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- (1) REPORTABLE: YES/NO.
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THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable
Case No: JA94/24

In the matter between:

RONNIE MZWANDILE KHUMALO

First Appellant

CHRIS MATSEMELA MOLOI

Second Appellant

and

**THE COMMISSION FOR CONCILIATION, MEDIATION,
AND ARBITRATION**

First Respondent

COMMISSIONER KARABO GABAOOCOE N.O

Second Respondent

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Third Respondent

Heard: 25 September 2025

Delivered: 29 October 2025

Coram: Chetty AJA, Djaje AJA et Basson AJA

JUDGMENT

BASSON, AJA

Introduction

- [1] This appeal lies against the judgment and order of the Labour Court¹ substituting a variation order granted by the Commission for Conciliation, Mediation and Arbitration (CCMA) with the following order:

'1. Paragraph 503 of the variation order is substituted with the following order:

"[503] The Respondent PRASA is ordered to reinstate Mr Ronnie Mzwandile Khumalo the first Applicant and Mr Chris Matsela Moloi the second Applicant with effect from 14 June 2021 [the date of the award]. The Appellant must report for work on 5 July 2021 according to the terms of employment before they were unfairly dismissed".'

Factual background

Dismissal: 5 June 2020

- [2] On 5 June 2020, following a disciplinary hearing, the third respondent, the Passenger Rail Agency of South Africa (PRASA), dismissed the appellants for misconduct related to the irregular appointment of a security company (SIDAS).

The CCMA award: 14 June 2021

- [3] The appellants referred an unfair dismissal dispute to the CCMA, challenging the substantive and procedural fairness of their dismissal. The CCMA found in their favour, holding that the dismissal was procedurally and substantively unfair, and made the following order:

'[503] The Respondent PRASA is ordered to reinstate Mr Ronnie Mzwandile Khumalo the first Applicant and Mr Chris Matsela Moloi the second Applicant with effect from 5 June 2020. The Applicants must report for work on 5 July 2021 according to the terms of employment before they were unfairly dismissed.'

¹ By Gandidze, AJ dated 28 September 23.

- [4] The Commissioner further ordered, in paragraph [504] of the award, that the reinstatement is *without back pay* and subject to a final written warning, valid for 12 months, to mark his disapproval of the appellants' conduct:

'[504] The reinstatement is without back pay and subject to a final written warning for 12 months issued to Mr Ronnie Mzwandile Khumalo the first Applicant and Mr Chirs Matsemela Moloi the second Applicant relating to a failure to ensuring [sic] that the procurement process pertaining to the award of the SIDAS was in compliance with the SCM policy of PRASA. The final written warning shall take effect from the date of this award.'

- [5] The Commissioner handed down a lengthy award setting out the facts in minute detail. In considering the sanction, the Commissioner states that the two applicants "*were not with clean hands as my findings that they failed to ensure a competitive bidding scope of influence of their work in respect of a three quotation imperative*". Moreover, the "*employees cannot escape censure for the misconduct committed*". Following this reasoning, he concludes that "*reinstatement without backpay and a final written warning valid for 12 months*" was considered a just and equitable remedy.

Variation applications in terms of section 144(b) of the LRA

- [6] Both parties were dissatisfied with the order and brought their own applications for a variation. Whilst they agreed that the Commissioner erred in granting retrospective reinstatement *without back pay*, they differed on how the order ought to be corrected, and, more specifically, on the date of the reinstatement order.

Appellants' variation application

- [7] In their variation application dated 17 June 2021, the appellants sought an order varying paragraph [504] of the award to read that PRASA is directed to reinstate them retrospectively from 5 June 2020 (the date of the dismissal), *with back pay*. The appellants contended that there is a material disjuncture between the orders in paragraphs [503] and [504], in that the former provides for retrospective reinstatement with effect from the date of dismissal (5 June 2020),

which contemplates reinstatement with back pay, whereas the latter states that the reinstatement (from the date of the dismissal) is without back pay. The appellants did not challenge the part of the order imposing a final written warning for negligence arising from their failure to insist on three quotations in the procurement process. They even suggested that such a warning be incorporated into the order.

PRASA's variation application

- [8] PRASA sought to vary paragraph [503] of the award, contending that the error should be corrected by varying the order to provide for reinstatement from 5 July 2021, the date the appellants were instructed to return to work. In this manner, PRASA submitted, the issue of back pay would not arise, and the Commissioner's disapproval of the appellants' misconduct would remain intact. In this court, counsel appearing on behalf of PRASA conceded that it had erred in submitting to the Commissioner that the date of reinstatement should be 5 July 2021, as that was plainly a date *after* the award.

