DRC ARBITRATION AWARD

Case number: MIDB 23812
Arbitrator: Leon Pillay
Date of award: 22 October 2025

In the matter between

Nozipho Ndlovu

Applicant

And

Motherson MSSL Global RSA

Respondent

DETAILS OF HEARING AND REPRESENTATION

1. This arbitration hearing was held at DRC offices, Pinetown on the 19th of June 2025 and was completed on the 16th of October 2025. Closing arguments were submitted in writing on the 20th of October 2025.

2. The respondent was represented by Reitumetse Morukhu, an official of SAUEO, an employer organisation. The applicant was represented by Thandeka Mhlongo, a NUMSA official.

BACKGROUND TO THE DISPUTE

3. The applicant commenced employment at the respondent on 1 May 2023 and was dismissed on 5 February 2025. At the time of her dismissal, the applicant was a masker at the respondent company (the company) and she earned R8 500,00 per month.

4. The applicant was charged, found guilty and dismissed for the following acts of misconduct:

4.1. Failure to Obey a Lawful and Reasonable Instruction in that:

On the 10th of January 2025, at the MSSL Durban plant, you refused to comply with a lawful and reasonable instruction from your shift in charge, Mbali Mfuphi, to tie your hair. This instruction was issued in alignment with the company's safety policies which prohibit long untied hair in the workplace due to safety concerns. Your refusal to comply directly contravened workplace safety regulations and demonstrated insubordination at MSSL Durban plant.

4.2. Insolent and disrespectful conduct in that:

Following your refusal to comply with the instruction to tie your hair on the 10th of January 2025, you further disrespected your shift in charge Mbali Mfuphi, by clicking your tongue at her. This behaviour undermines workplace harmony, shows a lack of respect for authority and breaches the company's code of conduct regarding professional behaviour and communication at MSSL Durban plant.

5. The applicant submitted that:

5.1. She was not guilty of the charges;

5.2. The instruction was unreasonable;

5.3. Many employees had long untied hair at the workplace;

5.4. The applicant was targeted; and

5.5. She sought reinstatement as relief.

ISSUES TO BE DECIDED

6. The issue to be determined is whether the applicant's dismissal was procedurally and substantively fair and if so decided, to determine the appropriate relief to award.

SURVEY OF RELEVANT EVIDENCE AND ARGUMENTS

7. The respondent submitted Bundle (A), paginated from page 1 to page 53 and the applicant submitted Bundle B, paginated from page 1 to 9. Two single pages (C & D were added subsequently) The arbitration proceedings were digitally recorded therefore this award reflects only a summary of the evidence that I considered relevant in deciding this dispute
8. **Respondent's case**: Isaac Netshivhangani, Mbali Mfuphi, Candice Gumkel and Conrad Solomon testified under oath for the respondent. It is the respondent's case that:
   8.1. The respondent's disciplinary code reflects dismissal as a sanction for:
      8.1.1. Disrespect/Insolence towards disobedience – Dismissal (page 44 of A)
      8.1.2. Refusal to obey a lawful and reasonable work instruction – Dismissal (page 45 of A)
   8.2. There were warning signs posted in the plant warning employees as follows: *"Do not operate when wearing gloves, loose clothing or exposed long hair."*
   8.3. Employees were compelled to follow the supervisor's instructions at all times because supervisors will not be able to run their production operations if employees lacked discipline and refused to comply with instructions.
   8.4. The warning signs are displayed in the paint shop area as well because escalators, jigs and machines may entrap employees with loose garments and it could result in death if the employees were caught in the moving parts.
   8.5. In addition to the signs, the paint shop had meetings once per week and safety procedures were explained to employees.

8.6. The photographs on page 7 and 8 of Bundle B showed some females with untied hair, which was prohibited. It was not brought to the attention of management.

8.7. On the 10th of January 2025, Mbali Mfuphi went to the applicant and requested her to tie her hair. She then instructed Conrad, the team leader, to instruct the applicant to tie her hair and Mbali went back to her table.

8.8. When Mbali looked at the applicant subsequently, she noticed that the hair was not tied.

8.9. Mbali then called Conrad, the team leader, and informed him that she gave the applicant an instruction to tie her hair but it was still not done.

