



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J1030/2023

In the matter between:

MATONG SEHLABAKA

First Applicant

DAVI MPHASHA

Second Applicant

THABO MTHIMKHULU

Third Applicant

SAM WILLIAMS

Fourth Applicant

LUNGISANI MANNGO

Fifth Applicant

CALDWELL KHUMALO

Sixth Applicant

MPHENENE MASHYIYE

Seventh Applicant

ERIC KHOSA

Eighth Applicant

LAWRENCE MATHEBULA

Ninth Applicant

and

**PASSENGER RAIL AGENCY OF SOUTH AFRICA
SOC LTD (PRASA)**

Respondent

Heard: 15 May 2025

Delivered: 24 June 2025(This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 24 June 2025.)

JUDGMENT

PHEHANE, J

Introduction and background

[1] The applicants and further employees, who are not applicants in this present application, were dismissed by the respondent, the Passenger Rail Agency of South Africa Soc Ltd (PRASA) on 11 September 2013. Following the dispute resolution mechanism in section 191 of the Labour Relations Act¹ (LRA), this Court dismissed their referral in an order of 18 March 2016. This decision was overturned by the Labour Appeal Court (LAC) in a judgment delivered on 21 November 2017, which ordered PRASA to reinstate the former employees retrospectively to the date of their dismissal with backpay (LAC order).

[2] On 31 January 2018, the Constitutional Court dismissed PRASA's application for leave to appeal, thus confirming the LAC order.

[3] Following proceedings for contempt of Court for non-compliance with the LAC order, this Court, per Whitcher J, issued an order setting out steps that PRASA was required to take to implement the LAC order. Thus, Whitcher J ordered PRASA *inter*

¹ Act 66 of 1995, as amended.

alia, to effect payment of backpay to the employees in two tranches, in November 2019 and January 2020. At that stage, the applicants' contracts of employment had been restored.

[4] The order of this Court per Whitcher J read as follows:

- '1. On or before 1 November 2019 [PRASA] must submit to the [applicants] the audited computation of the first year's [2013 to 2014] back pay calculated to be owed to the [applicants] and the documentary approval by the Department of Transport and the National Treasury.
2. On or before 15 November 2019 [PRASA] must submit to the Labour Court... a report setting out the progress in implementing the order. A copy of the report must be served on the applicants' attorneys.
3. On or before 27 November 2019 [PRASA] must pay to the [applicants] the audited amount of the first year's back pay calculated to be owed to them.
4. On or before 17 January 2020 [PRASA] will submit the following:
 - 4.1 The audited computation of the back pay for years 2 - 5 [2014 to 2018] calculated to be owed to the [applicants];
 - 4.2 A report to the Labour Court ... setting out the progress in implementing the order.
5. Before 31 January 2020 [PRASA] must pay to the [applicants] the audited amount of the back pay calculated to be owed to them for years 2 – 5.
6. The applicants may dispute the calculation and computation of the back pay paid to any individual after the payment on 31 January 2020.'

[5] PRASA complied with the Court order per Whitcher J.

[6] The applicants remained dissatisfied with the computation of the amounts of monies paid to them and ultimately launched this application. They allege that the audit reports submitted by PRASA are inadequate for the purposes of determining whether the correct computations of the backpay were made. The applicants state that PRASA's reports simply set out the globular amounts for the total cost to company (TCTC), cash portion, that is the total guaranteed portion (TGP) and

various tax calculations without granular detail. Notably, the application before this Court is not a contempt of Court application. The applicants concede to this.

[7] In this present application, the applicants seek various orders which can be categorised in three categories: the first is the disclosure of documents and information;² the second³ is a declarator in relation to the payment of interest on the backpay; and the third are orders relating to the payment of interest, benefits and reimbursement of funeral fund benefit deductions. To elaborate briefly on the relief sought, the applicants seek an order that PRASA provide them with copies of their respective payslips for the months of February 2013, being their dismissal date, to 3 September 2018, their date of reinstatement. In addition, the applicants seek an order directing PRASA to disclose information about their backpay in writing, to pay their backpay at the prescribed rate of interest from date of dismissal to date of payment, alternatively, from the date of this Court's order of 18 March 2016 in which their referral was dismissed to the date of payment, in the further alternative, from the date of the LAC order to the date of payment. The applicants also seek an order directing that PRASA pay over to them certain benefits to the extent that they were not paid those benefits when they were reinstated, and to reverse funeral fund benefit deductions from their salaries.

[8] The application is opposed by PRASA.

Condonation

[9] PRASA sought condonation for the late filing of its heads of argument. The application was unopposed. PRASA showed good cause for the late filing of their heads of argument. In the circumstances, condonation was granted.

Argument

[10] PRASA contends that this Court lacks jurisdiction to adjudicate the applicant's claim. PRASA submits that the applicants approach this Court dissatisfied with the

² Notice of motion, prayers 1 and 2.

³ Notice of motion, prayer 3.

arduous process it took to compute the backpay and provide them with salary slips – they harbour a suspicion that they were not paid the correct amounts and are unsure of what payments they received or did not receive. Therefore, PRASA submits that the applicants want this Court to assist them in their fact-finding expedition.