Commissioner's variation ruling: 9 July 2021

- [10] In considering the two variation applications, the Commissioner accepted that: (a) section 144(b) of the Labour Relations Act² (LRA) empowers the CCMA to vary an award that contains an ambiguity, obvious error, or omission, but only to the extent of that ambiguity, error, or omission; (b) section 193 of the LRA confers a discretion on the CCMA to determine the effective date of reinstatement; and (c) where reinstatement is ordered from a date preceding the employees' actual return to work, the employees are entitled to back pay.
- [11] The Commissioner concluded that there was an error in the "*wording*" of the order and reiterated what he had stated in the award that it was never the intention to order any back pay. Accepting that paragraph [503] of the award contains an obvious error, the Commissioner varied the order by ordering reinstatement with effect from 5 July 2021, which is the date on which they had to report for duty. The variation ruling therefore varied the reinstatement date to a date *after*

² Act 66 of 1995, as amended.

the date of the award (14 June 2021).

Labour Court review

- [13] Dissatisfied with the variation ruling, the appellants brought a review in the Labour Court, which PRASA opposed. The issue in the review was whether the Commissioner was correct in varying the order as he did. Both parties were *ad idem* that the award contained an error in that it did not allow for back pay, whereas they agreed that back pay follows as a matter of law in the event of a retrospective reinstatement order from the date of dismissal.
- [14] The Labour Court granted the review, correctly concluding that the Commissioner erred in ordering reinstatement as of 5 July 2021, as reinstatement cannot, in law, take effect *after* the award.³ The court *a quo* substituted paragraph [503] of the variation ruling with an order directing PRASA to reinstate the appellants, effective from 14 June 2021 (the date of the award), and to report for duty on 5 July 2021. Although not recorded in the order itself, the court *a quo*, in its judgment, required PRASA to pay the appellants their remuneration for the period from 14 June 2021 (the date of the award) to 5 July 2021 (the date of reporting for work). PRASA elected not to cross-review.

Reinstatement

- [15] The meaning of “*reinstatement*” is settled law, as explained by Nkabinde J in *Equity Aviation Services (Pty) Ltd v CCMA & others*,⁴ which is “*to put the employee back into the same job or position he or she occupied before the dismissal, on the same terms and conditions. Reinstatement is the primary statutory remedy in unfair dismissal disputes. It is aimed at placing an employee in the position he or she would have been but for the unfair dismissal. It safeguards workers’ employment by restoring the employment contract. Differently put, if employees are reinstated they resume employment on the same terms and conditions that prevailed at the time of their dismissal*”.

³ *Equity Aviation Services (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others (Equity Aviation)* 2009 (1) SA 390 (CC); [2008] 12 BLLR 1129 (CC) at para 36.

⁴ *Ibid.*

- [16] An order for reinstatement in terms of section 193(1)(a) thus contemplates the restoration of the *status quo ante*, as if the employee had never been dismissed. Reinstatement is often only ordered as of the date of the award, and an employer who reinstates an employee as of that date will be in compliance with the reinstatement order. From that date, the terms and conditions of the employee's employment, as they existed at the time of dismissal, will again take effect.
- [17] Section 193(1)(a), however, only provides for the Commissioner's discretion to *reinstate*. This section does not statutorily prescribe the extent or retrospectivity of such reinstatement (backpay). The only statutory limitation on reinstatement is that it cannot be ordered to an earlier date than the actual date of dismissal,⁵ nor can it commence *after* the arbitration award.⁶
- [18] A distinction must therefore be drawn between the discretion to reinstate (in terms of section 193(1)(a))⁷ and the discretion relating to the extent of its retrospectivity. The retrospectivity of the reinstatement is generally referred to as backpay and is, as pointed out, a separate issue for determination. The Constitutional Court in *Equity Aviation* explained that: "[i]f a Commissioner of the CCMA order the reinstatement of an employee that reinstatement will operate from the date of the award of the CCMA, unless the Commissioner decides to render the reinstatement retrospective to make it retrospective".⁸
- [19] An order for reinstatement, therefore, "*carries no automatic retrospective connotation*". Back pay is therefore not a *sine qua non* of an order of reinstatement, although it is coupled with such an order.⁹ It is for the Commissioner to decide specifically on the retrospectivity¹⁰ of a reinstatement

⁵ *SA Commercial Catering & Allied Workers Union & others v Massmart Holdings Ltd & another* (2020) 41 ILJ 2403 (CAC); [2020] 10 BLLR 1041 (CAC) at para 22.

