



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

NOT REPORTABLE

Case No: JR668/22

In the matter between:

INNOVATIVE STAFFING SOLUTIONS (PTY) LTD

Applicant

and

MINISTER OF EMPLOYMENT AND LABOUR

First Respondent

**NATIONAL BARGAINING COUNCIL FOR
THE ROAD FREIGHT AND LOGISTICS INDUSTRY**

Second Respondent

ROAD FREIGHT ASSOCIATION

Third Respondent

NATIONAL EMPLOYERS' ASSOCIATION OF SA

Fourth Respondent

CONSOLIDATED EMPLOYERS ORGANISATION

Fifth Respondent

**SOUTH AFRICAN TRANSPORT
AND ALLIED WORKERS UNION**

Sixth Respondent

**MOTOR TRANSPORT WORKERS
UNION OF SOUTH AFRICA**

Seventh Respondent

**PROFESSIONAL TRANSPORT & ALLIED
WORKERS UNION**

Eighth Respondent

TRANSPORT AND ALLIED WORKERS UNION

Ninth Respondent

Heard: 20 March 2025

Delivered: 4 December 2025

Summary: Application to review and set aside the decision of the Minister to extend the period of operation of the Main Collective Agreement of the Bargaining Council. Application dismissed, no costs.

JUDGMENT

DANIELS J

Introduction

- [1] This judgment relates to an application brought to review and set aside the decision of the first respondent (“the Minister”) to extend the period of the Main Collective Agreement (“the MCA”) of the second respondent (“the Bargaining Council”) as published in GG 45897 GN 813 of 10 February 2022 and in GG 45905 GN 831 of 11 February 2022. The applicant seeks a declaration that such extensions are invalid.
- [2] This application was heard together with two applications, under case numbers JR1518/23 and JR2749/22. For simplicity, separate judgments are handed down in respect of each application.
- [3] The judgment in respect of the matter under case number JR2749/22 was handed down on 3 April 2025. The court dismissed the application, brought by the same applicant to review and set aside the determination of representativeness, issued by the deputy registrar in terms of section 49(2) of the Labour Relations Act No. 66 of 1995 (“the LRA”) on 9 December 2021. It goes without saying that the findings of both fact and law, made in the application under JR2749/22, are also applicable in this matter.

Extensions of the Main Collective Agreement

[4] The Minister:

4.1 Through GG 45897 GN 813, published on 10 February 2022, extended the period of operation of the Main Collective Agreement in terms of section 32(6)(a)(i) of the LRA from 28 February 2022 to 29 February 2024.

4.2 Through GG 45905 GN 831, published on 11 February 2022, the Minister extended the period of operation of the Main Collective Agreement in terms of section 32(6)(a)(i) of the LRA from 28 February 2022 to 29 February 2024.

[5] Strangely, both notices were signed by the Minister on 7 February 2022 and are indistinguishable apart from the date on which they were published.

[6] By the time this application was argued, on 20 March 2025, the period of the extensions had long passed. It is therefore necessary to consider whether the application is moot.

Mootness

[7] It is said that a case is moot, and not justiciable, when it “*no longer presents an existing or live controversy which should exist if the court is to avoid giving advisory opinions on abstract propositions of law.*”¹ The issue is whether the decisions will have no practical effect or result.²

¹ *National Coalition for Gay and Lesbian Equality and others v Minister of Home Affairs and others* [2000] JOL 5877 (CC)

² *Agribee Beef Fund (Pty) Ltd and another v Eastern Cape Rural Development Agency and another* [2023] JOL 57428 (CC)

- [8] However, mootness is not finally determinative of whether the court should hear the matter. The court retains a discretion to do so, and must be guided by the interests of justice.³ Factors relevant include the nature and extent of the practical effect that any possible court order might have either on the parties or on others, the importance of the issue, the complexity of the issue, the fullness or otherwise of the argument advanced, and the need to resolve disputes between different courts. In my view, this judgment may impact on the conduct of the parties to the Bargaining Council, the conduct of the Minister, and the conduct of the registrar or deputy registrar, in similar disputes.
- [9] I do not believe that the dispute is moot. However, even if this is incorrect, the interests of justice demand that the application be decided. The dispute raises issues of importance to the parties, as well as the labour fraternity more generally. The extension of the collective agreements of Bargaining Councils is essential to one of the primary objects of the LRA - namely the promotion of collective bargaining at sectoral level.

