



THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: PA 17/2024

In the matter between:

CEPPWAWU obo TABATA

Appellant

and

ASPEN PHARMACARE LTD

Respondent

Heard: 29 May 2025

Delivered: 24 July 2025

Coram: Van Niekerk JA, Nkuta-Nkontwana JA et Basson AJA

JUDGMENT

VAN NIEKERK, JA

Introduction

[1] Ordinarily, the furnishing of security in terms of section 145 (7) and (8) of the Labour Relations Act¹ (LRA) suspends the operation of an arbitration award that is under review.² This appeal raises the question of whether the furnishing of security suspends the operation of an arbitration award in circumstances where the underlying review application has been archived in terms of clause 11 of the now-repealed Practice Manual³.

Background facts

[2] At the time of his dismissal, the appellant had been employed by the respondent for some 21 months. In that period, he had accumulated no less than five written warnings, including a final written warning, for time and attendance-related infringements. On 12 December 2014, the appellant was dismissed by the first respondent after arriving late for duty. The appellant referred a dispute about the fairness of his dismissal to the National Bargaining Council for the Chemical Industry (the bargaining council).

[3] The dispute was referred to arbitration. On 5 October 2015, the bargaining council issued an arbitration award to the effect that the appellant had been unfairly dismissed and ordered his reinstatement. The respondent received the award on 26 October 2015. On 20 November 2015, the respondent filed an application in terms of section 145 of the LRA to review and set aside the award. At the same time, the respondent filed a bond of security in terms of sections 145 (7) and (8) of the Act.

[4] On 3 December 2015, the bargaining council delivered an incomplete record of the arbitration proceedings to the registrar. The record did not contain the audio discs of the hearing. On 22 December 2015, the registrar advised the parties that the record had been received from the bargaining council and that the parties ought to comply with

¹ Act 66 of 1995, as amended.

² *City of Johannesburg v SA Municipal Workers Union on behalf of Monareng and another* (2019) 40 ILJ 1753 (LAC) at para 7.

³ Practice Manual of the Labour Court of South Africa (repealed effective 17 July 2024).

clause 11.2 of the Practice Manual. That clause provides that a transcription of the record of the proceedings under review must be filed within 60 days of the date on which an applicant in the review application is advised by the registrar that the record has been received.

[5] On 15 March 2016, the respondent addressed a letter to the appellant's union advising that the bargaining council had failed to file a complete record and requesting consent to the filing of a private transcription of the record, prepared by the respondent's legal representatives. The union refused to accede to this request and on 22 March 2016, advised the respondent that it should inform the bargaining council that the audio discs had been omitted from the record sent to the registrar.

[6] The respondent addressed a letter to the registrar on 31 March 2016 advising that the bargaining council had omitted to include an audio disc, and requested a directive on how to proceed with the matter. On 29 April 2016, the bargaining council delivered the audio disc to the registrar. On 3 May 2016, the registrar issued a directive in which receipt of the audio disc was acknowledged, and again drew the parties' attention to clause 11.2 of the Practice Manual.

[7] The respondent discovered that the audio disc filed by the bargaining council was incomplete. The matter was set down in the bargaining council for a reconstruction of the record. That attempt at securing a complete record of the arbitration proceedings was unsuccessful.

[8] On 30 May 2017, the registrar informed the parties that she had received what appeared to be the missing audio disc. That disc was furnished to the respondent only in August 2018, it having been misplaced during the Labour Court's move to new premises.

[9] On 17 September 2018, the respondent filed the complete transcribed record and delivered a notice in terms of Rule 7A (6), together with a Rule 7A (8)⁴ notice to the effect that the respondent did not intend to file a supplementary affidavit in support of the review application.

[10] On 9 November 2018, the union addressed a letter to the respondent advising that the review application had been deemed withdrawn with effect from 23 August 2017, being 60 court days after the audio disc had been made available on 30 May 2017. The union demanded compliance with the arbitration award.

[11] More than a year later, on 9 January 2019, the appellant filed an application in terms of section 158 (1)(c) to have the arbitration award made an order of court. On 16 January 2019, no doubt in response to the application, the respondent delivered an application to reinstate the review, recording the difficulties that it had encountered in preparing the complete record. The registrar enrolled the applications for hearing on a single date, 30 April 2019. On that date, the Labour Court ordered that the applications be heard simultaneously on a future date. Both applications remain pending.

[12] On 8 October 2019, the appellant addressed a letter to the registrar advising that the applications for review and to have the award made an order of court were ripe for hearing and requesting that they be set down on the opposed motion roll. For reasons that are not apparent, for a period of some four years, the matters were not set down, with neither party seeking to ensure that the applications came before the Court. It was only on 4 December 2023, when the appellant, without notice to the respondent, instructed the sheriff to attach goods to enforce the monetary component of the arbitration award, that the matter was resurrected. The sheriff attended the respondent's premises on 8 February 2024 to execute the award.⁵

⁴ Rule 7A of the now since repealed Rules for the Conduct of Proceedings in the Labour Court (GN 1665 of 1996), repealed effective 17 July 2024.

