



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C176/2022

In the matter between:

SAPU obo L TERBLANCHE

Applicant

and

**THE SAFETY AND SECURITY SECTORAL
BARGAINING COUNCIL**

First Respondent

TREVOR WILKES N.O.

Second Respondent

THE SOUTH AFRICAN POLICE SERVICE

Third Respondent

Heard: 14 August 2025

Delivered: 25 November 2025

JUDGMENT

MacKENZIE AJ

Introduction

- [1] This review against the Second Respondent's award concerns the fairness of the Third Respondent's refusal to promote Ms L Terblanche

pursuant to her application for promotion.¹ At its base, it turns upon the proper construction of the written stated case agreed to between the parties.

- [2] The Third Respondent opposes the matter. It also seeks condonation for the late filing of its answering affidavit. That application is unopposed. There is no prejudice. The matter is ripe for hearing. There is no reason why condonation should not be granted.
- [3] Both parties were represented by counsel who made both written and oral arguments. The Court is indebted to them for their helpful submissions.

Factual background

- [4] Pursuant to an advertisement under post 18/2018, Ms Terblanche applied for the position of Staff Officer: Divisional Commissioner: Technology Management Services at the rank of colonel. She was shortlisted, interviewed, and recommended for promotion. However, the Third Respondent subsequently considered that Ms Terblanche's qualification *'is not a NQF6 qualification but only constitutes 145 credits towards a NQF qualification and therefore does not satisfy the post requirements as advertised ...'*
- [5] A dispute ensued, and the matter eventually proceeded to arbitration.
- [6] At a virtual pre-arbitration meeting, the parties agreed in principle to proceed by way of a stated case. The parties subsequently signed and submitted a written stated case. Accordingly, no oral evidence was led.
- [7] In addition to the stated case, the arbitrator considered a bundle of documents compiled by the Applicant.
- [8] Both parties filed written submissions, a reply, and agreed that the matter be determined on those papers alone.

¹ I refer to the Applicant and Ms Terblanche interchangeably.

The stated case

- [9] The stated case comprises four paragraphs over four pages.
- [10] The first paragraph consists of 14 subparagraphs, each recording an agreed fact.
- [11] The second paragraph records the Third Respondent's contention that it has always required a three-year NQF Level 6 qualification and that the '*current advertisements have been amended to provide clarification on the interpretation*'.
- [12] The third paragraph – which is the crux of this matter – frames the dispute for determination:

'The arbitrator is required to decide whether the qualification of the Applicant satisfies the requirements as per the advertisement, the SSSBC promotion policy as well as the relevant National Instruction.'

- [13] The fourth and final paragraph frames the relief sought by the Applicant.

The Applicant's bundle of documents

- [14] The Applicant submitted a bundle of sixteen documents to the arbitrator, including, *inter alia*, the post advertisement in question, National Instruction 10/2017 ('*the National Instruction*') which sets out the requirements for post advertisements, the Applicant's qualification and an overview of the Applicant's qualification by the South African Qualifications Authority (SAQA).

The parties' written arguments before the arbitrator

- [15] The Applicant argued that the dispute turned upon the crisp question as to whether the Applicant's qualification satisfied '*the post requirements of an applicable NQF6 qualification as per the advertisement*' (emphasis added).

[16] The Third Respondent, on the other hand, framed the dispute as to whether the Applicant had met *'the requirements of the post in question, in terms of the qualifications required'* (emphasis added). However, it went on to clarify that the *'specific issue to be decided is whether the Applicant was in possession of an NQF qualification, as at the closing date of the advertisement ...'* (emphasis added). The Third Respondent made two core contentions. Firstly, the Applicant's qualification is not an NQF Level 6 qualification. Secondly, her qualification is, at any rate, not relevant to the post.

[17] The Applicant argued that the Third Respondent was precluded from arguing that the Applicant's qualification was not an NQF Level 6 qualification considering the content of paragraphs 1.5–1.7 of the stated case:

'1.5 The said qualification [sc. the Applicant's qualification] is registered in the NQF on Level 6.

1.6 According to SAQA, the qualification is an NQF level 6 qualification with 145 credits, although it is not a 3 (three) year degree or diploma.

