



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1066/23

In the matter between:

**EMSLIE MOTORS (PTY) LTD t/a TAMBOTI
TOYOTA**

Applicant

and

**DISPUTE RESOLUTION CENTRE OF THE
MOTOR INDUSTRY BARGAINING COUNCIL (DRC)**

First Respondent

COMMISSIONER ELSABE MAREE, N.O.

Second Respondent

MOTOR INDUSTRY BARGAINING COUNCIL (MIBCO)

Third Respondent

DYLAN WILLIAM DU TOIT

Fourth Respondent

Heard: 24 April 2025

Delivered: 8 May 2025

JUDGMENT

SCHENSEMA, AJ

Introduction

[1] This is an application seeking to review and set aside the arbitration ruling in terms of section 145 of the Labour Relations Act¹ (LRA) alternatively section 158(1)(g) of the LRA, made by the second respondent (the Commissioner), in which the Commissioner ruled that the applicant had failed to pay “wages (*Prescribed Minimum- Division C Chapter 1*) – *Failure on the part of the Respondent to pay the applicant (s) constitutes a contravention of Clause 2 of Division “C” read with the definition of “WAGE” in Clause 2.2 of Division “A” of the Motor Industry Main Collective Agreement as published under Government Gazette No. 27067, Notice No “R” 1362 of 28 November 2004 of the Motor Industry Main Collective Agreement as amended and extended and/or Gazette 44289 of 18 March 2021, Notice No 220 as currently amended and extended.*

Dylan William Du Toit for the period 2021/09/01 – 2022/06/30 = R16 962.04”

The respondent is obliged to pay the outstanding wages of Dylan William du Toit to the amount of R16 962.04.

The payment to be done on or before the 22nd of May 2023.”

Background Facts

[2] The applicant had concluded a learnership/apprenticeship agreement and employment contract with the fourth respondent, Du Toit, in terms of which Du Toit commenced his learnership on 2 July 2018 to qualify as a Motor Mechanic Petrol. The learnership agreement was also registered with the Manufacturing, Engineering and Related Services SETA (MERSETA).

¹ Act 66 of 1995, as amended.

[3] Following an investigation, the third respondent issued a Compliance Notice on the applicant in July 2022. Upon receipt of the Compliance Notice, the applicant, by email, sought clarification from the third respondent. The applicant sent a further email in which the applicant recorded its views in respect of the interpretation of the timeline for *Levels* and its interpretation as to when the minimum prescribed wage for apprentices becomes payable.

[4] Upon receipt of the emails, the third respondent proceeded to refer a dispute to the first respondent for the enforcement of the Compliance Notice. The referral was made in terms of section 33A(4)(b) -*MCPT- Wages and Statutory Monies due to Employees*.

[5] The applicant's defence in respect of its refusal to comply with the Compliance Notice was on the basis that it disputed the third respondent's interpretation of 'level' as contained in the prescribed minimum wage schedule when referring to apprentices. The applicant further disputes what proof the apprentice or the MERSETA must provide to an employer that a certain competency 'level' has been achieved to trigger the next salary escalation.

[6] The applicant holds the view that the third respondent interprets 'level' as it would interpret 'year' as may apply to certain time-based apprenticeships, and believes that the third respondent simply requires an employer to make payment to an apprentice from the date of enrolment, the prescribed minimum wage for level 1.

[7] The applicant further holds the view that the Competency-Based Training contract (CBMT) is a training system for apprentices who have chosen to learn a trade whilst working at an employer. The CBMT approach, according to the applicant, focuses on skills and competencies that a learner can demonstrate, in a practical way, for a given occupation.

[8] CMBT is therefore a form of training that is specifically focused on achieving competence. In terms of the CMBT training programme, a total of 4 levels must be completed over 4 years. During the training sessions, apprentices undergo theory, practical and level exam preparation training.

[9] Apprentices who successfully complete a level test will be certified as having successfully completed a level and will receive a level certificate issued by MERSETA.

[10] With reference to the interpretation of 'level', the applicant holds the view that 'level' could only mean "*achieved level of training*". In light hereof, a newly appointed apprentice has not acquired any level of competency and only upon passing level 1 will such apprentice be declared competent on level 1. Therefore, only once the apprentice has received a Level Certificate will the apprentice be eligible to receive the minimum prescribed wage for the achieved level of training.

[11] The applicant has further submitted that in light of the fact that the Motor Industry Bargaining Council Main Collective Agreement (Main Agreement) contains no definition in respect of 'level' that the Court ought to consider the Manpower Training Act, 1981, with specific reference to the Diamond and Jewel Setting trade which provides a definition for 'level'.

