IN THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

CASE NUMBER: MPMB2806-25

Kgathlisho Courtley Ngwatwana **Applicant**

and

Chrome Traders (Pty) Ltd **Respondent**

Dates of hearing: 18 November 2025 & 11 December 2025

Date of submission of heads of argument: 15 December 2025

Date of award: 18 December 2025

Name of Commissioner: Makgwale Asnath Sedibane

ARBITRATION AWARD

DETAILS OF HEARING AND REPRESENTATION

1. The alleged dismissal related to misconduct dispute was between Mr **Kgathlisho Courtley Ngwatana** (the Applicant) and **Chrome Traders (Pty) Ltd** (the Respondent),referred to the Commission on 15 September 2025, was held under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA) on 18 November 2025 and again on 11 December 2025, at the offices of the Department of Employment and Labour in Lydenburg.

2. The applicant attended the process in person and represented himself. The respondent was represented by Mr Victor de Kock**,** the Respondent's Human Resource Coordinator.

3. Ms **Andile Mthembu** assisted with interpretation from Sepedi to English and vice versa. I recorded the proceedings manually and electronically.

4. The parties submitted written closing arguments which I have considered when making this award.

BACKROUND INFORMTION

5. The applicant commenced employment with the respondent on 05 June 2024 as supervisor. He was dismissed on 03 September 2025. At the time of his dismissal, the applicant was earning a basic monthly salary of R20 535-00.

6. The applicant was dismissed based on the following allegation of misconduct –

   Failure to adhere to client protocols-
   In that upon a security search being conducted on 25 August 2025, you were found in the possession of your private cellphone which is not permitted the Concentrator Plant.

7. Both parties submitted bundles of documents. The respondent's bundle was labelled bundle "R" and the applicant's bundle was labelled bundle "A".

<u>Common cause issues</u>

8. The applicant was charged and dismissed for alleged misconduct.

9. The applicant pleaded guilty to the charge of misconduct in the disciplinary hearing.

10. At the time of dismissal, the applicant had a record of counselling and a valid Final Written Warning.

Issues in dispute

11. Whether the sanction of dismissal was appropriate.

12. Whether the respondent was consistent in the application of the rule. Whether the comparators, Mr Samuel Msila and Mr Hlaule were treated differently from the applicant.

ISSUE TO BE DETERMINED

13. I am required to determine whether the dismissal of the applicant was procedurally and substantively fair.

14. The applicant sought reinstatement as relief, should I find in his favour.

ANALYSIS OF EVIDENCE AND ARGUMENT

15. The matter was referred as dismissal related to misconduct in terms of section 191(1) [191(5)(a)] of the Labour Relations Act 66 of 1995. Since dismissal was not in dispute, the onus to prove the fairness of the dismissal rested on the respondent.

16. The respondent led evidence through four witnesses, Mr Kopano Gushupelwang, Mr Samuel Mosila, Mr Victor Elbert John de Cock and Mr Reinier Erich du Plessis. The applicant testified as the only witness in his case.

17. It was common cause that the applicant on 25 August 2025 breached the rule against being in possession of a private cell phone during a routine security check at the Consecrator Plant. The applicant admitted that he knew the rule, which was valid and his conduct of being in possession of a private cell phone at the plant constituted misconduct. He however raised the defence that he had an emergency which required him to have the cell phone and that his other colleagues who had committed the same or similar misconduct were not dismissed. The applicant further contended that the sanction of dismissal was too harsh and that the respondent's disciplinary code prescribed that he should have been issued with a final written warning.

18. The respondent's witnesses all testified that private cell phones were not allowed at the plant and that being in possession of a private cell phone constituted serious misconduct which was dismissible.

19. Mr Kopano Goshupelwang, Plant Superintendent confirmed that the applicant had pleaded guilty to the charge. He further confirmed that the applicant was at the time of the incident sitting on a valid final written warning albeit for a different offence. He described the applicant as a problematic employee who had the tendency to disregard safety procedures. He had given the applicant and his team coaching in 2024 after he had instructed them to load coal on a wheelbarrow first before loading it on the truck for safety reasons, but he had found them loading the coal on the truck directly.

