnick, despite not being a shop steward, also attend the meeting.

[9] Between 10h00 and 10h45, during the lunch interval, employees from the Small Volume Parenteral (SVP) division and Unit 1 left the company's premises, assembled outside the workplace, and commenced a protest action. In response, the company issued a first ultimatum in which it recorded that the employees had, since that morning, refused to perform their duties for reasons unknown to management. The ultimatum required the employees to return to work by no later than 12h00. However, as indicated above, the protest only took place during the 45-minute lunch interval and employees returned to work thereafter.

[10] The company simultaneously notified SACWU of the employees' conduct and informed the union that the protest action constituted unprotected industrial action. The company further conveyed its willingness to engage with SACWU to resolve the matter amicably and to facilitate the employees' return to work.

[11] At 13h25, Munnick circulated an email to the engineering section employees in which he stated that the employees had resolved earlier that morning to leave their workstations during their breaks and engage in a peaceful picket. He recorded that the company had responded by immediately issuing the first ultimatum. Munnick further recorded that the employees were sacrificing their lunch breaks in support of various workplace concerns, including incentives, warehousing grading, and transport issues. He concluded by expressing hope that the workforce as a whole would unite in support of the cause, stating that he would greatly appreciate it if *'the plant as a whole can rise up and stand up for what [they] believe in and to not give up'*, adding that *"this is as legal as they can come"*.

[12] Later that day, the company issued a memorandum to the employees, recording that they had gathered outside the workplace during their lunch break to participate in a picket, which the company regarded as unlawful. The memorandum further recorded that management had met with SACWU at 12h20, during which the shop stewards explained the reasons underlying the picket. According to the memorandum, the shop stewards indicated that SACWU had advised them that the picket was lawful. The company, however, informed the shop stewards that SACWU's advice was incorrect. The memorandum concluded as follows:

'Should there be any participation and/or continuation of any participation in any form of unprotected industrial action or subsequent pickets during any further lunch breaks or any of the other shifts and/or during normal working hours, the company will (and in line with the first ultimatum) approach the Labour Court on an urgent basis to interdict this (on-going) misconduct and which ... will also result in disciplinary action against any employees participating in the aforementioned conduct as well as damages claims in respect of any loss/harm suffered as a result of such conduct.'

[13] On the morning of 20 May 2016, before the continuation of the picket, the company issued a memorandum to all employees. In that memorandum, the company expressed its concerns about the planned picketing that day and directed employees to continue performing their normal duties and responsibilities. It further directed employees to refrain from engaging in any conduct considered unlawful.

[14] It is common cause that the picket continued during the employees' lunch break on 20 May 2016. At 12h28 on that day, Munnick once again addressed an email to the engineering section employees. He stated as follows:

'If what we are doing is illegal, then why don't they stop us from going out? Are we stopping production? NO, are we on their premises? NO, are we using company time? NO they are using scare tactics because they don't want the world out there to know how they [lie] to us and exploit us.'

[15] At 13h07, Munnick sent a further email to the employees. In that email, he advised them that the SACWU General Secretary and a union official had been invited to an urgent meeting with the company. He further stated that their actions had *"worked"* and indicated that they would continue with the picketing should the company fail to accede to their demands.

[16] Later that day, the company issued another memorandum in which it stated that:

'Despite the company's earlier communication today, some employees on the first shift in SVP and Unit 1 have (again) embarked on unlawful protest action during the lunch break commencing at 10.00AM outside the company's entrance and immediately opposite a neighbouring company ...

The company wishes to place on record its extreme disappointment at the persistent and wilful conduct of the participating employees, the SACWU shop stewards as well as SACWU.

The company herewith places on record that it fully reserves it[s] rights to approach the Labour Court for purposes of obtaining an interdict and also to take disciplinary action against participating employees and which disciplinary action may result in summary dismissals.'

[17] On the same day, SACWU responded to the company's two memoranda. SACWU maintained that its members had engaged in a peaceful protest rather than a picket. It contended that the action took place outside the company's premises, during the employees' own time and not during working hours and did not interfere with the company's production activities. On that basis, SACWU disputed the company's assertion that the conduct was unlawful. SACWU further recorded that its correspondence served as formal notice of the declaration of a dispute.