⁶ *Coca Cola Sabco (Pty) Ltd v Van Wyk* (2015) 36 ILJ 2013 (LAC); [2015] 8 BLLR 774 (LAC) at para 16.

⁷ The power to grant one of the remedies in section 193 is inherently discretionary and must be exercised judicially by the court that has that unfettered discretion.

⁸ *Equity Aviation* at para 36.

⁹ *Ludick v Vodacom (Pty) Ltd & others* (2021) 42 ILJ 2621 (LC); [2021] 12 BLLR 1226 (LC) at para 23. *Themba v Mintroad Sawmills (Pty) Ltd* (2015) 36 ILJ 1355 (LC) at para 23.

¹⁰ *National Union of Metalworkers of SA on behalf of Fohlisa & others v Hendor Mining Supplies (A Division of Marschalk Beleggings (Pty) Ltd)* (2017) 38 ILJ 1560 (CC); [2017] 6 BLLR 539 (CC) at para 13.

order: Whether back pay is payable depends on whether the reinstatement is made retrospective. The Court in *SA Commercial Catering & Allied Workers Union & others v Massmart Holdings Ltd & another*¹¹ explains:

[23] Section 193(1)(a) of the LRA provides that if the Labour Court or an arbitrator finds that a dismissal is unfair, the court or the arbitrator may 'order the employer to reinstate the employee from a date not earlier than the date of the dismissal'. Consequently, the retrospectivity of an order of reinstatement granted in terms of the LRA is not automatic. There is, therefore, a discretion to be exercised in relation to the period of retrospectivity of a reinstatement order, and a reinstated employee's entitlement to backpay and other benefits may be limited. The ordinary meaning of 'reinstatement', in accordance with *Equity Aviation*, is that the reinstated employee 'resumes' his or her service from the date of the order on the same contractual terms that applied when his or her services were terminated. It is in this respect that the remedy of 'reinstatement' differs from the remedy of 're-employment', since the latter does not require the employer to allow the dismissed employee to resume employment on the terms which previously applied.'

This appeal

[20] The fairness of the dismissal and the Commissioner's exercise of the discretion to reinstate the appellants are not in issue on appeal. The issue for determination in this appeal is whether the Labour Court misdirected itself by substituting the Commissioner's variation award with an order reinstating the appellants from the *date of the award* (14 June 2021). The appeal is with leave of the court *a quo*.

[19] It is necessary to briefly revisit the basis on which the variation of paragraph [503] (on the appellants' version) or paragraph [504] (on PRASA's version) of the award was sought. As already noted, the parties are in agreement that the error relates to the fact that the order disallowed back pay, despite the reinstatement having been made retrospective to the date of dismissal.

¹¹ (2020) 41 ILJ 2403 (CAC); [2020] 10 BLLR 1041 (CAC).

Furthermore, both parties are *ad idem* that this was the error and that it had to be corrected.

General observations regarding variations

- [20] The general rule is that, once a court has duly pronounced a final judgment or order, it has itself no authority to set it aside or to correct, alter, or supplement it because it becomes *functus officio*.¹² Section 144¹³ of the LRA does, however, make provision for the variation (or rescission) of an award in exceptional instances.¹⁴ Subsection 144(b) permits a variation but only “to the extent of that ambiguity, error or omission”. The courts have generally interpreted the provisions of section 144 narrowly.¹⁵
- [21] A “patent” error or omission refers to a mistake that is clear, self-evident, and apparent on the face of the record without requiring elaborate argument, interpretation, or fresh evidence. The court’s corrective power exists solely to give effect to the court’s true intention where there is a patent error and may not be used to change the substance of the order.¹⁶ The purpose of this section is to provide the parties with an expeditious procedural means to correct an obvious error.¹⁷ The Constitutional Court in *Minister for Correctional Services and Another v Van Vuuren and Another; In re Van Vuren v Minister for Correctional Services and Others* explains:¹⁸

¹² Erasmus Superior Court Practice RS 26, 2025, D1 Rule 42-1. *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) at 306F – G.

¹³ This rule is almost indistinguishable from rule 42 of the High Court Rules. An order of the Labour Court may be varied in terms of section 165(b) of the LRA and Rule 16A1(a)(ii), which provide for the correction of an ambiguity, obvious error or omission in a decision, judgment or order.