1.7 The post requirements as per the advertisements required a Senior Certificate plus applicable NQF6 qualification.'

[18] The Applicant argued, further, that it was untenable and impermissible as it was raised for the first time in heads of argument, *ex post facto* and without a factual basis for that contention. The Applicant argued further that the Third Respondent had not, in any of the preceding correspondence, ever stated that the Applicant's application was rejected on the basis that her qualification was not applicable or relevant.

The award

[19] The arbitrator's award is helpfully succinct, spanning only nine pages.

[20] In paragraph 5, the arbitrator framed the broad question for determination as *'whether the Applicant has been subjected to an unfair*

act or omission of the [Third Respondent] involving unfair conduct by the [Third Respondent] relating to the promotion of the Applicant.'

[21] The arbitrator started by considering whether Ms Terblanche's qualification was indeed an NQF Level 6 qualification. His analysis on this issue takes up the lion's share of the award. On this issue, the arbitrator held in the Applicant's favour. He concluded that if SAQA had confirmed the qualification's NQF Level 6 status, it logically followed that it was indeed such.

[22] The arbitrator then moved on to the relevancy issue. Given the wide ambit of paragraph 3 in the stated case, he considered that the dispute was *'not limited to whether the certificate is on a level NQF6 but whether it meets the requirements of the advertised post'*.

[23] He also noted that the Applicant had failed to address the relevancy issue despite having agreed to paragraph 3 of the stated case. Significantly, he noted that:

'[b]ecause the Applicant has not addressed the issue fully, the Applicant has not provided any basis on which the Certificate she holds is relevant to the core functions of the post. For this reason, I have considered the Certificate and SAQA indications thereto because this has been what the Applicant relies upon.' (emphasis added)

[24] The arbitrator considered the title of Ms Terblanche's certificate. He also considered the purpose thereof as stated by SAQA, namely *'competencies across all the educational training and development roles'*. He emphasised that among its specialisations are *'strategic management'* which qualifies Ms Terblanche to *'facilitate and manage skills development in an Organisation'*.

[25] Thereafter, the arbitrator concluded, without more, as follows:

'The respondent's reliance on the advertisement sets out the core functions and I was persuaded that these are of an "administrative" and not a "training or educational nature".'

- [26] Accordingly, he found against the Applicant on the relevancy issue, and dismissed the Applicant's case.

The Applicant's case on review

- [27] The Applicant argues that the arbitrator committed a gross irregularity, misdirection and an error in law *'which resulted in a failure of justice'* thereby rendering the award one that a reasonable decision-maker could not reach.
- [28] It is not clear whether the Applicant's three grounds are sought in the alternative. However, I proceed on that assumption.
- [29] The thrust of the Applicant's case is that the arbitrator exceeded his powers by straying outside the stated case by determining a dispute that the parties had not submitted to arbitration. Moreover, the Applicant argues that there are no facts in the stated case upon which the arbitrator could have properly determined the relevancy issue.

The applicable legal principles

Proceeding by way of stated case in a statutory arbitration

- [30] There is nothing in the First Respondent's rules regarding proceeding by way of a stated case. Nor is there any provision in the LRA that governs or provides whether the parties can proceed via a stated case. That is unsurprising considering that section 138(1) of the Labour Relations Act, 1995 empowers a commissioner to *'conduct the arbitration in a manner that the commissioner considers appropriate in order to determine the dispute fairly and quickly'* provided that the commissioner *'must deal with the substantial merits of the dispute with the minimum of legal formalities.'* There can therefore be no doubt that parties may proceed by

way of a stated case for purposes of a statutory arbitration such as those proceeding before the arbitrator *in casu*.²

[31] Since there are no prescribed formalities as to what such a stated case should contain, it is helpful to draw guidance from, firstly, rule 33 of the Uniform Rules of the High Court, and secondly, section 20 of the Arbitration Act, 1965.

[32] As the former, rule 33, in relevant part, provides as follows:

'(1) *The parties to any dispute may, after institution of proceedings, agree upon a written statement of facts in the form of a special case for the adjudication of the court.*

(2) (a) *Such statement shall set forth the facts agreed upon, the questions of law in dispute between the parties and their contentions thereon ...*

...

(3) *At the hearing thereof the court and the parties may refer to the whole of the contents of such documents and the court may draw any inference of fact or of law from the facts and documents as if proved at a trial.*

...