[18] The company subsequently approached this Court on an urgent basis for interdictory relief. On 23 May 2016, the Court issued a rule *nisi* together with an interim order declaring the picket that had commenced on 19 May 2016 unlawful and in contravention of the LRA. The interim order further interdicted the employees from continuing to participate in the picket pending the return date. The Court confirmed the rule *nisi* on 2 June 2016.

The arbitration award

[19] As indicated above, Munnick was dismissed on the basis that he had incited employees to participate in an unlawful picket on 19 and 20 May 2016. The commissioner found that Munnick's email sent on 19 May 2016 at 13h45 and the further emails sent on 20 May 2016 at 12h28 and 13h07, incited employees to participate in the picketing action. She found that the contents of these emails *"clearly incite[d] employees to persist with their unlawful picket"*.

[20] The commissioner further found that, when assessing the appropriateness of dismissal as a sanction, he considered that Munnick genuinely believed the picket to be lawful, a view that was also shared by SACWU. He also considered that the picketing took place during the employees' lunch breaks, was conducted peacefully, and occurred outside the company's premises. Notwithstanding these considerations, the commissioner concluded that the dismissal was substantively fair. She reasoned that:

'I had to balance the above considerations against the fact that Munnick was fully aware of the [company's] instruction to stop picketing and that the picket was unlawful. He however persisted to encourage employees to continue with their unlawful behaviour.'

The review grounds

[21] Munnick contends that the commissioner's finding that he incited employees to participate in an unlawful picket is disconnected from the evidence and is therefore unreasonable. He argues that the commissioner was required to determine whether he had the requisite intention to incite employees to engage in an unlawful picket. Munnick submits that this enquiry was central to the determination of his guilt, yet the commissioner failed to undertake it and instead concluded that he had committed misconduct without properly considering the question of intent.

[22] Munnick further contends that, had the commissioner properly directed herself to the question of intent, she would have concluded that there was no evidence that he intended to incite employees to participate in an unlawful picket. In support of this contention, Munnick points out that he was not a shop steward and that the decision to embark on the picket originated from employees on the shop floor rather than from anything contained in his emails. He further argues that his email of 19 May 2016 was sent only after the picket had already commenced and therefore could not have induced or encouraged employees to participate in the action. By the time the email was circulated, the employees had already embarked on the picket of their own accord, with the result that the conduct which was alleged to have been incited had already occurred. Accordingly, Munnick contends that the email could not reasonably be construed as having incited the commencement of the picket.

[23] Similarly, the emails sent on 20 May 2016 at 12h28 and 13h07 were transmitted after the picket had already occurred on that day and, accordingly, could not have incited employees to engage in the picketing. Munnick also maintains that he genuinely believed the picket to be lawful, a belief reinforced by the advice given by his trade union, SACWU, and that this bona fide belief is inconsistent with any intention to encourage unlawful conduct.

[24] Regarding the appropriateness of sanction, Munnick contends that the commissioner failed to attach sufficient weight to his bona fide belief that the picket was lawful and, consequently, failed to appreciate that he lacked any intention to incite employees to participate in unlawful conduct. He further submits that the commissioner overlooked the fact that the picket took place outside the company's premises, during employees' lunch breaks rather than working hours, and that it was conducted peacefully.

[25] Finally, Munnick contends that the commissioner failed to properly apply the principle of consistency in determining the fairness of his dismissal. He submits that the commissioner disregarded evidence indicating that Phumeza Damana, Sebastian Jonas and Mzwanele Dinge, who were shop stewards, were not disciplined or dismissed despite having played a role in encouraging or promoting the same unlawful picket. According to Munnick, these employees were similarly situated to him, if not more culpable, yet were treated differently. He argues that the commissioner's failure to consider this differential treatment rendered her decision unreasonable.

Evaluation

[26] Munnick challenges both the commissioner's finding that he was guilty of misconduct and the sanction of dismissal imposed. The thrust of Munnick's case in relation to the finding of guilt is that the decision to embark upon the picket originated with the employees on the floor and was taken during the morning of 19 May 2016, independently of any communication from him. He contends that his subsequent emails cannot reasonably be construed as having incited, induced or encouraged employees to participate in the picketing action.

[27] His case is that he lacked the requisite intention to incite employees to engage in an unlawful picket. He contends that he genuinely believed the picket was lawful, having regard to the fact that it took place during employees' lunch breaks, outside the company's premises, and was conducted peacefully. He also relied on the advice provided by SACWU, which had informed employees that the action was lawful. In these circumstances, Munnick contends that he could not have intended to encourage participation in conduct that he honestly believed to be lawful.