8.10. Conrad went to the applicant and told her to tie her hair but it was still not done. Conrad informed Mbali that he gave the instruction to the applicant and the applicant indicated that she had nothing to tie it with.

8.11. After the first break, Mbali, Conrad and Candice were present when Mbali called the applicant and informed her that she was given an instruction to tie her hair but she did not comply. The applicant stated that she informed Conrad that she did not have a hair band.

8.12. Mbali informed the applicant that if the applicant informed Mbali initially that she did not have a hair band, Mbali would have tried to get one for her. The applicant then looked at Mbali up and down and clicked her tongue and walked away.

8.13. Mbali asked the applicant to return and asked if the applicant had clicked her tongue at Mbali. The applicant returned and clicked her tongue in Mbali's face.

8.14. Mbali asked the applicant to return to her table whilst Candice and Conrad just stood there.

8.15. The applicant's hair was braided and was down to her waist at the back. It was curly at the bottom and partly blonde.

8.16. There were signs towards PP1 and PP2 and the applicant was aware of the signs and the rule that loose hair was not permitted.

9. **Applicant's case**: The applicant and Bonga Sibisi, the shop steward, testified for the applicant. It is the applicant's evidence that:

9.1. The applicant was a masker at the respondent and on the 10th of January 2025, Mbali went to the applicant and told the applicant to tie her hair because the hair was disgusting to Mbali. The applicant was not given a chance to respond and Mbali left.

9.2. Mbali went back to her office and constantly came out of her office to check if the applicant's hair was tied.

9.3. Mbali then came out of her office with Candice to check if the applicant's hair was tied. Mbali then sent Conrad with an instruction to the applicant to tie her hair and when the applicant received the instruction, she informed Conrad that she had nothing with which to tie her hair but she will try and find something.

9.4. The applicant could not leave her workstation because she had to wait for the employee she worked with to return, before the applicant could leave to find something with which to tie her hair.

9.5. Conrad returned later and gave the applicant the instruction from Mbali once again. The applicant then left to find something to tie her hair because the other employee she worked with had returned.

9.6. The applicant went to the toilet to look for rags used by the cleaners that the applicant could use to tie her hair but there were no rags there. The applicant also spoke to Thandeka, the cleaner, who indicated that there were no rags but she will inform the applicant when some rags arrived.

9.7. Mbali then went past the applicant's workstation to the 961 Department and spoke to the employees there. The applicant could not hear what Mbali said but she did hear one of the employees saying "We cannot hear from her", meaning that Mbali cannot take instructions from the applicant and that Mbali must "deal with her", referring to the applicant.

9.8. One of the employees thereafter went to the applicant and inquired about the instruction that Mbali gave which the applicant refused to comply with. The applicant said that she only told Conrad that she

did not have anything with which to tie her hair. The employee advised the applicant to be careful because it seemed that Mbali was after the applicant.

9.9. It was then time for their break and when the applicant returned, she went past the toilet to ask Thandeka in there were rags there but there was none.

9.10. The applicant went to her workstation and noticed Mbali and Candice arrive at the door of the applicant's workstation. Mbali stood in front of the camera that was facing the applicant.

9.11. They sent Conrad to call the applicant and when the applicant went to Mbail, Mbali said "I told you to tie your hair and also sent Conrad to tell you to tie your hair." The applicant replied that she told Conrad that she did not have anything with which to tie her but she will look for something.

9.12. Mbali then asked Conrad "why did you not tell me that she did not have something with which to tie her hair?" but Conrad did not reply.

9.13. A planner called Thandeka, then arrived to hear what was happening. Candice was also there and she was shouting at employees that were under her.

9.14. Mbali then asked the applicant why she did not tell Mbali that she had nothing to tie her hair with and the applicant indicated that Mbali did not give her a chance to respond.

9.15. Mbali then told the applicant that she did not take instructions, was rude and Mbali intended taking the matter further.

9.16. The applicant then asked Mbali why she always wanted to find something wrong with the applicant although the applicant did nothing wrong.

9.17. The applicant knew that Mbali would take the applicant to Isaac to get her fired therefore she asked Mbali to tell her what she did wrong so that the applicant could apologise.