¹⁴ *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* [2003] ZASCA 36; 2003 (6) SA 1 (SCA).

¹⁵ See in respect of rule 42(1) of the High Court Rules: *MEC for Public Works, Eastern Cape and another v Ikamva Architects CC* 2023 (2) SA 514 (SCA); [2024] ZASCA 95 at para 28; *Williams v Shackleton Credit Management* 2024 (3) SA 234 (WCC) at para 23.

¹⁶ *Firestone South Africa (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A) at 306F–307H.

¹⁷ Section 144 is similar to section 165(b) of the LRA (which provides for the Labour Court to vary and rescind orders of the Labour Court) and rule 42 of the Uniform Rules of the High Court. See *Mostert NO v Old Mutual Life Assurance Co (SA) Ltd* 2002 (1) SA 82 (SCA): “[5] In dealing with the parties’ contentions it has to be borne in mind that the general rule is that a court’s final judgment is not capable of being altered or supplemented. However, there is a limited number of exceptions to the rule. The only one which could apply here is that a court may clarify its judgment or order if, on a proper interpretation, the meaning remains uncertain and it is sought to give effect to its true intention. Even then the sense and substance of the order must not be altered. *Firestone South Africa (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A) at 306F - 307A”.

¹⁸ 2011 (10) BCLR 1051 (CC); [2011] JOL 26968.

- [8] A court may clarify its order or judgment to give effect to its true intention which is to be ascertained from the language used without altering the sense and substance of the judgment if, on its proper interpretation, the meaning remains unclear. But once a court has pronounced a final judgment or order, it has, itself, no authority to correct, alter or supplement it. The rationale for this principle is delineated by Ngcobo J in *Zondi v MEC, Traditional and Local Government Affairs* that:

"In the first place a Judge who has given a final order is *functus officio*. Once a Judge has fully exercised his or her jurisdiction, his or her authority over the subject matter ceases. The other equally important consideration is the public interest in bringing litigation to finality. The parties must be assured that once an order of Court has been made, it is final and they can arrange their affairs in accordance with that order."¹⁹

The award

- [21] A plain reading of paragraphs [503] and [504] of the award reveals an internal contradiction between these two paragraphs that gives rise to a patent error on the face of the order: Paragraph [503] orders the retrospective reinstatement of the appellants "*with effect from 5 June 2020*" (the date of the dismissal), which, as a matter of law, carries with it the necessary consequence that they would be entitled to backpay as from that date. Paragraph [504], however, provides that the reinstatement is "*without back pay*," which is legally irreconcilable with the retrospective effective date of the reinstatement order in paragraph [503]. These two provisions cannot coexist: the one creates a right to back pay, while the other purports to extinguish it. The inconsistency is manifest on the face of the award and requires no extraneous evidence or subsequent explanation to reveal it.
- [22] Having regard to the Commissioner's stated intention in the award that the appellants "*were not with clean hands*" and that they "*cannot escape censure for the misconduct*," the Labour Court correctly found that the order created uncertainty, required clarification, and contained an obvious error in that the

¹⁹ Footnotes omitted.

order did not reflect the Commissioner's true intention. I am also in agreement with the Labour Court's finding that the variation of the date of reinstatement did not amount to a change of mind on the part of the Commissioner, but was rather an effort to clarify the award and bring it into conformity with the expressed intention not to grant reinstatement with retrospective effect. In the circumstances, it follows that the award did not accurately reflect the decision-maker's true intention and accordingly falls within the category of exceptional cases justifying a variation in order to resolve the inconsistency and give proper effect to what the Commissioner intended. The variation also cannot be said to change the substance of the award. Since an order for reinstatement cannot take effect from a date later than that of the award, the Labour Court was entitled, in giving effect to the Commissioner's intention not to award retrospective reinstatement (back pay), to vary the award accordingly.

- [23] The appeal, therefore, falls to be dismissed. In keeping with the requirements of law and fairness, there is no order as to costs.²⁰

Conclusion

- [24] In the event the following order is made:

Order

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


A.C. Basson

Acting Judge of the Labour Appeal Court

Chetty AJA and Djaje AJA concur.

²⁰ Section 179(1) of the LRA provides: "The Labour Appeal Court may make an order for the payment of costs, according to the requirements of the law and fairness".

APPEARANCES:

FOR THE APPELLANTS: Mr Sebola of Sebola Nchupetsang Sebola Inc

FOR THE THIRD RESPONDENT: Ms Norton

Instructed by Mkhabela Juntley Attorneys

LABOUR APPEAL COURT