



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR182/22

In the matter between:

**DEPARTMENT OF EDUCATION, FREE STATE
PROVINCE**

Applicant

and

**SUID-AFRIKAANSE ONDERWYSERSUNIE (SAOU)
OBO A TAYLOR**

First Respondent

**M.A. HAWYES N.O.
Respondent**

Second

EDUCATIONAL LABOUR RELATIONS COUNCIL

Third Respondent

Heard: 14 August 2025

Delivered: 30 October 2025

JUDGMENT

MAMANYUHA, AJ

Introduction

- [1] This is an application to review and set aside an arbitration award that was granted against the applicant in a dispute concerning the interpretation and application of the ELRC collective agreement No. 3 of 2006 (the collective agreement).
- [2] The arbitrator ordered that:
- 2.1. The respondent immediately regrade Brebner Secondary School retrospectively from the 1st of January 2015;
 - 2.2. The applicant likewise qualifies to be upgraded in his principal post from the 1st of January 2015;
 - 2.3. The respondent is ordered to pay the applicant the difference in his notch for the period from the 1st of January 2015 to the 31st of December 2015, which amounts to R85, 113.00;
 - 2.4. The amount of R85,113.00 (less statutory deductions) must be paid to the applicant upon or before the 30th of November 2019.
- [3] The applicant in this matter contends that the arbitrator was obliged to give due consideration to the cases presented by both parties in their respective written submissions. The arbitrator's failure to do so constitutes misconduct, resulting in a decision that a reasonable decision-maker, presented with the same facts and circumstances, would not have reached.
- [4] It appears from the papers that this matter had been taken on review before this court before, and the dispute between the parties was remitted back to the Council to be heard *de novo*.
- [5] Both parties seek condonation for their late filing of the review application by the applicant and answering affidavit by the first respondent. I begin by

addressing the applications for condonation, as I do not intend to be hindered by this issue.

- [6] In *Grootboom v National Prosecuting Authority and Another*¹, the Constitutional Court held as follows:

‘the standard for considering an application for condonation is the interests of justice. However, the concept “interests of justice” is so elastic that it is not capable of precise definition... it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success.’

- [7] I have taken into account the explanations provided by both parties for the delay, which relate to bureaucratic processes and the impact of the Covid-19 pandemic, during which many were working remotely.
- [8] I have also considered the significance of the interpretation and application of the collective agreement at issue. Weighing all relevant factors, I am satisfied that it is in the interests of justice to grant condonation.

Background facts

- [9] The central issue before the arbitrator concerned the interpretation and application of the collective agreement, specifically with a view of determining whether the principal of the school was entitled to a higher salary notch with effect from 1 January 2015 or 1 January 2016.
- [10] Clause 4.1(a) of the collective agreement provides that:
- ‘A school is up-graded to a higher grading level if, for two consecutive years, the educator post allocation to the school reaches or exceeds the number of posts required for the up-grading of the school as indicated in the table.’
- [11] Clause 4.1(c) of the collective agreement provides that:

¹ [2013] ZACC 37; 2014 (2) SA 68 (CC) at para 22.

'Re-grading of schools should be done on an annual basis and should be effective from 1 January, based on the school's post establishments of the previous year and of the current year.'

[12] The first respondent held a view that the principal became entitled to receive the increased salary attendant upon the school's grading to a higher level at the commencement of the second year in which the educator's post allocation to the school reached or exceeded the number of posts required for upgrading of the school as indicated in the applicable table under the collective agreement.

[13] The applicant, relying on clause 4.1(d) of the collective agreement below, contends that it should be 1st of January 2016 and not 1st of January 2015 as claimed by the first respondent. Clause 4.1(d) provides that:

'Where the enrolment of a school increases or decreases substantially, affecting the post allocation to the school substantially, and sufficient evidence exists that the new enrolment and accompanying post allocation will be maintained for a reasonable period, the head of the department may immediately re-grade the school in accordance with the relevant post allocation.'