Factual matrix

- [10] The factual background to the dispute is as follows:

10.1 The Bargaining Council referred a demarcation dispute to the CCMA on 30 October 2018 requesting an award that the applicant fell within its registered scope. On 2 March 2021, the CCMA commissioner found that the applicant was a temporary employment service and part of its operations fell within the scope of the Bargaining Council. As a result, the applicant was required to register with the Bargaining Council and comply with collective

³ *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) at para 11; *MEC for Education, Kwa-Zulu Natal and Others v Pillay* 2008 (1) SA 474 (CC) at para 32

agreements of the Council which had been or would be extended to non-parties. The applicant launched an application to review and set aside the demarcation award under case number JR510/2021.

10.2 The applicant launched a further application, under case number JR482/21, to stay the demarcation award pending the review. A court order was granted by agreement (on 11 May 2021) between the parties in terms of which the demarcation award would be stayed, pending the determination of the review application under JR510/2021, but the applicant would comply with certain provisions of the MCA and submit returns to the Council demonstrating compliance.

10.3 The applicant launched a further application, under case number J1428/2021 seeking an order *inter alia* declaring that it had complied with the court order of 11 May 2021.

10.4 The applicant launched a further application, under case number J1380/2021, seeking a court order *inter alia* interdicting the Council from representing to any of the applicant's clients that it was acting in breach of the 11 May 2021 court order and that a writ of arrest had been issued for the director of the applicant regarding his alleged refusal to register the applicant with the Bargaining Council. The Council opposed the application and brought a counter application seeking a court order *inter alia* interdicting the applicant from holding out to any employers in the road freight industry that it is entitled not to comply with the MCA and that if they engage the services of the applicant their employees would not longer be subject to the MCA. The application came before my sister, Mahosi J, on 16 November 2021 who delivered her judgment a short while later.

10.5 The court dismissed the application and pending the final determination of the application under JR510/21, granted the relief sought by the Bargaining Council. In effect, the applicant was ordered to comply with the MCA, and to refrain from advising employers in the road freight industry that the applicant was entitled not to comply with the MCA.

10.6 The applicant's application for leave to appeal against the judgment of Mahosi J was dismissed, and its petition to the Labour Appeal Court was also dismissed. Its subsequent application for leave to appeal to the Constitutional Court was also dismissed.

10.7 Several years earlier, the Minister had issued a letter to Ms Ngwetjana appointing her as the deputy registrar and requested her *"to perform all functions assigned to this position in the absence of the Registrar of Labour Relations."*⁴ In these proceedings, we are concerned with the conduct of the deputy registrar and the determinations made by her. Accordingly, in what follows, any reference to registrar includes the deputy registrar.

10.8 On 9 December 2021, the deputy registrar signed a certificate, in terms of section 49(2) of the LRA, which reads:

⁴ Section 108(2) of the LRA states: (a) The minister may designate any number of officials in the Department as deputy registrars of labour relations to assist the registrar to perform the function of the registrar in terms of this Act. (b) A deputy registrar may exercise any of the functions of the registrar that have been generally or specifically delegated to the deputy.

DEPARTMENT OF LABOUR**CERTIFICATE OF REPRESENTATIVENESS
OF PARTIES TO A COLLECTIVE AGREEMENT****National Bargaining Council for the Road Freight
and Logistics Industry**

In terms of section 49(2) of the Labour Relations Act, 1995, I am satisfied that the parties to your Council's Main Agreement are representative and will be regarded as such until 31 December 2023

1. On 7 December 2021 there were 108 673 employees employed within the scope of the Collective Agreement.
2. On 7 December 2021 there were 26 827 members of the trade unions to the Council that were employed within the scope of the Collective Agreement.
3. On 7 December 2021 there were 60 555 employees employed within the scope of the Agreement by members of the employers' organisations, party to the Collective Agreement.

Date: 9 December 2021

Reference number: 2/6/6/55

Deputy Registrar of Labour Relations

10.9 It bears noting that the certificate relates to the representativeness of the parties, to the Bargaining Council, in relation to the scope of the MCA. The certificate does not refer to the registered scope of the Bargaining Council though, of course, the scope of the MCA and the registered scope of the Council frequently coincide.

Grounds for review

[11] This application is brought on the grounds set out under the Promotion of Administrative Justice Act, 2000 (hereafter “PAJA”) alternatively the principle of legality. The principle of legality extends to the exercise of all public power. Though more limited than the grounds of review in PAJA⁵ the principle of legality permits review of public power on the grounds of irrationality and on the basis that the decision-maker did not act in accordance with the empowering statute.⁶ Rationality requires that the exercise of public power must not be arbitrary. Such decisions must be rationally related to the purpose for which the power was given and calls for an objective enquiry.⁷

The first ground

[12] The applicant contends that, properly constructed, section 32(8) of the LRA requires that the notice and comment procedure contemplated by section 32(5) is applicable whenever the extended collective agreement is either amended, amplified or replaced. The Minister’s decision to

