



Not reportable

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN**

**CASE NO: C674/2016 &
C754/2017**

In the matter between:

**DIRECTOR GENERAL: OFFICE OF THE PREMIER:
WESTERN CAPE**

First Applicant

**THE HEAD: THE DEPARTMENT OF TRANSPORT
& PUBLIC WORKS**

Second Applicant

and

**NEHAWU obo MNCEDISI MICHAEL NOBALA
AND MTHETHUNZIMA ALFRED THUNZI
GENERAL PUBLIC SERVICE SECTORAL**

First Respondent

BARGAINING COUNCIL

Second Respondent

COLIN RANI N.O.

Third Respondent

Date of Hearing: 24 June 2025

Date of Judgment: 3 July 2025

Summary: Application to archive a matter in terms of Practice Manual clause 16.1 – need to adopt course which will best serve interests of justice.

JUDGMENT

A OOSTHUIZEN, AJ

1. The issues that arise for consideration are, firstly, whether the dispute between the parties is settled and, secondly, under what circumstances a matter should be archived as envisaged in clause 16 of the Practice Manual.
2. A dispute of fact exists as to whether the matter has been settled. These being motion proceedings, such dispute has to be decided on the version put up by the First Respondent, NEHAWU, except where such version raises allegations that are so improbable or farfetched that they may safely be rejected on the papers. There is no suggestion that any of the averments put up in the affidavits filed by NEHAWU can be rejected on the papers.

3. The allegation by the Applicants is that the dispute between the parties was settled at a meeting which took place on or about 5 July 2022. A letter written by the State Attorney on behalf of the Applicants on 2 August 2022 contains confirmation of instructions issued to the State Attorney *“to make the following counter-offer, entirely without prejudice to the Applicants’ rights herein”* (details of the counter-offer are then set out). If, as alleged, the matter had been settled a month previously, it is inconceivable that a letter containing a counter-offer of this nature would have been sent out by the State Attorney on 2 August 2022.
4. The contention that the matter was settled on 5 July is also consistent with a joint minute filed by the parties dated 8 July 2022, paragraph 2.2 whereof reads as follows:

“The Applicants and the First Respondent were directed to endeavour to settle the matter. The Applicants and the First Respondent are currently engaged in exhaustive negotiations.”

[Emphasis supplied]
5. What this clearly conveys is that, as of 8 July 2022, the matter had not yet been settled.
6. Given these facts, the contention that the dispute currently pending has been settled cannot be sustained.

7. I will now deal with clause 16 of the Practice Manual. As pointed out in **MJR Transport Services CC v CCMA & Others** (2017) 38 ILJ 414 (LC) at **paras 12 – 17**, the Practice Manual contains a set of directives with which practitioners must comply. It is not a substitute for the Labour Court Rules. In any event, clause 1.2 of the Practice Manual calls for flexibility in the application thereof. While that flexibility is important, and salutary, it cannot be regarded as an invitation to litigants to comply with or ignore the Practice Manual, as they see fit. In other words, the Practice Manual must be respected with due diligence by practitioners, but flexibility and common sense should prevail where a court has to decide on the manner in which it is to be applied to the facts of a particular case. Ultimately, the interests of justice play an important part in the manner in which a court is to apply the provisions of the Practice Manual.
8. The approach summarised above is in no way at variance with the pronouncements of the Labour Appeal Court in **Samuels v Old Mutual Bank** (2017) 38 ILJ 1790 (LAC) at **para 15**, and **Macsteel Trading Wadeville v Van der Merwe NO & Others** (2019) 40 ILJ 798 (LAC) at **para 22**.
9. The Labour Relations Act of 1995 (*“the LRA”*) was promulgated to achieve a number of purposes. One of these, spelt out in Section 1(d)(iv) of the LRA, is to promote the effective resolution of labour disputes. Most

invariably, the effective resolution of a dispute encompasses the need to achieve finality as expeditiously as possible. In applying clause 16 of the Practice Manual or, indeed, any other provision thereof, the Court should adopt the course best suited to the efficient resolution of the labour dispute before it.

10. Clause 16 of the Practice Manual is obviously intended to combat a somewhat worrying trend of proceedings being launched in the Labour Courts after which extensive delays occurred, occasioned largely or solely by inaction on the part of one or both parties, or a failure to comply with rules and directives issued by the courts. The matter now before the Court demonstrates this trend in a graphic and unacceptable matter.
11. The Applicants seek the review of an award which was rendered on 20 April 2016. The review proceedings were only launched three years later, on 12 August 2019. Almost three years elapsed thereafter before the meeting on 28 April 2022, to which the joint minute discussed in paragraph 4 above relates. After the joint minute had been filed and the correspondence pertaining to the counter-offer exchanged in August 2022, the following further steps took place:

- 11.1 10 August 2022: NEHAWU instructed the First Respondent's current attorneys to provide a legal opinion on the Applicants' settlement proposal;

- 11.2 19 August 2022: The Employees consulted with their attorneys regarding settlement options and future steps;
- 11.3 13 September 2022: NEHAWU instructed attorneys to proceed with negotiations after receiving the legal opinion;
- 11.4 30 November 2022: Consultation between Employees and their attorneys about counter-offers;
- 11.5 1 December 2022: Attorneys for the First Respondent addressed correspondence to the State Attorney rejecting the alleged counter-offer and setting out their mandate;
- 11.6 5 December 2022: Notice of Appointment as Attorneys of Record was served and filed;
- 11.7 24 January 2023: A follow-up letter was sent to request a roundtable meeting;
- 11.8 7 February 2023: A further follow-up telephonic call Applicant's attorneys;

11.9 13 February 2023: A further follow-up email was sent by the First Respondent's attorneys;

11.10 17 April 2023: The First Respondent's attorneys submitted a formal request to the Labour Court for further directions due to the impasse;

11.11 30 May 2023: A further follow-up email was sent to Applicants;

11.12 30 May 2023: The directive from the Labour Court was received and shared with the Applicants;

11.13 13, 15 June 2023: The State Attorney sent a draft order be made an order of court. This was met with a request for clarity, as the alleged settlement was disputed.