[14] The applicant also relied on clause 4.2(b) of the collective agreement below to support the contention that performance must be verified at the end of the second year to assess whether the principal will qualify for the salary increment. Clause 4.2(b) provides the following regarding Salary Progression:

'An educator will qualify for an annual notch increment if his/her performance in respect of the past 12-month was satisfactory/acceptable.'

Submissions before the arbitrator

[15] The applicant's submissions in its written heads of argument before the arbitrator were: The resolution provides for a cool-off period of two years to ensure that the growth in educator post allocation is sustainable, and the resolution calls for the educator post allocation to be done for two consecutive years. The up-grading of a post can only happen once the two years of

educator post allocation have been completed. Given that the educator post allocation was done in September 2013 for implementation in January 2014, the first year of allocation is 2014 in this case. The second educator post allocation was done in September 2014 for implementation in January 2015. The two-year period that is referred to in the resolution is from January 2014 to December 2015. If one were to follow the first respondent's interpretation of the resolution, this would mean that the up-grading of the principal's post of Brebner Secondary School should have been done, taking only the teacher establishment of 2014 as verified, without really checking on the sustainability over time of the allocation of 2015.

- [16] The first respondent's submissions in its written heads of argument before the arbitrator were essentially that Brebner Secondary School qualified to be re-graded due to the fact that the school's educator post allocation exceeded 47 for two consecutive years:

16.1. On 10 September 2013 = 50 posts for 2014 (Previous year)

16.2. On 19 September 2014 = 52 posts for 2015 (Current year)

16.3. And therefore, the principal qualified for a higher salary notch from the date of up-grading of the school, namely January 2015.

The arbitration award

- [17] The arbitrator considered the surrounding clauses, which may provide clues on the thinking of the drafters of the legislation on specific aspects. The arbitrator found these clues in clauses 4.1(d) and (e) of the collective agreement. Arbitrator concluded that it is clear from these clauses that based on reasonable evidence at a certain point in time enrolment may be re-graded immediately by the head of department, there's no waiting period and that re-grading after two consecutive years interpretation is not consistent with the wording of all relevant provisions of the collective agreement.

Grounds for review

- [18] The applicant contends that the arbitrator's conclusion that the principal's increased salary was payable on the earlier date of 01 January 2015 was irrational and not one which a reasonable decision-maker could make in respect of the interpretation dispute.

Evaluation

- [19] In *Western Cape Department of Health v MEC Van Wyk and Others*² the court held that:

'In interpreting the collective agreement the arbitrator is required to consider the aim, purpose and all the terms of the collective agreement. Furthermore, the arbitrator is enjoined to bear in mind that a collective agreement is not like an ordinary contract. Since the arbitrator derives his/her powers from the Act he/she must at all times take into account the primary objects of the Act. The primary objects of the Act are better served by an approach that is practical to the interpretation and application of such agreements, namely, to promote the effective, fair and speedy resolution of labour disputes. In addition, it is expected of the arbitrator to adopt an interpretation and application that is fair to the parties.'

- [20] In *Natal Joint Municipal Pension Fund v Endumeni Municipality*³ the court emphasised that:

'The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

- [21] Central to this review are the allegations that the arbitrator failed to have proper regard to both parties' cases as expounded on their respective written submissions. The written submissions, which the applicant claims were ignored, are in their heads of argument to the arbitrator and quoted below:

'4.1 If we were to follow the applicant's interpretation of the resolution, this will mean that the up-grading of the principal's post of Brebner

² [2014] ZALAC 25; [2014] 11 BLLR 1122 (LAC) at para 22.

³ [2012] ZASCA 13; [2012] 2 All SA 262 (SCA) at para 18.

Secondary School should have been done taking only the teacher establishment of 2014 as verified without really checking on the sustainability over time of the allocation of 2015.