[11] The applicants plead in their founding affidavit that they are entitled to the disclosure of the information as set out in their notice of motion to entrench their right to fair labour practices and the provisions of Chapter 4 of the Basic Conditions of Employment Act⁴ (BCEA). In their replying affidavit, in response to the jurisdictional challenge raised by PRASA, the applicants aver that this application is brought in terms of the provisions of sections 158(1), section 158(1)(a)(iii), section 158(1)(a)(vii), section 158(1)(b) and section 158(1)(f) of the LRA and sections 75, 77 and 77A of the BCEA, alternatively, in terms of section 8(3)(a) read with section 23(1) of the Constitution of the Republic of South Africa (Constitution).⁵

[12] Jurisdiction is determined from the pleadings.⁶ It is well established that a litigant is to make out their case in the founding affidavit and not in reply.

[13] Section 23 of the Constitution provides that everyone has the right to fair labour practices. On the doctrine of subsidiarity, the provisions of the legislation subordinate to the Constitution that was promulgated to give effect to section 23 must be invoked first, and only if it is found to be inadequate, then a litigant may assert its rights in terms of the Constitution.⁷ In paragraph 19 of their founding affidavit, the applicants aver that in terms of the provisions of Chapter 4 of the BCEA, they are entitled to the disclosure of information sought in the notice of motion. During oral argument, Mr Roskam for the applicants echoed this averment and submitted that the applicants are entitled, in terms of the provisions of sections 29 and 33 of the BCEA, to this information.

[14] Chapter 4 of the BCEA is entitled “*Particulars of Employment and Remuneration*”. Sections 28 to 35 of the BCEA provide, in summary, that employers

⁴ Act 75 of 1997, as amended

⁵ Replying affidavit at para 6, p 231.

⁶ *Chirwa v Transnet Ltd and others* 2008 (4) SA 367 (CC).

⁷ *Mazibuko and Others v City of Johannesburg* 2010 (4) SA 1 (CC) at para [73].

must provide employees with particulars of information relating to their employment, their remuneration and prohibit certain conduct by employers relating to deductions from employees' remuneration. Employees may enforce these provisions by means of compliance processes conducted by labour inspectors unless the limitations set out in section 70 of the BCEA apply.

[15] It is unclear whether the applicants earned below the threshold. If they did, this Court lacks jurisdiction as a court of first instance, and they would need to follow the enforcement processes in section 68 of the BCEA. If they earned above the threshold, and had not instituted proceedings for the recovery of the amount owed, and the amount had not been owing for longer than 36 months, then the applicants may approach this Court for relief.

[16] In my view, this would be a claim for breach of contract in terms of section 77(3) of the BCEA. The applicants, however, do not plead breach of contract, nor are they able to specify what amount is due and payable to them. They do not know what is due and payable to them.

[17] The monies that were due to the applicants were payable in terms of the LAC order and the order by this Court per Whicther J to give effect to the LAC order, and not in terms of the provisions of the BCEA.

[18] Section 75 of the BCEA provides for the payment of interest on any amount due and payable in terms of the BCEA. In *Telkom SA Soc Ltd v Mashaba*⁸, this Court stated that the monies due to the employee in that case were due and payable in terms of a court order reinstating the employee and therefore, section 75 of the BCEA was inapplicable. This principle was confirmed on appeal.⁹

[19] It follows, therefore, that as the amounts due and payable were so in terms of a Court order and not in terms of the BCEA, then the applicants may not institute a claim in terms of section 77 of the BCEA for breach of contract. It also follows, the provisions of section 75 of the BCEA find no application in *casu*.

⁸ [2019] JOL 42268 (LC) at para [29].

⁹ See: *Mashaba v Telkom SA SOC Ltd* (2020) 41 ILJ 2437 (LAC) at para [10].

[20] The LAC order is one *ad factum praestandum* enforceable through contempt of Court proceedings,¹⁰ as is the order per Whitcher J. The remedy for the applicants to enforce these Court orders is by way of contempt proceedings. The applicants concede, however, that they are not in a position to demonstrate *mala fides* on the part of PRASA to succeed in a contempt of court application.¹¹

[21] Two audited reports on the computations were submitted by PRASA to this Court in compliance with the order by Whitcher J. Payment was effected in terms of those computations. PRASA explains that it conducted a thorough and detailed calculation of the backpay and sets out in paragraph 35 of its answering affidavit what this process entailed. In reply, the applicants state that they have no knowledge of the process PRASA explains, dissatisfied with PRASA's computation of the backpay, as it is, according to them, inadequate.

[22] Following the applicants' dispute concerning the calculation of their backpay, PRASA responded to each query raised by the applicants in sufficient detail in correspondence, and this response is repeated in the papers before this Court. Out of 690 employees who were reinstated and paid backpay, only nine approached this Court in the present application, uncertain of what they are looking for and are on a fact-finding expedition. The resources of this Court are not to be spent on litigants who are unsure of what amounts are due to them. Such conduct is to be discouraged and warrants an order for the payment of costs.

[23] In view of the foregoing, the following order is made:

Order

1. Condonation is granted for the late filing of the respondent's heads of argument.
2. The application is dismissed with costs.

¹⁰ *National Union of Metalworkers of South Africa obo Fohlisa and Others v Hendor Mining Supplies (Pty) Ltd (A Division of Marschalk Beleggings (Pty) Ltd)* [2017] BLLR 539 (CC) at para [23].

¹¹ Applicants' heads of argument at paras 37 to 41.

M. T. M. Phehane
Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Mr A Roskam of Hafagee Roskom Savage Attorneys INC

For the Respondent: Ms T Makamu of Puke Maserumule Attorneys