(5) *When giving its decision upon any question in terms of this rule the court may give such judgment as may upon such decision be appropriate and may give any direction with regard to the hearing of any other issues in the proceeding which may be necessary for the final disposal thereof.*

(6) *If the question in dispute is one of law and the parties are agreed upon the facts, the facts may be admitted and recorded at the trial and the court may give judgment without hearing any evidence.*' (emphasis added)

[33] As to the latter, section 20, in relevant part, provides as follows:

² See: *PSA obo Van Wyk / Department of Water Affairs and Forestry* [2004] 8 BALR 1024 (GPSSBC).

‘(1) An arbitration tribunal may, on the application of any party to the reference and shall, if the court, on the application of any such party, so directs, or if the parties to the reference so agree, at any stage before making a final award state any question of law arising in the course of the reference in the form of a special case for the opinion of the court or for the opinion of counsel.’ (emphasis added)

- [34] The excerpts above bear out that a stated case envisages at least two material requirements. Firstly, the question for determination must be stated. Secondly, the facts must be stated upon which that question must be determined. It is implicit that those facts must be agreed.³

The test on review

- [35] It is common cause that this matter concerns an unfair labour practice in the form of a refusal of an application for a promotion.

- [36] While the onus in such a dispute rests on the employee,⁴ the test on review, as far as the merits are concerned, remains the same, namely whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach.⁵ There must be a rational connection between the outcome and the facts upon which it is based.⁶ A rational decision is one that is logically borne out by the evidence.⁷

- [37] In *Goldfields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation & Arbitration & others*,⁸ the Labour Appeal Court summarised the test succinctly:

³ *Minister of Police v Mboweni* 2014 (6) SA 256 (SCA) at para 7; *Claassen’s Dictionary of Legal Words and Phrases*, June 2025 update, the meaning of ‘special case’.

⁴ *Department of Justice v CCMA & others* [2004] 4 BLLR 297 (LAC) at para 73.

⁵ *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC) at para 110.

⁶ *Mashaba v University of Johannesburg & others* (2023) 44 ILJ 156 (LAC) at para 19.

⁷ *Carephone (Pty) Ltd v Marcus NO* 1999 (3) SA 304 (LAC) at para 37.

⁸ (2014) 35 ILJ 943 (LAC) at para 16.

'In short: A review court must ascertain whether the arbitrator considered the principal issue before him/her; evaluated the facts presented at the hearing and came to a conclusion which was reasonable to justify the decisions he or she arrived at.'

Analysis

[38] Mr Van Eedveldt, who appeared for the Applicant, submitted, in essence, that this matter turns upon two issues. Firstly, whether the arbitrator was limited to a determination of only the NQF issue and, secondly, whether there were any facts in the stated case upon which he could determine the relevancy issue.

[39] I refer to them as the first and second questions, respectively.

[40] The answer to both questions turns upon the correct construction of the stated case. In doing so, I am mindful of the correct approach to the proper construction of documents. The process is not simply an objective exercise, but rather a unitary process in which one must take account of both textual and extratextual aspects.⁹

The first question

[41] The first question concerns jurisdictional rationality, namely the arbitrator's interpretive reasonableness of the stated case leading to his conclusion that he had jurisdiction.

[42] To begin with, paragraph 3 in the stated case frames the dispute between the parties in wide and ambiguous terms:

'The arbitrator is required to decide whether the qualification of the Applicant satisfies the requirements as per the advertisement, the SSSBC promotion policy as well as the relevant National Instruction.'

⁹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18; *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) at para 12.

- [43] The Applicant's argument is that the arbitrator was confined to only a determination of the first question. That is so, the Applicant argued, since paragraph 1.13 of the stated case records that the Third Respondent:

'indicated that the qualification submitted by the Applicant is not a NQF6 qualification but only constitute 145 credits towards a NQF qualification and therefore does not satisfy the post requirements as advertised ...'.

- [44] That, argued Mr Van Eedveldt, is further borne out by paragraph 4.2 of the Third Respondent's heads of argument before the arbitrator:

'The specific issue to be decided is whether the Applicant was in possession of an NQF qualification ...'.