12. In addition, NEHAWU made a number of further requests to the Applicant departments, or the attorneys representing them, all of which were ignored. The chronology pertaining hereto is the following:

12.1 1 December 2022: Rejection by NEHAWU of the counter-offer;

12.2 24 January 2023: NEHAWU's request for a round table;

12.3 13 February 2023: NEHAWU's follow-up email;

- 12.4 17 April and 30 May 2023: NEHAWU approaches the Court for directives;
- 12.5 15 June 2023: Finding out about draft order which has been filed, NEHAWU challenges;
- 12.6 28 March 2024: Letter referencing court directive;
- 12.7 23 April 2024: Request to file affidavit.
13. The crux of the explanation put up for this lengthy delay, in the affidavit filed on behalf of the Applicants, is the following:

“33. The Department took the court's order directing the parties to endeavour to settle the matter seriously. There were advantages to a settlement of the dispute. Apart from resolving the issues, it would curtail further legal costs. Reaching a settlement would be consistent with the provisions of the Public Finance Management Act 1 of 1999 regarding what might be considered fruitless and wasteful expenditure.

34. I am advised that the initial discussions between the respective representatives seemed promising. And

NEHAWU's undertaking to forego the costs order in its favour, prompted the Department to improve its initial offer of settlement. As it turned out, its improved offer was accepted.

35. *In the light of the negotiations and the resultant settlement, it seemed not necessary to attend to the additional orders. The court would be informed in due course of the settlement.*

36. *NEHAWU's approach was no different. To my knowledge, it did not suggest that whilst the negotiations were ongoing, the parties had to comply with the remaining additional orders. It too was intent on resolving the matter.*

37. *As I have said above, 1 December 2022, was the first time the Department heard from NEHA WU - through its attorneys. It was then suggested for the first time that it rejected what they termed an offer of settlement made on 2 August 2022, coupled with a request to comply with the additional orders.*

38. *In the circumstances, I submit that given the Department's bona fide attempts to settle the matter, its understanding of what transpired between the parties, not taking the steps provided for in the additional orders were not deliberate, mala fide, or unreasonable. As I have stated above, NEHAWU*

acted no differently. The Department believed that the matter was settled. It contends that it is settled, and that NEHAWU, Mr Nobala and Mr Thunzi ought to be held to agreement.”

14. As discussed above, the contention that the matter was settled in early July 2022 is contradicted by documentation which unequivocally indicates that the matter was not settled. Even if, however, I accept that senior officials of the Applicants believed that the matter had been settled, this does not satisfactorily explain the lengthy, or the several occasions on which written requests by NEHAWU that the parties take steps to advance the matter were ignored.
15. To constitute an acceptable explanation for the delay, one would have expected the Applicants to react to the attempts by NEHAWU to take the steps required for the resolution of the matter by informing NEHAWU that such steps were unnecessary because the matter had been settled. For a period of over a year, no such response was tabled on behalf of the Applicants.
16. There is little doubt that practitioners are required to comply with the provisions of the Practice Manual (**SACCAWU v Putini [2025] ZALAC 11**). As was stated in **E Tradex (Pty) Ltd v Finch & Others [2022] ZALAC 106** at **para 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 consequences 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".

17. I have already, in paragraphs 11 and 12 above, alluded to the excessive delays which have arisen in this matter. Virtually without exception, they were delays occasioned by the conduct of the Departments and its officials. The Departments can fairly be described as conducting themselves in precisely the manner that the archiving rules are intended to prevent. The explanation given, as set out in those portions of the Applicants' affidavit quoted in paragraph 13 above is unacceptably terse, given the lengthy delays which ensued after the events of July and August 2022 which, the Applicants contend, led them to believe that the matter had been settled.
18. In taking into account all of these factors, I am satisfied that a proper case is made out for the relief sought by NEHAWU. Although the interests of justice remain of paramount importance, it is in my view in the interests of justice to issue an order which reflects, in no uncertain terms, that the parties are required to respect the Labour Court Rules and the Practice Manual, and to ensure that litigation is dealt with expeditiously. For the review to remain unresolved nine years after the award sought to be reviewed was given, is unacceptable and would require a full explanation indicating a reasonable degree of diligence on the part of the litigant

responsible for the delay. The explanation placed before me is neither comprehensive nor satisfactory.

19. As regards costs, I believe that it is appropriate that these be borne on a scale as between attorney and client. Such an order should both indicate the Court's displeasure at the extent of the delays which have ensued, and hopefully serve as a warning to litigants to diligently ensure that they comply with the Rules of the Court and the provisions of the Practice Manual.

20. In the circumstances, it is ordered as follows:

20.1 The matter instituted under case number C674/2016 is re-archived in terms of clause 16.1 of the Practice Manual;

20.2 Applicants are directed to pay First Respondent's costs of this application on a scale as between attorney and client.



AC OOSTHUIZEN A.J.

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Adv De Villiers-Jansen

Instructed by: The State Attorney Cape Town

For the Third Respondent: C Hendricks

Instructed by: Marais Muller Hendrick

LABOUR COURT