4.2 Again in terms of the applicant's interpretation of the resolution the upgrading would have been done before the educator establishment of Brebner Secondary School has completed.'

[22] In my view, the arbitrator did not disregard the applicant's submissions, but rather did not accept them. The mere fact that each submission was not addressed in detail does not, in itself, indicate that they were not considered. In *Ekurhuleni Metropolitan Municipality v SA Municipal Workers Union & others*⁴ we are reminded that:

'...The test is concerned with outcomes, not the process by which the outcomes are achieved. Only when the outcome is one which no reasonable arbitrator, with the material that was to hand, could produce, is an award liable to be set aside. The frailties of an arbitrator's reasoning, or inattention to mentioning every facet of relevance, or clumsiness in articulation are unimportant, unless they are causally connected to an unfair outcome.'

[23] It is evident that, in interpreting the collective agreement as a whole, the arbitrator was persuaded by the principle that once the requirements for re-grading are met, the re-grading takes immediate effect, without any waiting period to assess continued performance, as suggested by the applicant. I further agree with the first respondent that Clause 4.1(d) as relied upon by the applicant has no application in this matter, as there was *no substantial or sudden increase* in the school's post allocation arising from changes in enrolment. The clause introduces a discretionary exception to the standard rule, and it appears the arbitrator referenced it merely to demonstrate internal consistency within the collective agreement regarding the principle of immediate re-grading.

[24] The applicant appears to misconstrue the nature of the issue by framing it as one that hinges on the performance of the school or the principal. However,

⁴ (2018) 39 ILJ 546 (LAC); [2018] 3 BLLR 246 (LAC) at para 18.

the core of the matter, as correctly identified by the first respondent, relates not to performance metrics, but rather to the *educator post allocation*, which serves as the basis for determining whether the threshold for re-grading has been met in terms of the collective agreement. It is not in dispute — and was in fact confirmed by the first respondent — that educator posts, once allocated, are not subject to reduction during the course of the academic year, as such posts are planned and budgeted for in advance. This undermines the applicant's suggestion that a period of further assessment or monitoring is necessary before re-grading can take effect. The collective agreement does not provide for a discretionary waiting period once the requisite post allocation is in place for two consecutive years. The process is administrative in nature, and not subject to subjective considerations such as performance.

- [25] I hold a view that clause 4.1(c) determines the Effective Date and not the Completion of a Calendar Year. The operative part in the clause is the phrase: "based on the post establishments of the previous year and of the current year".

25.1. In *casu*, by September 2014, the department had already determined:

25.1.1. Post establishment for the previous year: 50 posts (2014)

25.1.2. Post establishment for the current year: 52 posts (2015)

The argument that "two consecutive years" (clause 4.1(a)) means the school qualifies for upgrading *after* the end of the second year artificially imposes a calendar-year requirement that is not found in the agreement. The collective agreement uses the post allocation data, which is determined annually in September for the following year. This means that by 19 September 2014, the two required years had already been completed, confirmed, and available before the start of the next year. If the relevant data to assess "two consecutive years" is already available, why wait for the end of a full calendar year (December 2015).

- [26] Having considered the evidence presented during the arbitration proceedings, the findings made by the arbitrator, and the grounds for review advanced by

the applicant, I am satisfied that the arbitrator's award falls within the bounds of reasonableness in the circumstances.

[27] Having considered the parties' submissions, the requirements of law and fairness in relation to costs, I am satisfied that this is not a matter in which a costs order is warranted.

[28] Accordingly, the following order is made:

Order

1. The application to review and set aside the award issued by the second respondent is dismissed.
2. No order is made as to costs.

T. Mamanyuha
Acting Judge of the Labour Court of South Africa

Appearances

For The Applicant: Adv A.I.B Lechwano

Instructed by: State Attorney

For The Respondent: Adv Gideon v/d Westhuizen

Instructed by: Louw Erasmus Incorporated

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