- [45] On the other side, Mr Abrahams, who appeared from the Third Respondent, stressed the wide ambit of paragraph 3 of the stated case. He also relied upon the decision of the late Appellate Division in *Paddock Motors* where, at 24B–C, Jansen JA held:¹⁰

'If ... the parties were to overlook a question of law arising from the facts agreed upon, a question fundamental to the issues they have discerned and stated, the Court could hardly be bound to ignore the fundamental problem and only decide the secondary and dependent issues actually mentioned in the special case. This would be a fruitless exercise, divorced from reality, and may lead to a wrong decision.'

- [46] In other words, the fact that an issue was not properly, or at all, stated does not preclude its determination lest it give rise to a wrong decision.

- [47] In my view, the dispute as framed in the stated case, on both a textual and contextual level, indeed encompassed both the first and second questions. I say so for these reasons.

¹⁰ *Paddock Motors (Pty) Ltd v Igesund* 1976 (3) SA 16 (A).

[48] Firstly, the plain and unambiguous wording of the stated case bears out a rational connection between the first and second questions.

[49] Secondly, in the virtual pre-arbitration meeting, the arbitrator framed his understanding of the dispute as follows:

'Alright so I think that sounds like it is common course (sic) so there is a difference ... Colonel Terblanche has an NQF6 qualification. Dispute is going to be about what the intent was of the advert and maybe other ... arguments that will be available to the Applicant as well so I think this could well be dispersed (sic) with by a stated case (sic)' (emphasis added).

[50] Thirdly – and significantly – the words '*NQF Level 6 qualification*' do not feature in paragraph 3 of the stated case. One would have expected them to appear to qualify, or narrow, the ambit of the issue for determination. On this, Mr Abrahams' reliance on *Paddock Motors* is well-founded. An arbitrator, like a Court, should be astute to determining a fundamental question that might have been overlooked by the parties.

[51] Fourthly, the Applicant's reliance upon paragraph 1.13 is misplaced. Whilst it certainly relates to the issue for determination, paragraph 1.13 neither defines nor limits the issue for determination; paragraph 3 of the stated case fulfils that purpose. Nevertheless, it might be fairly suggested that paragraph 1.13 could, at the very least, serve to inform the proper construction of paragraph 3. However, that approach unduly narrows the clause which the parties agreed would define the ambit of their dispute.

[52] Fifthly, if indeed, the parties intended to only submit the question concerning fulfilment of the NQF Level 6 requirement, it begs the question why the parties did not simply frame the question more succinctly along the following lines: '*does the Applicant's qualification constitute an NQF Level 6 qualification as required by the advertisement?*' Instead, the parties framed the dispute in wider terms as to whether the Applicant's qualification '*satisfies the requirements as per the advertisement, SSSBC promotion policy as well as the relevant*

National Instruction'. That indicates that the dispute was not as narrow as the Applicant suggests. Moreover, it is significant that the Applicant signed the stated case in those terms.

- [53] Sixthly, whilst it is so that the Third Respondent had never stated that Ms Terblanche's qualification was not applicable or relevant, that fact is only a further contextual indicator. It is subsumed by the wide wording of paragraph 3 of the stated case.
- [54] Finally – and somewhat ironically – the Applicant's contention in its heads of argument before the arbitrator that the Third Respondent was precluded from arguing that Ms Terblanche's qualification was not an NQF Level 6 qualification since it had conceded that fact in the stated case, would mean that the Third Respondent had, in effect, conceded the very issue submitted for determination by the arbitrator. The Applicant's argument is at odds with the object of the stated case. It means that the arbitration served no purpose.
- [55] It is trite that an arbitrator commits a reviewable irregularity where they exceed their jurisdiction by exercising a power they do not have.¹¹ The test is an objective one of correctness.¹² With that in mind, it cannot be said *in casu* that the arbitrator's construction of the stated case lacked an objective rational connection to the issues framed in the stated case.
- [56] Accordingly, in my view, the arbitrator did not exceed his powers, or jurisdiction, when he considered himself called upon to determine both questions. His conclusion on the first question is one that a reasonable decision-maker could reach.

¹¹ *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA) at para 52.

¹² *SA Rugby Players' Association (SARPA) & others v SA Rugby (Pty) Ltd & others; SA Rugby Pty Ltd v SARPU & another* [2008] 9 BLLR 845 (LAC) at para 41.

The second question

[57] The second question concerns a matter of substantive rationality, namely the existence of sufficient facts in the stated case in order to arrive at a rational outcome.