9.18. Mbali also instructed the applicant to work at different workstations believing that the applicant would refuse. Such refusal would result in the applicant's dismissal. The applicant however complied with the instructions.

9.19. The applicant also received a message from other employees that Mbali stated that Mbali wanted doctors' notes from those that faked their illness and were absent.

9.20. Whilst Mbali spoke to the applicant and accused the applicant of not complying with the instructions to tie her hair, the applicant just cried. Thandeka pulled the applicant away and took her to her workstation.

9.21. The applicant then had a panic attack and went to drink water and other employees asked her what happened. Mlu then took the applicant to work at PP3 and spoke to the applicant on the way to PP3.

9.22. The following week the applicant was at work and on the Thursday, at 17h30, Isaac called the applicant and gave her a notice of suspension in the presence of Bonga, the shop steward.

9.23. The respondent did not have a rule stating that female employees must have their hair tied. The applicant did not have an induction when she was employed nor was the applicant informed verbally that the respondent's rule was that hair should be tied.

9.24. The applicant did not see the notice (Bundle C) stating *"Do not operate when wearing gloves, loose clothing or exposed long hair."*

9.25. Daily meetings did not occur when the shift commenced but on Thursdays, a meeting was held and the employees were told how to be more productive.

9.26. Prior to the 10th of January 2025, the applicant was never instructed to tie her hair nor was she disciplined for not tying her hair.

9.27. The respondent did provide the employees with shower caps but that was insufficient to cover/accommodate the applicant's hair.

9.28. The applicant was not rude to Mbali nor did she click her tongue at Mbali. She spoke in a polite manner. The applicant's conduct would have been on video but the respondent did not produce the video that would prove that the applicant was not rude and did not click her tongue.

9.29. It was also normal for female employees to have their hair untied and that would have been visible in the video footage.

9.30. The various pictures on pages 6, 7 and 8 of Bundle B shows employees with untied hair and none of the employees were disciplined.

9.31. There was no moving machinery at the applicant workstation therefore there was no danger of the hair being caught in the machine.

ANALYSIS OF EVIDENCE AND ARGUMENT

10. In the applicant's opening statement, the applicant submitted that the dismissal was unfair because the rule, ie. that the hair must be tied, was not known to the applicant and that many employees worked at the respondent's premises whilst their hair was long and untied.

11. The evidence of the respondent was that the following sign was displayed in the paint shop area:

"Do not operate when wearing gloves, loose clothing or exposed long hair".

12. This was not seriously challenged by the applicant party when the respondent's witnesses gave evidence. According to the respondent's witnesses, the sign was posted on the wall close to the escalator at the paint shop. Although the shop steward testified that the sign was not displayed on the wall at the respondent's premises, I find his version improbable for reasons that follow.

13. The applicant's representative cross examined the respondent's witnesses and put to them that the wording on the sign did not stipulate that the hair must be tied and the witnesses conceded that it did not state that hair must be tied. This is actually an acceptance by the applicant that the sign existed at the respondent's premises.

14. To accept the applicant's version that the sign did not exist at the respondent's premises implies that the sign was fabricated by the respondent and that all the respondent's witnesses conspired in the fabrication. This is highly improbable.

15. In addition to the signs, it was the evidence of the respondent that long loose hair was not permitted at the workplace as it may be caught in moving machine parts or the escalators which could seriously injure employees.

16. It was the applicant's own evidence that respondent provided the employees with shower caps but that was insufficient to cover/accommodate the applicant's hair.
17. This actually supports the respondent's version, ie. that the rule of long loose hair being prohibited, did exist and that the sign was not a fabrication by the respondent. If long hair at the workplace was not prohibited, there would be absolutely no reason for the respondent to provide the employees with shower caps. It can only be to contain long hair and prevent it from hanging loose.
18. Based on the above it is improbable that the applicant was unaware of the rule that long loose hair was prohibited at the workplace.
19. But even if the applicant was unaware of the rule, the shift supervisor, Mbali, instructed the applicant to tie her hair and the applicant ought to have complied. Further, Mbali instructed the applicant to tie her hair twice thereafter. The applicant's response was that she informed Conrad that she had nothing to tie it with. If that was the case then the applicant should have made some effort to obtain a hairband or something else to tie her hair.