[28] It was common cause that the employees themselves took the decision to embark on the picket during their lunch breaks. There was no evidence that Munnick played any role in influencing or encouraging that decision. In any event, the charge of incitement was founded exclusively on the contents of the emails sent by Munnick. The email of 19 May 2016 was transmitted only after the picket had already commenced and could therefore not have been the cause of, or catalyst for, the employees' earlier conduct.

[29] Furthermore, there was no evidence that any of the recipients of the email interpreted its contents as an encouragement or inducement to participate in, or persist with, the picket. Nor was there any evidence that the email, which was addressed to employees in the engineering section, was received by the shop-floor employees who had participated in the picket, let alone that they understood it as a call to commence or persist with the action. In the absence of such evidence, there was no factual basis upon which the commissioner could reasonably conclude that the email of 19 May 2016 constituted incitement of the unlawful picket, or that it encouraged the picket.

[30] Even if the email could be construed as encouraging employees to continue with the picket, Munnick's unchallenged evidence was that he genuinely believed the employees' conduct to be lawful. He explained that in his understanding, he saw nothing unlawful in employees gathering outside the workplace during their lunch break. This understanding was further reinforced by the advice received from SACWU.

[31] Munnick testified that it was only when the matter came before the Court in the interdict proceedings that he realised that his understanding of the legality of the picket was wrong when, during those proceedings, the Court referred to a judgment involving facts similar to those of their case. He said that this realisation came as a considerable shock and disappointment to him, describing himself as being *"too unhappy"* and *"too sad"* to discover that they had been mistaken regarding the legality of the picket. His evidence underscores his contention that, at the time of the events in question, he genuinely believed that the picketing action was lawful and that he acted on that belief.

[32] Munnick's emails of 20 May 2016 stand on no different footing. Both emails were sent after the employees had already embarked upon the lunchtime picket on that day. It is further common cause that no picketing took place after 20 May 2016. In those circumstances, the emails could not logically or causally have incited employees either to commence the picket on 20 May 2016 or to engage in any future unlawful picketing.

[33] The commissioner's conclusion that these emails amounted to incitement is therefore difficult to sustain on the evidence. Incitement, by its nature, involves conduct that encourages, induces or persuades another person to commit an act. Where the conduct alleged to have been incited has already occurred, or where no subsequent conduct follows, it is difficult to conceive how that conduct could have been incited after the event. The commissioner's finding is thus disconnected from the chronology of events and the undisputed evidence. Put differently, it is illogical to conclude that Munnick's emails incited conduct that had already taken place or conduct that never occurred thereafter.

[34] Munnick is therefore not guilty of the misconduct alleged against him. On the evidence before the commissioner, the finding of guilt cannot therefore stand.

[35] In light of this conclusion, the issue of sanction does not arise. However, even if Munnick had been found guilty, dismissal would, in my view, not have been an appropriate sanction in the circumstances. The commissioner's finding on sanction was unsustainable and internally inconsistent. Having accepted that Munnick genuinely believed the picket was lawful, she nevertheless concluded that he was fully aware of its unlawfulness and deliberately persisted in encouraging employees to continue picketing. These findings are irreconcilable and cannot logically coexist.

[36] The facts show that the picket was conducted peacefully, took place during employees' lunch breaks and outside the company's premises, and significantly, that Munnick acted under the bona fide belief that the conduct was lawful. SACWU advised Munnick that the picket was lawful. There was no evidence that he intended to encourage employees to engage in conduct that he knew to be unlawful. Viewed cumulatively, these factors substantially mitigate the seriousness of the misconduct and render the sanction of dismissal disproportionate. Accordingly, even on the assumption that misconduct had been established, dismissal would have been unfair.

[37] There is a second, and more fundamental, reason why the sanction of dismissal cannot be sustained, or why the dismissal was substantively unfair, which is, the company's inconsistent application of discipline. The company's own evidence, led through Wolmarans, revealed a stark and compelling instance of unexplained and unjustified inconsistent application of discipline. She conceded that although four employees, including Munnick and fellow shop steward Phumeza Damana, faced allegations of incitement, Damana received only a final written warning without even being subjected to a disciplinary hearing. Unable to account for this differential treatment, Wolmarans candidly acknowledged that the only explanation she could offer was that it was *"probably a mistake"*, adding that *"[I]t is what it is. I don't know how to explain it to you"*.