[12] As aforementioned, the applicant further seeks clarity as to what proof of competency should be provided to the employer for an apprentice to move to the next level and be paid accordingly. In this regard, the applicant considers the official MERSETA level certificate as acceptable and essential to prove the achieved level of training. Accordingly, only upon receipt of the MERSETA level certificate is the applicant prepared to escalate the apprentice's wage to the next level, even where such a certificate is dated prior to receipt of the certificate.

[13] In summary, the applicant is of the view that the dispute before the Commissioner ought to have concerned the interpretation of the wage schedule pertaining to CBMT apprentices and that the third respondent cannot enforce the wage schedule until such time as it has been determined how the schedule should be interpreted.

[14] In opposition, the third respondent disputes that the issue to be determined is the interpretation of the word 'level' in that the word 'year' is clearly applicable due to

the fact that Du Toit is an apprentice. The third respondent further made reference to the wage schedule (attached as annexure "B" to the third respondent's answering affidavit) in which it has highlighted the fact that the words 'level' and 'year' both appear on the wage schedule, which words are further not used interchangeably when referring to Du Toit.

[15] The third respondent is of the view that the applicant contends that the third respondent attributed the same meaning to the words 'year' and 'level', which is incorrect.

[16] The third respondent further contends that for purposes of this matter, the third respondent considered only the term *Year*, as it specifically appears under the 'Apprentices' section of the wage schedule. It is evident from annexure "B" that the apprentice section applies across all chapters, including those relevant to the applicant. The highlighted portion merely sets out the wages applicable to apprentices in each respective year. The applicant disregards the clear distinction between 'learners' and 'apprentices' and further argues that the *level* should apply to apprentices, despite the fact that the custodians of the agreement have explicitly distinguished between the two. Nowhere in the annexed schedule is there a requirement to interpret wages based on work achieved, as the applicant proposes.

[17] The only distinction, according to the third respondent, that is to be made is between a 3 or 4 year trade apprenticeship and that the schedule simply informs the employer what rate is payable for each year. No further interpretation in this regard is therefore required.

[18] The applicant is seeking to ignore the simple interpretation of the schedule in an attempt to avoid liability. The third respondent further makes reference to its annexure B in respect of its submission that in light of the fact that the applicant does not fall within the CBMT section (in that the wage schedule specifically excludes companies that are classified as sector 6 establishments), the applicant's submissions in relation hereto are therefore irrelevant.

[19] The third respondent further rejects all attempts by the applicant to include the word 'achieve' as this approach is not relevant for the application of rates that are to be earned by an apprentice in each year. 'Achievement' is not the basis on which the wages are determined. The wage schedule simply prescribes what should be paid in each year or level a person is attending, and this cannot only be applied once the level or year has been successfully achieved.

The Ruling

[20] Upon commencement of the proceeding, the Commissioner identified the issues that needed to be determined. In this regard the Commissioner considered whether the dispute needed to be determined in terms of section 24 LRA, or whether section 33A of the LRA was applicable.

[21] The Commissioner determined that in light of the fact that section 33A of the LRA deals with the enforcement of collective agreements by bargaining councils and subsection (7) specifically states that "*an arbitrator acting in terms of this section may determine any dispute concerning the interpretation and application of a collective agreement*", that she had the power to determine the dispute on the basis of section 33A(7) of the LRA in light of the applicant's contravention of the collective agreement.

[22] The Commissioner further considered the true nature of the dispute, that being to determine the dispute relating to the interpretation and application of the collective agreement.

[23] The Commissioner further considered that a collective agreement is a written contract, which written contract demonstrates the intention of the parties thereto. In this regard, the Commissioner rejected the applicant's attempts to use a notice relating to the diamond trade and the Manpower Act for purposes of interpreting the meaning of 'level'.

[24] After having considered the evidence coupled with the submissions made by the parties, the Commissioner concluded that Du Toit was a motor mechanic petrol

apprentice at the time the dispute arose, he therefore fulfills the definition of an apprentice and as such must be paid in accordance with Division C Chapter 1 Clause 2 – minimum wages that refers to payment of wages in terms of the relevant years.

Test on Review

[25] In *SA Municipal Workers Union v SA Local Government Bargaining Council and Others*², the LAC dealt with a review application concerning the interpretation or application of a collective agreement and noted that the question to be answered in such a review application, was not whether the award in issue was correct but whether the arbitrator had acted fairly, and considered and applied his mind to the issues before him.