20. The applicant's evidence was that she did go to the toilet to find a rag that she could use to tie her hair and she also asked the cleaner, Thandeka, for a rag but there was none. This version was never put to the respondent's witnesses nor was Thandeka called as a witness.

21. The applicant did put to Conrad that she informed him that she had nothing with which to tie her hair and Conrad confirmed the applicant's version in this respect. It was not however put to Conrad that the applicant said that she will get something with which to tie her hair.

22. If the applicant did say to Conrad that she will get something with which to tie her hair, that should have been put to Conrad and if confirmed, it would be an indication that the applicant wanted to comply with the instruction.

23. Subsequently Mbali, in the presence of Candice and Conrad, the team leader, once again called the applicant and inquired why her hair was still not tied. The respondent's version is that:

    23.1. This angered the applicant and the applicant displayed open defiance towards Mbali, the shift supervisor;

    23.2. The applicant clicked her tongue at Mbali and

    23.3. When asked by Mbali if she clicked her tongue at Mbali, the applicant returned and clicked her tongue at Mbali's again.

24. The applicant party submitted that the applicant was angry at being targeted by Mbali but the applicant was not disrespectful.

25. It is also true that the respondent's witnesses were unable to state exactly what disrespectful words the applicant uttered to Mbali. I also accept that either Conrad or Candice or both may not have understood isiZulu therefore they may not have understood what was said between the applicant and Mbali. That however is irrelevant because the clicking of one's tongue is a display of disrespect irrespective of language. You don't have to understand a language to know that it is disrespectful to click one's tongue at your supervisor.

26. I therefore accept that the conduct of the applicant in the circumstances was not only grossly disrespectful to the shift supervisor, it was also grossly insubordinate.

27. The applicant presented pictures of herself and many other female employees in the workplace with their hair open and loose. It was argued by the applicant that it was a common practice at the workplace and dismissal was therefore inappropriate.

28. On the issue of other employees also having loose hair at the workplace, Candice Gumkel accepted that other female employees also broke the rule but when they were instructed to tie their hair, they complied with the instruction. This evidence was not challenged in the cross examination of Candice. Candice's evidence was that it was difficult to get the employees to comply with the rule. Whilst this is evidence that management was aware that employees were not complying with the rule, it does not imply that management condoned non-compliance because employees were told to tie their hair and they complied.

29. If the misconduct of the applicant was limited to not tying her hair whilst at the workplace, I would accept that dismissal may be regarded as too harsh a sanction but the difference between the conduct of the applicant and the other female employees that wore open loose hair, was the gross insubordination displayed by the applicant towards Mbali. It was a direct challenge to the authority of the supervisor, Mbali.

30. In ***TMT Services and Supplies (Pty) Ltd v CCMA and others*** **(JA 32/2017) [2018] ZALAC 36; (2019) 40 *ILJ* 150 (LAC); [2019] 2 BLLR 142 (LAC)** (handed down on 17 October 2018) it was held that the enquiry into the gravity of the specific insubordination considers three aspects: the action of the Employer prior to the deed, the reasonableness of the instruction, and the presence of wilfulness by the Employee. The LAC furthermore held that to the extent that insubordination involves a defiance of authority, such a defiance can be proven by a single act of defiance, and that the Employer's prerogative to command its subordinates is the principle that is protected by the class of misconduct labelled *"insubordination*" and addresses operational requirements of the organisation that ensure that managerial paralysis did not occur.

31. In summary my findings are that:

    31.1. The respondent did have a rule that long loose hair was not permitted at the workplace;

    31.2. The rule was reasonable and the applicant was aware of the rule;

    31.3. The applicant broke the rule and failed to comply when instructed by Mbali to tie her hair;

31.4. The respondent first attempted to obtain compliance from the applicant but failed;

31.5. The applicant's defiance was wilful; and

31.6. The applicant was grossly insubordinate to the shift supervisor, Mbali

32. There is no evidence that the applicant showed any remorse therefore I find that dismissal under the circumstances is not unfair.

AWARD

33. The dismissal of the applicant is procedurally and substantively fair.

34. The application by the applicant is dismissed.

Leon Pillay
Commissioner