20. Mr Goshupelwang further confirmed that Mr Samuel Mosila had received a final written warning for being in possession of a private cell phone on the plant. His sanction was different from that of the applicant as he did not have any previous final written warning and unlike the applicant, Mr Mosila did not have a legal appointment. He disputed that another employee, Mr Hlaudi had ever committed similar misconduct.

21. Mr Samuel Mosila, a previous subordinate of the applicant testified that he had been found guilty of being in unauthorised possession of a private cell phone on the plant. He was issued with a final written warning as he did not have any previous record of misconduct. As far as he knew, the company could dismiss an employee for misconduct if they were already sitting on a final written warning.

22. Mr Victor de Cock, the respondent's Human Resources Manager testified that he was the chairperson of the applicant's disciplinary hearing, and he had recommended the sanction of dismissal against the applicant after considering the company's code of conduct and the applicant's disciplinary record which included counselling and a final written warning. The code of conduct was a guideline and was not cast in stone, as per clause 5 of the code. The offence for which the applicant was dismissed was very serious and warranted the sanction of dismissal.

23. Mr Renier du Plessis, Operations Manager, testified that he had counselled supervisors including the applicant as there were performance issues. Mr Goshupelwang had also raised complaints about the applicant not following instructions. The respondent's client had raised the applicant's conduct of being in unauthorised possession of a cell phone with the respondent and this had led to the applicant being charged with misconduct and dismissed. As supervisor, legally accountable for the employees' safety, the applicant needed to lead by example. The applicant had a previous record of

misconduct which included counselling and a final written warning. The applicant was not a good employee and supervisor. He had committed at least three offences within his fourteen months of employment with the respondent.

24. The applicant maintained that dismissal was not appropriate. He referred to clause 4.4 in thee respondent's code of conduct which provided that *"If during a twelve (12) month period an employee who is on two (2) final warnings, commits a 3rd offence whether linked to others or not, a hearing must be held. If found guilty, a final warning for generally unsatisfactory behaviour will be issued. Should there be a further offence during the validity of this warning, then that offence shall be subject to disciplinary action or dismissal at a formal disciplinary enquiry/arbitration. "The* applicant contended that this clause meant that an employee should have at least three final warnings before they are dismissed.

25. The respondent's witnesses referred to clause 5.1 of the same code which provides that the list of offences is not necessarily exhaustive, that penalties quoted must be regarded as guidelines and that each case will be treated on its own merits. This is indeed in line with schedule 8(Code of Good Practice: Dismissal) of the Labour Relations Act 66 of 1995). Item 7(2) of the new code (gazetted on 04 September 2025) provides that serious misconduct may be a single instance of misconduct or repeated misconduct where graduated disciplinary measures have been implemented.

26. The Labour Court in **NUM obo Moeng and others v CCMA and others (C 792/2016) [2018] ZALCCT 35** held that the employees could not insist that they be given only a final written warning for gross insubordination in line with the sanctions stated in the disciplinary code for a first offence, as the provisions of the code showed that it was merely a guideline which had to take note of the clause stating that regard must be had to all the prevailing circumstances.

27. The applicant has not disputed that he committed serious misconduct. He has however contended that cell phones were not completely prohibited from the plant and he had access to a work cell phone as supervisor and that the reason he had carried his cell phone into the plant on that day was because as it was payday, he needed to access funds to transfer some to his pregnant wife so she could buy supplements.

28. The respondent's witnesses corroborated each other on the severity of the misconduct, especially in light of it having been raised with the company by its client, Boysendal Mine. The applicant as supervisor carried more responsibility in terms of ensuring compliance with security measures. His contention that he was allowed to have a private cell phone was refuted and he could not prove that he had the required authorisation to possess the cell phone at the plant. It would also not make

sense for the applicant to plead guilty to the charge when he honestly believed that he was entitled to have the private cell phone at the premises.

29. The applicant's misconduct was aggravated by his record of discipline, which was not good. In a period of fourteen months, the applicant had received counselling relating to his conduct and he had a valid final written warning for misconduct. The applicant argued that the counselling was non-disciplinary and it had expired at the time of the commission of the cell phone related misconduct. It is true that in terms of the respondent's disciplinary code, counselling letters are valid for 6 months, but this does not mean that previous counselling sessions will not be taken into consideration when an employee is found to have committed misconduct. The respondent was correct in taking the previous counselling sessions involving the applicant into consideration, when determining the appropriate sanction.