[26] Notwithstanding the aforementioned LAC judgment, the LAC in *Herbert v Head Education: Western Cape Education Department and Others*³ the LAC considered the test to be applied and held that:

‘[24] In *MacDonald’s Transport*⁴ it was found that the LRA did not contemplate that a CCMA or bargaining council arbitrator, both statutory roles, would have the last word on the proper interpretation of an instrument as this would mean that a patently wrong interpretation would be left intact, which “would be absurd”. The wrong interpretation of an instrument by an arbitrator could therefore constitute a reviewable irregularity as envisaged by section 145 of the LRA, in the sense that a reasonable arbitrator does not get a legal point wrong. The Court concluded that either “the reasonableness test is appropriate to both value judgments and legal interpretations. If not, ‘correctness’ as a distinct test is necessary to address such matters”. This view was echoed in *NUMSA*⁵, in which it was stated that an incorrect interpretation of the law by a commissioner constitutes a material error of law

² [2011] ZALAC 22; (2012) 33 ILJ 353 (LAC).

³ [2022] ZALAC 9; (2022) 43 ILJ 1618 (LAC).

⁴ *MacDonald’s Transport Upington (Pty) Ltd v Association of Mineworkers and Construction Union (AMCU) and Others* [2016] ZALAC 32; (2016) 37 ILJ 2593 (LAC).

⁵ *NUMSA v Assign Services and Others* [2017] ZALAC 44; (2017) 38 ILJ 1978 (LAC) at para 32.

which “will result in both an incorrect and unreasonable award”, which can either be attacked on the basis of its correctness or for being unreasonable”.

[25] The arbitrator in this matter incorrectly interpreted the relevant appointment provisions contained in annexure C3 to the OSD agreement insofar as they related to the appellant. This error was of such a material nature that it resulted in a decision which, on a proper interpretation of the OSD agreement, was one that a reasonable arbitrator on the material before them could not reach.’

[27] In light of the applicant’s review grounds, it is necessary for this Court to determine the correctness of the Commissioner’s ruling. In this regard, it is trite that the court is free to substitute its own view as to what the decision should have been or otherwise sanction the commissioner’s conduct as having been incorrect.⁶

Grounds of Review

[28] The applicant holds the view that the Commissioner committed an error of law by rejecting the applicant’s reference to the interpretation of ‘level’ regarding apprenticeships in the Diamond and Jewel Setting trade, merely because the particular notice the applicant sought to rely on was 20 years old and deals with a totally unrelated trade and is therefore not relevant to the dispute before the Commissioner.

[29] The Commissioner rejected the applicant’s reference to the Manpower Act and Skills Development Act, and by doing so, the Commissioner failed to apply her mind to the persuasive value of the comparable interpretation of the word ‘level’ in other legislation.

[30] The Commissioner further incorrectly placed reliance on the Parole Evidence Rule to reject the applicant’s reference to the Notice relating to the diamond trade and the Manpower Act.

⁶ A Myburgh SC ‘*The Correctness Standard of Review*’ ILJ (2023) Volume 44 Issue 2, at page 725; *MacDonald’s Transport Upington (Pty) Ltd v Association of Mineworkers and Construction Union and Others* [2016] ZALAC 32; (2016) 37 ILJ 2593 (LAC) at paragraphs 21 and 22; *National Bargaining Council for the Road Freight and Logistics Industry v Deyssel N.O and Others* [2025] ZALAC 25.

[31] The applicant is further of the view that the Commissioner failed to resolve the dispute in respect of the interpretation of the word 'level' in the wage schedule.

[32] In its supplementary affidavit, the applicant's grounds of review were supplemented on the basis that the Commissioner had misconducted herself in relation to her duties when she failed to adjudicate the dispute in respect of the wages allegedly due to Du Toit. In this regard, the third respondent had alleged that Du Toit ought to be paid in accordance with the wage schedule in respect of learners enrolled under CMBT and not apprentices and that the calculation of the amount of R16 962.04 was based on the table in the wage schedule in respect of learners enrolled under CBMT. In light of the Commissioner's ruling that Du Toit was an apprentice, the wages in respect of learners could therefore not be applicable.

[33] The amount owed to Du Toit ought to have therefore been calculated on the basis of the table in the wage schedule in respect of *apprentices*. In terms of the wage schedule, the wages of apprentices are less than those of learners; the amount awarded by the Commissioner is therefore inconsistent with her conclusion that Du Toit is an apprentice.

[34] In summary, the third respondent, according to the applicant, has not proven the amount which it claimed on behalf of Du Toit, as the amount was calculated using the table for learners enrolled under the CMBT, whilst the Commissioner determined that Du Toit held the position of apprentice.

Analysis

Did the Commissioner commit a material error of law?

[35] The applicant's case is that the Commissioner committed an error of law by rejecting the applicant's reference to the interpretation of 'level' regarding apprenticeships in the Diamond and Jewel Setting trade. Similarly rejected the applicant's reference to the Manpower Act and Skills Development Act, incorrectly relied on the parole evidence rule and the Commissioner ultimately failed to conclude the dispute in respect of the interpretation of 'level' in the wage schedule.

