

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

Not Reportable

Case No: JR 2554/2018

In the matter between:

**DEPARTMENT OF CORRECTIONAL SERVICES**

**Applicant**

And

**SOLIDARITY OBO HJ TALJAARD**

**First Respondent**

**GENERAL PUBLIC SERVICE SECTORAL**

**BARGAINING COUNCIL**

**Second Respondent**

**MSIZA BHEKI N. O**

**Third Respondent**

**Heard: 27 August 2019**

**Delivered: 13 September 2019**

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## JUDGMENT

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**MABASO, AJ**

### Introduction

- [1] This is an interlocutory application brought by the First Respondent, seeking among other things an order that the arbitration award issued under the auspices of the Second Respondent under case number GPBC 829/2017 be made an order of Court in terms of section 158(1)(c) of the Labour Relations Act<sup>1</sup> (LRA). The Respondent, who is an applicant in the review application, is opposing this application.
- [2] On 22 March 2018, Commissioner Bheki Msiza issued the arbitration award in favour of Mr HJ Taljaard following an unfair labour dispute that he had declared against the Respondent. The dispute emanates from the non-implementation of occupations specific dispensation (OSD) for Correctional Services Officials which was signed off by the unions and the Respondent on 24 June 2009.
- [3] The Respondent avers that it received the arbitration award on 12 May 2018. In February 2019, nine months later, it launched a condonation application for the late delivery of a review application, but no review application was launched. No steps were taken to prosecute the same condonation application. At the time this Rule 11 application was delivered in June 2019, the Respondent had not delivered the review application. On 18 February 2019, the Applicant served and filed a notice of opposition to the condonation application. On or about 20 March 2019, the Applicant notified the Respondent that it would no longer oppose the condonation application and requested that it be served with the review application.

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<sup>1</sup> No 66 of 1995, as amended.

- [4] On 9 April 2019, the Applicant transmitted a correspondence to the Respondent notifying the Respondent that no review application has been delivered and requested for an update in respect of the progress in this regard. On 15 April 2019, the Applicant dispatched another correspondence to the Respondent reiterating that they had not received the review application and warned the Respondent that if no review application is delivered, then this application was to be launched. However, the Respondent did not comply with the Applicant's warning.
- [5] On 30 April 2019, the Applicant sent another email to the Applicant indicating again that no review application had been launched. On 9 May 2019 another correspondence was sent to the Applicant wherein the Respondent was notified that it was in the process of bringing a Rule 11 application "*as [the respondent] has no intention in pursuing this review application*", however, the Respondent neither responded to this letter nor delivered a review application. On 21 May 2019, Mr Professor Nkowane of the Respondent advised Ms Nicolette Ras that the review application was sent to the Applicant on 15 February 2019, however, later it transpired that this was not correct.
- [6] By 25 June 2019, no review application had been delivered by the Applicant and this necessitated the Applicant to bring this application which, among other things, is to make the arbitration award an order in terms of section 158(1)(c) of the LRA, as the Applicant avers that the Respondent has no intention of prosecuting the review application. Therefore, Mr Taljaard is being prejudiced by this failure. Mr Taljaard further states that he has no other option but to approach this Court, as the Respondent has failed to abide by the arbitration award.
- [7] The registrar of this Court issued a notice of set down on 17 July 2019 advising the parties that this application was to be heard on 27 August 2019. Four days before the set down date, on 23 August 2019, the Applicant delivered the review application which was not even accompanied by an application to stay the enforcement of the arbitration award or a notice advising this Court that it

has complied with the provisions of section 145 (7) read with ss (8), or an application for exemption from paying the security bond.

- [8] The Respondent also delivered an answering affidavit to the application before this Court, wherein they aver, among other things that the late delivery of the answering affidavit be condoned. The Applicant has not registered any objection to the late delivery of the answering affidavit. The Respondent blames the office of the state attorney for failure to speedily prosecute the review application and raised a number of internal mishaps within the state attorneys office. They further state that the interest of justice does not permit the granting of the order prayed for considering that Commissioner Msiza ordered it to pay an amount of R1 045 386.00 to Mr Taljaard.
- [9] As the matter was set down on an unopposed motion roll, the answering affidavit was served on the union representative at Court, and she indicated that she did not require an opportunity to deliver the replying affidavit and she was ready to argue the matter. In the interest of justice and to avoid further delays, this Court proceeded with the matter now as opposed.
- [10] This Court has the discretion to make an arbitration award an order of Court even if there is a review application pending. If this Court makes such arbitration award an order, the review application becomes moot as this Court cannot review an arbitration award that has been made an order of Court in terms of section 158(1)(c) of the LRA, unlike an arbitration award certified in terms of section 143(1) of the LRA as the certification of the award does not makes such award an order of Court.
- [11] In deciding whether an arbitration award may be made an order of this Court considering the interest of justice which requires speedy resolution of disputes under the LRA the circumstances of this matter requires that I consider the following questions: Is the alleged defaulter aware of the award? Has it failed to comply with the terms of the award? What are the reasons for failure to comply? Is the review application delivered on time, if not, why?
- [12] It is common cause between the parties that the Respondent received the arbitration award, therefore, it is aware of it. The respondent has not complied

with the terms of the award. The reasons for the failure are that it intended to bring a review application against the award. It is also essential to look at whether the Applicant intended to review the award. The award was issued in March 2018, and the Applicant alleges that it received the award in May 2018, no review application had been delivered by 25 June 2019, at the time of the delivery of this application. In this Court, the interests of justice require that a party who was to exercise their rights must do so speedily and if there is a delay, such delay must be adequately explained. The Respondent herein blamed its internal deficiencies which has nothing to do with Mr Taljaard whose rights of enjoying the benefits of the arbitration award emanating from an OSD issue dated back to 2009.

[13] Considering that the issue that was referred to the Bargaining Council was about an unfair labour practice, and the Commissioner made an order among other things that the Applicant should be paid an adjustment with effect from 1 January 2018 following the OSD pay progression. Now, the Respondent's explanation in the answering affidavit as to why the review application was delivered on 28 August 2019 amounts to no explanation at all, and it boils down to negligence on the part of the state in prosecuting the review application, as was correctly submitted by its Counsel during the argument. Under the circumstances, I conclude that it will be in the interests of justice that the arbitration award should be made an order of Court to allow the employee his rights to enforce the terms of the arbitration award.

[14] During the argument, the union official contended, that the review application be dismissed. I have looked at the papers before this Court and there is no averment in the affidavit which supports this prayer as the review application was delivered after this application had been launched. Under these circumstances, I conclude that I cannot dismiss the review application. In respect of the remaining prayers of the notice of motion, the union official correctly conceded that there were no supporting averments too.

[15] The union official moved for the addition of another prayer, which is for the Court to make an order that the condonation application be dismissed. I considered the application and am not in agreement with the union official,

taking into account that in its papers the union averred that it had no intention of opposing the condonation application, and there is nothing in the founding papers which suggest that the condonation application should be dismissed.

[16] In respect of the costs, I have to be guided by the provisions of section 162 of the LRA, and I am of the view that a costs order will not be appropriate.

[17] Wherefore the following order is made:

Order

1. The arbitration award by Commissioner Bheki Msiza under the GPSSBC under case number GPBC 829/2017 dated 22 March 2018 is made an order of this Court.
2. The registrar is directed to archive both the condonation application and the review application delivered by the Department of Correctional Services under the above case number.
3. There is no order as to costs.

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S. Mabaso

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv Makgate  
Instructed by: Leepile Attorneys Inc

For the Respondent: Ms Endres (Union Official)  
Instructed by: Solidarity