⁵ The Labour Court raised, but did not decide, the question whether it was lawful for the sheriff to enforce the backpay portion of an award of reinstatement as if it were an order *ad pecuniam solvendum*.

[13] On 28 February 2024, the respondent's new attorney of record filed a fresh bond of security in an amount equivalent to 24 months' remuneration. On 7 March 2023, after the appellant refused to provide undertakings sought, the respondent filed an urgent application seeking to stay the enforcement of the award pending the finalisation of the review.

The Labour Court

[14] The Labour Court identified and dealt with three enquiries. The first was the question of urgency; the second, the validity of the security bond issued in terms of section 145 (7) and (8) of the LRA; and the third being whether section 145 (7) and (8) applied to reviews that had been 'archived' in terms of the Practice Manual.

[15] The Court held that the application was urgent. In relation to the security bond, the Court held that the bond initially issued on 5 November 2015 had been issued in an amount equivalent to the employee's remuneration for a period of 12 months' remuneration, and not the 24 months required by section 145 (8)(a), given that the arbitration award was one of reinstatement. In the absence of any satisfactory explanation from the respondent, the Labour Court considered that this bond was ineffective since it had not been issued in the required amount. However, the Court found that the security bond filed on 28 February 2024, in the correct amount, was valid.

[16] The Court then moved to consider whether the security bond furnished by the respondent suspended the operation of the arbitration award in circumstances where the underlying review application filed by the respondent had been archived. The Court recorded that when the 60-day period for the filing of the record of arbitration proceedings under review expires, in terms of clause 11.2.3 of the Practice Manual, the review application is deemed to have been withdrawn. Further, if all the papers in a review application are not filed within 12 months, then the review application will, in terms of clause 11.2.7, '*be archived and regarded as lapsed*'. Thirdly, if an applicant in a review application fails to take any steps for a period of six months, then the registrar

will 'archive' the file with *'the same consequences as to the further conduct by any respondent as to the matter having been dismissed.'* (All of these consequences were referred to by the Court under the umbrella term 'archived'.) It was not in dispute that these consequences had been triggered. The respondent submitted that once a review application is archived, the application remains in limbo pending any application to reinstate it, and any security furnished remained effective and precluded the enforcement of the award, at least until the review application was finally dismissed. The appellant submitted that once a review application is archived in terms of the Practice Manual, the beneficiary of the award under review is entitled to execute the award despite the existence of a security bond and any application to have the review application retrieved from the archives.

[17] After a comprehensive review of the case law concerning the consequences of the archiving of a review application, the Labour Court concluded that if a review application is archived in terms of the Practice Manual, the application could only be 'finally dismissed' by an order of Court in an application filed in terms of Rule 11. That being so, *'then the review must still exist. If it still exists, then sections 145 (7) & (8) of the LRA must apply'*. In the result, the Labour Court concluded that the archiving of the review application did not invalidate any security bond filed in terms of section 145 (7), and that the operation of the underlying award remained suspended until the review was finally determined, either on the merits or dismissed through an application to dismiss in terms of Rule 11. The Court went on to hold that an order to stay the execution of the arbitration award was unnecessary, since the filing of the correct security on 28 February 2024 had stayed the execution of the award, by operation of law. The order ultimately granted was a declaratory order to that effect, coupled with an order prohibiting the sheriff from executing the award until there was a final determination of the review application. The Labour Court made no order as to costs.

The grounds for appeal

[18] The grounds for appeal are broad and encompass every aspect of the Labour Court's reasoning. The primary focus of the appeal is the Labour Court's finding that the archiving of a review application does not invalidate a section 145(7) security bond, and that the underlying award remained suspended until the review application was determined either on the merits or dismissed consequent on a Rule 11 application.

Evaluation

[19] The primary basis of the appellant's opposition to the application was that any suspension of execution continued only for so long as the review application remained pending, and that, given what he termed the 'lapsing' (i.e. archiving) of the review application, the issue of security was of no consequence. The primary dispute before the Labour Court was thus whether the review application remained capable of reinstatement unless and until 'finally' dismissed; or whether the Court was obliged to find that the review application, once archived, could no longer constitute an underlying cause to grant a stay of execution.⁶

[20] The judgment by this Court in *Macsteel Trading Wadeville v Van der Merwe NO and Others*⁷ (*Macsteel*) concerned an application filed by a trade union seeking to review and set aside an arbitration award that had upheld the fairness of the dismissal of one of its members. The record had been filed about 20 months after the launch of the review application, with the result that the application was archived in terms of clause 11 of the Practice Manual. The Labour Court had refused to consider the issue of undue delay raised by the respondent employer because the employer had failed to file a Rule 11 application to dismiss the review. The Labour Court went on to uphold the review and reinstate the dismissed employee. On appeal, this Court held that in the absence of any application for the reinstatement of the review, the Labour Court had been obliged to strike the matter from the roll on the grounds of lack of jurisdiction. Alternatively, the Court ought to have afforded the employer an opportunity to file a Rule

⁶ As the Labour Court put it, was the review application '*as dead as a doornail*'?