For the reasons that follow, in my view, there is no merit to the applicant's ground of review in respect of the Commissioner having committed an error of law.

[36] The facts are common cause that the third respondent had issued a compliance order against the applicant, in which it sought the payment of outstanding monies. The Commissioner considered the issues raised by the applicant and determined that section 24 of the LRA is not applicable in that this matter simply related to the non-payment by the applicant in respect of monies owed to Du Toit. The applicant takes issue with the fact that the Commissioner failed to resolve the dispute in respect of the interpretation of 'level' in the wage schedule.

[37] With reference to the evidence, the applicant in accordance with annexure C to the third respondent's answering affidavit, is a Sector 6 Chapter 1 employer, which is not disputed by the applicant. As a result, and with reference to annexure B to the third respondent's answering affidavit, the only wage tables that are applicable are those with reference to an apprentice/learner and not those which are referred to in respect of CBMT agreements, which clearly states "*Not Applicable to Sector 6 Establishments*".

[38] In the premise, the relief sought by the applicant in its notice of motion in terms of prayer 2 becomes irrelevant, due to the fact that the aforementioned schedule together with the common cause fact that Du Toit was employed as an apprentice as well as the applicant's status as a Section 6 Chapter 1 employer, renders it unnecessary for this Court to qualify the word 'level' to mean "*achieved level of competence*", as the schedule dealing with CBMT contracts finds no application.

[39] The applicant is attempting to convince this Court that the CBMT schedule should be used for purposes of determining the level of payment applicable to an apprentice in respect of the achieved level of competence. It is clear from annexure B that the third respondent has drawn a clear distinction between employers who fall within the CMBT sector and those who fall outside thereof, the applicant being one. In light hereof, there is no need for 'level' to be interpreted.

[40] In line with this distinction the applicant ought to have simply requested a variation of the calculation based on its understanding of the wage tables and not have initiated these review proceedings on the basis of a convoluted and engineered argument in which the applicant seeks to convince this Court that it ought to consider repealed legislation on the basis of a guide. Repealed legislation is just that, it is repealed, and accordingly, there is no basis for the applicant to suggest that this Court should be guided thereby. This is not a precedent which can or ought to be relied upon by this Court.

[41] I have further had regard to the Main Collective Agreement, moreover clause 2 thereof and in particular the definition of “*experiential student*”, which is defined as follows:

“**experiential student**” means an employee employed by a work place in order to provide him with workplace based experiential learning; provided –

1. records are kept by the employer;
2. first year apprentice wages are paid;
3. student must submit proof of registration at an educational institution;
4. employer has SETA accreditation;
5. employment will be limited to a twelve month period provided it is related to the individual's studies or curriculum; and
6. Student is registered with the Council from the date the employee commences with duties in the workplace.’ (own emphasis)

[42] Even in the case of this class of employee, the Main Agreement has determined that this class of employee is to earn the first-year apprentice wage. In light hereof the applicant's submissions that the word ‘level’ must be interpreted to refer to “*achieved level of competence*” cannot be sustained in that it is clear that the calculation of wages for a first-year apprentice is not subject to the acquisition of any level of competence as is being proposed by the applicant. This clearly confirms the correctness of the third respondent's submission that it would be illogical to apply the applicant's proposed skills acquiring condition in order to be paid the apprentices' wages as set out in annexure B.

[43] There is accordingly no basis for the review to succeed as the Commissioner correctly considered the true nature of the dispute before her and correctly determined that section 33A(7) of the LRA was applicable.

The Correct Calculation of the Wage

[44] Notwithstanding that the applicant's review application on the grounds of an error of law have failed, this Court on the papers is unable to determine the correct calculation, moreover with reference to the applicable year in the apprentice's column as contained in the Schedule, marked annexure B, it is therefore necessary for this Court to make an order in this regard only.

Costs

[45] This Court has a wide discretion in awarding costs. In light of the fact that the CBMT wages could never find application, there is no basis for the main ground of review, and I am therefore of the view that costs must follow the outcome herein.

[46] In the premises, I make the following order:

Order

1. The third respondent is ordered to conduct a recalculation of the wages for the period 1 September 2021 to 30 June 2022 for Du Toit, which calculation must be done in accordance with the apprentice wage schedule "*all areas all chapters*" as cited in annexure B to the third respondent's answering affidavit;
2. The applicant is to pay the costs of the review application on a party and party scale.

H. Schensema
Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate R. Venter

Instructed by:

L.F. Taljaard Attorneys

For the Third Respondent:

Mr T. S. Leboloane

LABOUR COURT