[58] Mr Van Eedveldt submitted that the second question was factual in nature, but that the stated case contained no facts upon which it could be determined. He argued further that the Third Respondent advanced factual statements not in the stated case and could thus not have been considered by the arbitrator, namely the following:

58.1 The National Instruction 10/2017 regulates the advertising of posts in the service;

58.2 That the post is of an administrative nature;

58.3 The reference to a collective agreement;

58.4 The post of staff officer is not a '*training Officer Post*' and therefore not relevant.

[59] Marshalling support from the decision in *Mboweni*,¹³ Mr Van Eedveldt argued that the arbitrator should not have embarked upon a determination of an issue in the stated case without facts upon which he could do so.

[60] I agree that the second question is a factual one. After all, it requires factual evidence regarding the content of each qualification in order to properly compare them and thus determine whether Ms Terblanche's qualification is relevant, or applicable, to the advertised post. I did not understand Mr Abrahams to dispute that submission. He argued rather that the arbitrator's conclusion on the second question was rationally linked to the facts before him, both in the stated case and documents.

[61] The logical point of departure is to consider the agreed facts framed in the stated case:

¹³ *Minister of Police v Mboweni* 2014 (6) SA 256 (SCA) at para 15.

- '1.1 The Applicant was the recommended candidate for post 18/2018: Staff Officer: Divisional Commissioner: Technology Management Services.*
- 1.2 The only reason for her non-appointment is due to the non-recognition of her qualification as the requisite qualification as per the post advertisement.*
- 1.3 The Applicant is in possession of a National Certificate: Occupationally Directed Education, Training and Development Practices.*
- 1.4 The said qualification is an NQF Level 6 with 145 credits.*
- 1.5 The said qualification is registered in the NQF on Level 6.*
- 1.6 According to SAQA, the qualification is an NQF level 6 qualification with 145 credits, although it is not a 3 (three) year degree or diploma.*
- 1.7 The post requirements as per the advertisements required a Senior Certificate plus applicable NQF6 qualification.*
- 1.8 The promotion requirements from Lieutenant Colonel to Colonel as per SSSBC Agreement 3/2011 is at least an NQF6 qualification.*
- 1.9 National Instruction 1/2004 defined a NQF6 qualification as a relevant three-year degree or diploma accredited by SAQA to be on an NQF Level 6.*
- 1.10 National Instruction 1/2004 was replaced with National Instruction 3 of 2015 w.e.f 2015-09-28.*
- 1.11 National Instruction 3 of 2015 defines NQF qualification as a qualification accredited by SAQA to be on the required NQF level.*
- 1.12 In a letter dated 2019-03-28, the Respondent indicated that the Applicant is in possession of a qualification confirmed to be on NQF Level 6, 145 credits. Par 3 of the said letter further indicated that with all the posts advertised in the SAPS thus far, the NQF6 requirement refers to at least a fully-fledged Diploma with a minimum of 240 credits.*

1.13 *In a letter dated 2019-10-24 the Respondent indicated that the qualification submitted by the Applicant is not a NQF 6 qualification but only constitutes 145 credits towards a NQF 6 qualification and therefore does not satisfy the post requirements as advertised.*

1.14 *No appointment was made into the post, as the post was withdrawn.'*

[62] On the face of it, there are no facts which expressly refer or speak directly to the '*relevancy*' of the Applicant's qualification to the advertised post. However, I do not lose sight of the fact that the arbitrator also had the benefit of the Applicant's bundle of documents, including the advertisement and the National Instruction.

[63] In developing his argument that there is enough in the stated case to determine the second question, Mr Abrahams submitted that paragraph 1.2 of the stated case refers to a '*requisite qualification as per the post advertisement*' and paragraph 1.7 refers to an '*applicable NQF6 qualification*'. He argued that the words '*requisite*' and '*applicable*' must mean something and cannot be appraised *in vacuo*. That meaning, he argued further, is to be gleaned from the '*core functions*' as described in the advertisement and the definitions of '*competence*', '*core functions*' and '*relevant qualification*' in the National Instruction.

[64] I accept that the words '*requisite*' and '*applicable*' as used in paragraph 1.2 of the stated case must hold some meaning. I accept, further, that the logical meaning attributable to those words is that the required qualification must at least comply with the competencies specified in the post advertisement and National Instruction.

[65] However, in my view, that does not elevate those words and their meaning to *facts* bearing upon the determination of the second question.

