



Not reportable

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

Case no:C45/23

In the matter between:

ECHALAR FISHING (PTY) LTD

Applicant

and

CM BENNET N.O

First Respondent

**THE COMMISSION FOR
CONCILIATION AND ARBITRATION**

Second Respondent

**UWAWU obo AKWENYE & 35
OTHERS**

Third Respondent

Date of Hearing: 27 June 2025

Date of Judgment: 29 September 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 judgment is deemed to be 10h00 on 30 September 2025.

JUDGMENT

BARTHUS AJ

Introduction

- [1] The Applicant seeks to review and set aside the First Respondent's ("Commissioner") award handed down under the auspices of the Second Respondent. The Applicant proved that the review application was launched timeously and therefore, there is no need to deal with the Third Respondent's assertion that the review application was launched late.

The Facts

- [2] The Commissioner awarded the retrospective wage increase to the Third Respondent's members, who were dismissed before the announcement of the retrospective increase, on grounds of equity.
- [3] The Third Respondent's members were dismissed for misconduct in August 2022.
- [4] After their dismissal and on 02 September 2022, the Minister announced an increase for workers in the Applicant's industry and that these increases were for the period 1 July 2021 to 30 June 2022.
- [5] The Applicant paid the retrospective increases to its (current) employees.
- [6] The Third Respondent's members, who are dismissed former employees, referred a dispute to the Commission for Conciliation Mediation and Arbitration ("CCMA") in terms of section 73A of the Basic Conditions of Employment Act ("BCEA"), claiming the retrospective increases which fell within the period of their employment.

- [7] The Third Respondent's representative argued that the "*had it not been for dismissal*" principle should be applied to the Third Respondent's members, and the arbitration award should stand. The Applicant argued that when the Third Respondent was dismissed all rights and obligations under the employment contract had ceased to exist and therefore the Third Respondent was not entitled to the backdated increase.
- [8] The Applicant's review challenge is based on the way the arbitration was conducted in that the parties made submissions, but no evidence was led. The Applicant contends that the manner in which the arbitration was conducted led to an incorrect finding of law.

Analysis

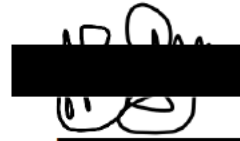
- [9] In terms of Section 73A of the BCEA "(1) ... *any employee or worker, as defined in Section 1 of the National Minimum Wage Act, 2018, may refer a dispute to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of this Act, the National Minimum Wage Act, 2018, a contract of employment, a sectoral determination, or a collective agreement.*"
- [10] An employee or a worker can lodge a claim against their employer whilst they are still employed, or after termination of employment, provided that the claim has not prescribed¹.
- [11] In the present matter, the Commissioner was seized with determining whether the Third Respondent's members were entitled to claim backdated wage increases as former employees.

¹ In *Ademulegun v Monothendre (Pty) Ltd t/a GFT Group Fiveways Superspar* [2024] JOL 63624 (LC), the applicant instituted action against his former employer for unpaid remuneration – such as underpayment of wages, non-payment of overtime, and family responsibility leave – over a period of 8 years. The employer raised a special plea that some of the claims had prescribed. In considering the matter, the court observed that a debt becomes due when the debtor is obliged to make payment; therefore, each month constituted a new and separate debt. The court upheld the special plea in part as it found that the applicant's claims that arose more than three years before the claim was initially instituted had prescribed. This demonstrates that a former employee is not precluded from pursuing a claim under s73A of the BCEA, provided that the threshold requirements are met.

- [12] At the arbitration hearing, the Applicant's representative submitted that the backdated increases were implemented by the Applicant. The only issue the Commissioner was seized with was whether the Third Respondent's members, as former employees, were entitled to the retrospective increases since they were still employed as at 1 July 2021 to 30 June 2022. The Commissioner correctly identified the issue he was seized with determining.
- [13] The Applicant's representative at the arbitration, Ms Van Rooyen, did not, on the face of the record of proceedings, attempt to call witnesses but explained to the Commissioner how the increases were calculated and implemented. The Applicant does not explain which witness(es) it would have called and to what end. Indeed, it is inconceivable what further evidence could have been led to rebuff the claim to backdated increases, and it is not disputed that the Applicant implemented the backdated increases.
- [14] Whilst the Commissioner cites equity as the reason for his decision to award the backpay, it is in fact the law that undergirds the decision. The BCEA protects the right to claim backdated increases and does not distinguish between former employees and dismissed former employees. The CCMA and this Court are forums of law and equity, and the argument that a finding cannot be based on equity is, thus, illogical.
- [15] The review is based on the contention that the Commissioner committed an error of law. The Applicant could not sustain such a proposition since the law dictates that the Third Respondent's members are entitled to the backdated increases applicable from 1 July 2021 to 30 June 2022.

Accordingly, the following order is made:

- [1] The review application is dismissed.
- [2] There is no order as to costs.



Barthus AJ
Acting Judge of the Labour Court of South Africa

Representatives:

For the Applicant:

Instructed by:

Arend Posthuma
Snyman Attorneys

For the Third Respondent: Chuene Tumelo Ramabu

Instructed by:

Ramabu Attorneys