⁷ (2019) 40 ILJ 798 (LAC).

11 application seeking to have the review dismissed on the basis of the undue delay. In the result, the Labour Court had determined the review application in circumstances where it had no jurisdiction to do so.

[21] In coming to this conclusion, this Court recognised a clear distinction between a review application being archived under clause 11 of the Practice Manual, and the dismissal of the application under Rule 11 of the then Rules of the Labour Court.

[22] *E Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others*⁸ (*E Tradex*), followed on the judgment of *Macsteel*. In *E Tradex*, this Court held:

[9] The notion of a case being ‘archived’ was invented by the drafters of the Practice Manual as a penalty for dilatoriness and to relieve the burden of carrying dormant cases indefinitely. The consequence of a case being archived is serious. ... There can be no plausible doubt that once the case is ‘archived’ it requires the intervention of the court to ‘un-archive’ it. ...

[10] The use of the term ‘archived’ is peculiar to the Labour Court Practice Manual. In the general civil courts, for example, the failure to prosecute an appeal timeously results in the appeal having lapsed. The effect of that is that the case shall not be dealt with by a court unless an application to reinstate the appeal is made. It is, in our view, plain that the archiving of a Labour Court case was intended to have the identical effect; indeed, clause 16.3 goes even further, to equate the consequence of an archiving of a case to be understood to mean the application is ‘dismissed’, albeit that a procedure exists to reinstate the case on good cause shown.

[11] It must therefore follow that the archived case acquires a peculiar status which requires the delinquent party to justify why it should be reinstated and thereafter be entertained by a court in the wake of a lack of expeditious prosecution. ...’

⁸ (2022) 43 ILJ 2727 (LAC).

[23] Neither judgment makes any pronouncement regarding the circumstances in which an arbitration award may be executed where an underlying review of that award has been archived. Neither judgment supports the appellant's proposition that a review application archived in terms of the Practice Manual 'loses its existence', and that the Labour Court thus lacked jurisdiction to grant the order that is the subject of this appeal. *E Tradex* specifically addresses the status of an archived review application and confirms that that status may be altered by way of the outcome of an application to reinstate the review, or an order that finally dismisses the application. In the present instance, an application to reinstate the review was pending at the time that the appellant sought to enforce the arbitration award in his favour. In these circumstances, the Labour Court was not precluded from determining the application to stay the enforcement of the arbitration award.

[24] Turning next to the security bond furnished by the respondent, section 145(7) of the LRA provides:

'(7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).'

[25] The attack on the security bond is a limited and unsubstantiated denial in the answering affidavit that the notice filed does not constitute security in terms of sections 145 (7) and (8). The Labour Court's finding that the respondent's new attorney of record filed a fresh bond of security on 28 February 2024 and that a valid bond existed from that date is correct – the appellant does not seriously dispute that the bond was issued in the correct amount.

[26] The next question is the correctness of the Labour Court's conclusion that the execution of the award was stayed, by operation of law, once the fresh security bond had been furnished. Section 145 (7) of the LRA. That section provides:

‘(7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).’

[27] What this formulation suggests is that when security is furnished in terms of section 145 (7) and (8), the execution of any award that is the subject of a pending review application is automatically suspended. In *City of Johannesburg v SA Municipal Workers Union on behalf of Monareng and another*,⁹ this Court held:

‘[7] The Labour Court has a discretionary power under s 145(3) of the LRA to stay the enforcement of an arbitration award pending its decision in the review application. It may stay the enforcement of an arbitration award pending finalisation of a review application against the award with or without conditions. It may in terms of s 145(8) of the LRA dispense with the requirement of furnishing security. Properly construed, s 145(3) read with s 145(7) and (8) should be interpreted to mean that where an applicant in a review application furnishes security to the Labour Court in accordance with s 145(8) of the LRA, the operation of the arbitration award is automatically suspended pending its decision in the review application. In other words, the employer need not make an application in terms of s 145(3) of the LRA to stay the enforcement of the arbitration award pending the finalisation of the review application.’

[28] The Labour Court’s order was thus correct, and the appeal stands to be dismissed.

[29] Finally, I associate myself with the Labour Court’s concerns at what it described as the ‘appalling delays’ in the resolution of this matter. The arbitration award that is the subject of the review application was issued almost 10 years ago, and the dispute over the reasonableness of that award is nowhere close to resolution. This is a state of affairs entirely inconsistent with the statutory goals of expeditious and efficient dispute resolution.

⁹ Ibid, fn 1.

[30] Insofar as costs are concerned, for the purposes of section 179 of the LRA, the requirements of the law and fairness are best satisfied by each party bearing its own costs.

[31] I make the following order:

Order

1. The appeal is dismissed, with no order as to costs.

André van Niekerk
Judge of the Labour Appeal Court
Nkutha-Nkontwana JA and Basson AJA concur.

APPEARANCES:

FOR THE APPELLANT: M Thys

Instructed by Butler Attorneys

FOR THE RESPONDENT: FE le Roux

Instructed by Kirchmanns Inc.