[66] It appears that the arbitrator conducted an *in vacuo* evaluation of the Applicant's qualification, against the competencies required by the post advertisement and National Instruction. In other words, he simply

compared the wording of the former to the latter – essentially a textual comparison between the two documents, without any contextual factual foundation. However, the arbitrator appears to have overlooked that the interpretative process entails both textual and extratextual aspects. Thus, facts were required in order to properly contextualise the similarities and differences between Applicant's qualifications against competencies set out in the post advertisement and National Instruction. This is the more so since, on a cursory appraisal thereof, there is an appreciable *prima facie* conceptual overlap between the core functions in the post advertisement with the competencies of Ms Terblanche's qualification as recorded in the SAQA document, namely the following:

- 66.1 Managing administrative systems, stakeholder consultations, personnel performance, and financial controls (as stated in the advertisement) which overlaps with strategic management, skills development facilitation, and evaluating human resource development (HRD) interventions (as stated in the SAQA document);
- 66.2 Quality control of reporting, compliance with regulations, and grievance handling (as stated in the advertisement), which overlaps with quality assurance, defining/evaluating standards, and evaluation of HRD interventions (as stated in the in the SAQA document);
- 66.3 Performance management of personnel, handling grievances, and managing human resources (as stated in the advertisement), which overlaps with facilitation of learning, managing skills development, and evaluation of HRD/people-focused initiatives (as stated in the in the SAQA document).

[67] The point is not that the Court undertakes a fresh factual assessment, but to demonstrate that even the documents alone reveal an appreciable overlap sufficient to demand reasoned treatment, grounded in evidence. By failing to engage with those apparent intersections, and by providing no cognisable reasoning for his conclusion, the arbitrator misconceived

the enquiry regarding the relevancy question. Exacerbating matters is the fact that the arbitrator offered no cognisable reasoning for his conclusion on the second question.

[68] In short, the arbitrator committed a reviewable irregularity in his determination of the second question. The error is not only one of reasoning but also one of process. The arbitrator misconceived the nature of the enquiry by deciding a factual issue absent an agreed or proven factual basis. Consequently, the arbitrator's decision on this question is unmoored from any cognisable facts before him. Accordingly, the arbitrator's decision on the second question bears no rational link to the facts that were before him.

Conclusion on the award

[69] While his conclusion on the first question is reasonable and rational, the arbitrator's conclusion on the second question is not.

[70] It follows that the award falls to be reviewed and set aside.

Appropriate remedy

The Applicant seeks that the matter proceed *de novo* before a different arbitrator. Given the lack of facts to determine a vital issue, I consider that an appropriate remedy in the circumstances.

Costs

[71] It is trite that in this Court costs do not follow the result as a matter of course¹⁴ but are awarded only where the requirements of law and fairness so demand. The Court must strike a balance between discouraging frivolous or abusive litigation and not deterring parties from pursuing genuine disputes.¹⁵

¹⁴ *Union for Police Security and Corrections Organisation v South African Custodial Management (Pty) Ltd and Others* [2021] 12 BLLR 1173 (CC).

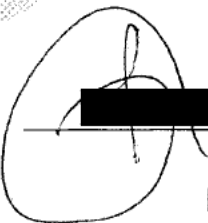
¹⁵ *MEC for Finance: Kwazulu-Natal and Another v Dorkin NO and Another* [2008] 6 BLLR 540 (LAC) at para 19.

[72] In all the circumstances, I consider it fair that each party should pay its own costs. This the more so since the irregularity tainting the award was as a result of a deficiency in the stated case agreed by the parties.

Order

[73] In the result, the following order is made:

1. The late filing of the Third Respondent's answering affidavit is condoned.
2. The award of the Second Respondent dated 21 February 2022 under case number PSSS53 of 20/21, is reviewed and set aside.
3. The matter is remitted to the First Respondent for hearing *de novo* before a new arbitrator.
4. Each party shall pay its own costs.


A handwritten signature in black ink, consisting of a stylized 'P' and 'M' with a horizontal line extending to the right, is written over a solid black rectangular redaction box.

PS MacKENZIE
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: C van Eetveldt
Instructed by: Magoma Attorneys

For the Respondent: R Abrahams
Instructed by: State Attorney (C Bailey)

LABOUR COURT