30. The nature of the misconduct committed by the applicant was very serious and had the potential of harming the respondent's business as the rule was viewed in a serious light by the respondent's client. The applicant's explanation of wanting to transfer funds to his wife was not supported by any evidence and would in any event not justify breaching the rule. Surely the applicant had other options of ensuring that his wife has access to funds, without him having to breach a security rule.

31. The applicant decried the sanction of dismissal and submitted that there was no demonstrable harm, loss, or safety risk that resulted from his use of the cell phone and that as a legally appointed supervisor, he was already authorised to use a production smartphone for reporting purposes. The applicant appeared to believe that breaching the rule should be of no consequence if there was no harm caused by such conduct. This cannot be as rules are there for a reason and employers must hold employees responsible for non-compliance with valid rules. The Labour Appeal Court in **Xstrata SA (Pty) Ltd v CCMA and others (JA 50/2014) [2016] ZALAC 93** held that by seemingly condoning an employee's conduct, especially in the face of a final written warning for the same type of misconduct, could undermine an employer's safety policy, and send a message to the employer's other safety critical employees that the breach of the rule was of no consequence.

32. The respondent led evidence to show that there was no inconsistency with regards to the application of the rule. Mr Mosila was disciplined for a similar misconduct. He was however not dismissed as he had a clean disciplinary record, and he was junior in rank to the applicant. The two cases were distinguishable, and the respondent considered each case on its own merits when arriving at the different sanctions. The respondent disputed that there was another employee Hlaudi, who had committed similar misconduct.

33. The applicant admitted having pleaded guilty to the misconduct in the disciplinary hearing. In the arbitration, the applicant attacked the characters of the respondent's witnesses and displayed arrogant behaviour towards the respondent's representative. He tried to distort the facts by testifying that there was authorisation for supervisors to carry their private cell phones, but when he was challenged on this, he conceded that no such blanket authorisation existed. The applicant did not show any remorse for his conduct and seemed to portray himself as a victim. I do not believe that the applicant would be repentant if the respondent was to give him another opportunity. When considering the appropriateness of the sanction of dismissal, the Labour Appeal Court in **Pick 'n Pay Retailers (Pty) Ltd v Maluleke and others (JA 26/2019) [2020] ZALAC** held that dismissal was appropriate when an employee has committed serious misconduct which destroyed the trust relationship between the parties, this despite the employee's length of service, which had to be considered amongst other factors. The employee's failure to show any remorse in that case was found to have made the employee's transgressions even more unpardonable.

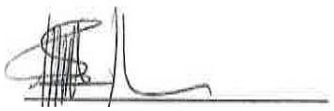
34. The applicant in his opening statement raised an issue relating to procedural fairness whereas this issue was not raised when issues were narrowed. He contended that he had not been served with the notice of disciplinary enquiry but was only informed verbally about the hearing. Mr Goshupelwang however led evidence that he had served the applicant with the notice of the disciplinary enquiry which the applicant had signed. The applicant did not dispute this fact and there was also no record of him having raised issues with the service of the notice in the disciplinary hearing. The applicant is literate and very vocal, I therefore do not believe that if indeed he had not been properly served with the notice to attend the disciplinary enquiry, he would have not raised this in the hearing or even at the stage of narrowing issues at arbitration stage. This allegation seemed to be an afterthought that the applicant decided to throw in, and he did not even challenge Mr Gosupelwang's evidence on this aspect. Based on this, it is my finding that the applicant was given proper notice to attend the disciplinary hearing and that his dismissal was therefore procedurally fair.

35. Having had regard to all the evidence that was presented before me, I find on the balance of probabilities that the dismissal of the applicant was both procedurally and substantively fair. The respondent discharged its onus in terms of section 192(2) of the Labour Relations Act 66 of 1995, by proving on a balance of probabilities that the dismissal of the applicant was fair. The applicant's application must fail, and the applicant is therefore not entitled to any relief.

AWARD

1. The dismissal of the applicant, **Kgathlisho Courtley Ngwatwana**, by the Respondent, **Chrome Traders (Pty) Ltd** was procedurally and substantively fair.

2. The application is dismissed and the applicant is not entitled to any relief.



Makgwale Asnath Sedibane
CCMA Commissioner