⁵ Section 6(1) of PAJA permits the review of administrative action if the administrator: (a) (i) was not authorised to do so by the empowering provision; (ii) acted under a delegation of power which was not authorised by the empowering provision; or (iii) was biased or reasonably suspected of bias; (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with; (c) the action was procedurally unfair; (d) the action was materially influenced by an error of law; (e) the action was taken - (i) for a reason not authorised by the empowering provision; (ii) for an ulterior purpose or motive; (iii) because irrelevant considerations were taken into account or relevant considerations were not considered; (iv) because of the unauthorised or unwarranted dictates of another person or body; (v) in bad faith; or (vi) arbitrarily or capriciously; (f) the action itself - (i) contravenes a law or is not authorised by the empowering provision; or (ii) is not rationally connected to - (aa) the purpose for which it was taken; (bb) the purpose of the empowering provision; (cc) the information before the administrator; or (dd) the reasons given for it by the administrator; (g) the action concerned consists of a failure to take a decision; (h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or (i) the action is otherwise unconstitutional or unlawful.

⁶ *Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others* 2012 (3) SA 486 (SCA) paras 28 – 30

⁷ *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex Parte President of the Republic of South Africa and others* 2000 (2) SA 674 (CC) at paras 85 and 86

extend was not preceded by a notice and comment procedure, as contemplated, and is therefore invalid.

The second ground

[13] The applicant contends that the registrar made no determination on 9 December 2021, and the certificate is not a determination.

The third ground

[14] The applicant contends that the registrar was required to sign the certificate, but it was instead signed by the deputy registrar.

The fourth ground

[15] The applicant contends that the Minister was required to interrogate the figures in the registrar's determination, if such a determination was indeed made. The Minister could not simply accept the figures in the certificate when this differed from the request for extension made by the Bargaining Council.

Analysis of the grounds of review

The first ground

[16] In this matter, the Minister exercised her power to extend under section 32(2) of the LRA.

[17] In the judgment under case number JR2749, the court rejected the argument that representations, or consultation, as envisaged by sections 3 and 4 of PAJA are also applicable to the determinations of representativeness made by the Registrar. The sentiments in that

judgment are equally applicable to the Minister when he or she exercises the powers contemplated under section 32(2).

[18] The accepted method of statutory interpretation has been well captured as the “interpretative triad of language, context and purpose”.⁸

[19] In my view, there is nothing in the language, context or purpose of section 32 which suggests that the procedures in sections 3 and 4 of PAJA are also applicable when the Minister exercises his or her powers under section 32(2).

[20] The applicant’s argument appears to be anchored in its view that the words “amended, amplified or replaced” in section 32(8) also includes any extension of the period of the agreement. With respect, one merely needs to consider the text of the subsection to see that this is incorrect. Section 32(8) states:

“Whenever any *collective agreement* in respect of which a notice has been published in terms of subsection (2) or (6) is amended, amplified or replaced by a new *collective agreement*, the provisions of this section apply to that new *collective agreement*.” (own emphasis)

[21] First, it is plain from the text that the words “amended, amplified or replaced” means something other than extended. Second, the applicant’s submission ignores the insertion of the word “new”. The extension of the same collective agreement cannot bring into existence a new collective agreement. The provisions of the collective agreement are clearly not “amended, amplified or replaced”.

⁸ *Shoprite Checkers (Pty) Ltd v Mafate NO* (2024) 45 ILJ 2491 (CC) at para [33]

- [22] To ensure that the process of sectoral collective bargaining is protected from those employers who might wish to derail it, the LRA does not require any comment or consultation process to be followed by the Minister in terms of section 32(2). To read in such requirement would be to breach the principle of separation of powers. I note that the applicant refrained from any challenge to the constitutionality of the relevant provisions in the LRA. I note also that the applicant made no submissions in relation to section 210 of the LRA which provides, in brief, that where there is a conflict between the LRA, and the provisions of any other law (save for the Constitution) the LRA must prevail.

The second, third and fourth grounds

- [23] The applicant contends that the registrar made no determination on 9 December 2021, and the certificate is not a determination. These contentions were addressed at length, and rejected, in the judgment under case number JR2749/22.

Costs

- [24] It is trite that costs in labour matters do not follow the result. Furthermore, the submissions were novel. No costs order is made.

Conclusion

- [25] In the circumstances, for the reasons set out above, I make the following order:

25.1 The review application is dismissed,

25.2 There is no order as to costs.

Reynaud Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:
Adv Boda SC with Adv Itzkin and Adv Karim
Instructed by Hanelle Vrey Inc

For the First Respondent:
Adv L Kutumela
Instructed by State Attorney

For the Second Respondent:
Adv H Barnes SC
Tricker Inc

LABOUR COURT