[38] Significantly, Wolmarans testified that the company's instructions had been clear that employees involved in such conduct, and particularly shop stewards, should be dealt with firmly because they were leaders and examples to the workforce. If shop stewards were regarded as deserving of stricter discipline because of their leadership role, there is no apparent reason why Damana, a fellow shop steward charged with the same offence, escaped a disciplinary hearing altogether and received only a final written warning, while Munnick, who was not a shop steward, was dismissed.

[39] Wolmarans went further and identified additional instances of selective discipline. Referring to other shop stewards, Sebastian Jonas and Dinge, she testified:

'Mr Jonas probably should have received the second charge as well and like I say, Mr Dinge, we didn't even know that he received final written warning until such time that it was brought up in his Disciplinary Enquiry at that time.'

[40] The company's evidence therefore establishes that the parity principle was plainly infringed. The dismissal of Munnick cannot be reconciled with the treatment afforded to other employees who were involved in the alleged same events and, on the company's own version, were equally culpable or more culpable.

[41] For all these reasons, Munnick's dismissal remains substantively unfair, even if he were assumed to have committed the misconduct in question. The commissioner failed to properly consider the clear evidence of inconsistency and arrived at a conclusion that is unsupported by the facts before him. The award is accordingly unreasonable and fails to be reviewed and set aside.

Remedy

[42] Given that the full evidentiary record is before this Court and all the relevant issues have been ventilated, nothing inhibits this Court from exercising its powers of substitution rather than remittal.

[43] Munnick sought reinstatement during arbitration proceedings and still seeks reinstatement in these proceedings. The exceptions to reinstatement contemplated in section 193(2) of the LRA are not present in this matter. The company did not contend otherwise, nor did it advance any evidence to suggest that any of the exceptions finds application. Accordingly, Munnick is entitled to reinstatement.

[44] The company bears the burden to prove that reinstatement should not apply retrospectively.^[2] Mr Voultsos, on behalf of the company, submitted that if the Court were to grant retrospective reinstatement, it should limit the backpay awarded and not order full retrospective remuneration.

[45] Munnick was dismissed on 8 September 2016. The unfair dismissal dispute was finalised on 19 April 2018, when he received the award. Although the review application was filed only 11 days outside the prescribed six-week period on 12 June 2018, it was thereafter not diligently prosecuted and consequently lapsed on 4 October 2018. The company subsequently applied for the dismissal of the review application, while Munnick sought its reinstatement and/or revival. That application was granted on 8 June 2022. There is no evidence before this Court suggesting that Munnick was responsible for any further delays following the revival of the review proceedings. In these circumstances, it is my view that reinstatement should be ordered with backpay for the period during which Munnick was out of employment, save for the period between 4 October 2018, when the review lapsed, and 8 June 2022, when it was reinstated. Munnick is accordingly entitled to reinstatement together with backpay for the periods 8 September 2016 to 3 October 2018 and 9 June 2022 to the date of compliance with this judgment.

[46] Although Munnick sought a costs order, particularly in respect of the period during which he was legally represented, I am not persuaded that this is a matter that warrants a departure from the well-established principle in labour matters that costs do not follow the result. Accordingly, I consider it appropriate that each party bears its own costs.

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

Order

- The late delivery of the review application is condoned.
- The arbitration award issued by the second respondent dated 10 April 2018 under case number ECCHME47-16/17, is reviewed and set aside, only insofar as it relates to the first applicant.
- The award is substituted with the following order:

- The dismissal of the first applicant by the third respondent on 8 September 2016 is declared substantively unfair.
- The third respondent is ordered to reinstate the first applicant retrospectively from the date of his dismissal on the same terms and conditions of employment that existed before his dismissal and without any loss of benefits.
- The third respondent is ordered to pay the first applicant back pay for the period 8 September 2016 to 3 October 2018, and 9 June 2022 to the date of compliance with this judgment, within 15 court days of this judgment.
- The applicant is ordered to return for duty in terms of his reinstated contract of employment within a reasonable time, not later than three (3) working days after receipt of this judgment.'
- There is no order as to costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the First Applicant: In person

For the Third Respondent: Mr L. Voultsos

Instructed by: Kirchmanns Inc.

[1] Act 66 of 1995, as amended.

[2] *Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile and others* (2010) 31 ILJ 273 (CC); [2010] 5 BLLR 465 (CC).