



**REPUBLIC OF SOUTH AFRICA**

**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGEMENT**

Not reportable

Case no: JR 2614/12

In the matter between:

**Top Car Panelbeaters CC**

Applicant

and

**Dispute Resolution Centre**

1<sup>st</sup> Respondent

**Commissioner MC Van Aarde**

2<sup>nd</sup> Respondent

**J Van Eck & 3 others**

3<sup>rd</sup> Respondent

**Heard:** 9 July 2013

**Delivered:** 11 July 2013

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**JUDGMENT**

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**BRUINDERS AJ**

- [1] The employees were dismissed at the end of November 2011. On 25 April 2012 a default arbitration award was issued under the auspices of the Dispute Resolution Centre, an appointed body acting under the Main Collective Agreement of the Motor Industry Bargaining Council. In terms of that award their dismissal was found to be unfair and they were granted compensation. On 9 September 2012 under case number MINT 29745A the Dispute Resolution Centre refused to rescind the default award. On 31 October 2012 the employer brought an application to review that award. On 20 May 2013 the employees brought this application under rule 11 to

have the review application dismissed and to have the award made an order of court. It is unopposed.

- [2] On the morning that the application was set down, an advocate representing the employer appeared. He informed court that the rule 11 application had not been served on the employer who intended opposing the application and that he might even advise it to amend its review application. There is a certificate of service to which is attached a registered post office slip establishing that the application was served on the employer by registered mail on 14 February 2013. No affidavit was filed explaining the failure to oppose the rule 11 application or seeking an indulgence to allow the employer to file an affidavit opposing this application.
- [3] It is trite that in the absence of agreement, a party who has failed to deliver an affidavit must explain its default satisfactorily, give reasons for why it seeks an indulgence to be allowed to file an affidavit out of time, show that it is not in bad faith and not merely seeking to delay the relief sought and show that its case on the merits is in broad outline, genuine. The employer has failed to do any of this on affidavit. Where there is no agreement, as is the case here, and the matter has been set down on the unopposed roll, it proceeds as an unopposed matter.
- [4] I am satisfied that the employees are entitled to the orders sought in the notice of motion. I make the following order:
- [a] The review application filed by applicant on 31 October 2012 is dismissed.
  - [b] The default arbitration award issued on 25 April 2012 under case number MINT 29745A is made an order of court.
  - [c] The applicant is ordered to pay the costs of this application.

T J Bruinders  
Acting Judge of the Labour Court