



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 209/21

In the matter between

DEPARTMENT OF INFRASTRUCTURE DEVELOPMENT

Applicant

and

GENERAL PUBLIC SERVICE BARGAINING COUNCIL

First Respondent

COMMISSIONER ELAINE MOLEKO N.O.

Second Respondent

NEHAWU

Third Respondent

WENDY MHLANGA

Fourth

Respondent

Heard: 15 July 2025

Delivered: 02 December 2025

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 02 December 2025.

JUDGMENT

SAUNDERS, AJIntroduction

- [1] This matter deals with a review application and the ancillary issue of condonation for the late filing of the review. The applicant seeks an order setting aside the arbitration award. The application is opposed.
- [2] At the hearing of the matter, full argument was presented. Judgment was reserved. Prior to the consideration of the merits of the review application, the issue of the deemed withdrawal must be considered.
- [3] On 23 January 2024, the third and fourth respondents filed a Notice of Deemed Withdrawal. On the preparation of this judgment, there were several references to a reinstatement application. The first was a letter from the attorney for the third and fourth respondents, dated 11 November 2024, which referenced a reinstatement application brought by the applicant, presumably in response to the Notice of Deemed Withdrawal. In addition, the reinstatement application was referenced in the heads of argument prepared by the applicant.
- [4] There was no reinstatement application in the court file. On request from the parties, I was provided with a copy of the reinstatement application by the third and fourth respondents, who also indicated that the reinstatement application was not opposed and that they sought an order in the main application. The reinstatement application appears to have been served on the third and fourth respondents, who confirmed receipt and that the matter was unopposed, but it did not reflect a court stamp.
- [5] A further request, specifically to the State Attorney, to be provided with a copy of the reinstatement application which had been served and, importantly, filed, was left unanswered.

[6] This review application was launched under the provisions of the now-repealed Practice Manual¹ (Practice Manual) and the Rules of the Labour Court in existence in 2020.

[7] The relevant excerpts of Clause 11 of the Practice Manual read as follows:

‘11.2 Applications to review and to set aside arbitration awards and rulings

11.2.1 Once the registrar has notified an applicant in terms of Rule 7A (5) that a record has been received and may be uplifted, the applicant must collect the record within seven days.

11.2.2 For the purposes of Rule 7A (6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received.

11.2.3 If the applicant fails to file a record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given. If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by Rule 7. The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record.

11.2.4 If the record of the proceedings under review has been lost, or if the recording of the proceedings is of such poor quality to the extent that the tapes are inaudible, the applicant may approach the Judge President for a direction on the further conduct of the review application. The Judge President will allocate the file to a judge for a direction, which may include the remission

¹ Practice Manual of the Labour Court of South Africa effective 2 April 2013 and repealed with effect from 17 July 2024

of the matter to the person or body whose award or ruling is under review, or where practicable, a direction to the effect that the relevant parts of the record be reconstructed.

...

11.2.7 A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.'

[8] Clause 16 of the Practice Manual reads as follows:

'16. ARCHIVING FILES

16.1 In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

- in the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed;
- in the case of referrals in terms of Rule 6, when a period of six months has elapsed from the date of delivery of a statement of case without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed; and
- when a party fails to comply with a direction issued by a judge within the stipulated time limit.

16.2. A party to a dispute in which the file has been archived may submit an application, on affidavit, for the retrieval of the file, on notice to all

other parties to the dispute. The provisions of Rule 7 will apply to an application brought in terms of this provision.

16.3 Where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed.’

- [9] In this matter, the review application was launched on or about 4 February 2021. On 5 March 2021, the Notice of Compliance in terms of Rule 7A(2)(b) was filed by the bargaining council, indicating that the record was available for collection by the applicant. The record appears to have been filed on 12 May 2021. On 6 June 2021 and 11 June 2021, further Notices of Compliance in terms of Rule 7A(2)(b) were filed by the bargaining council. The second part of the record was filed on 11 August 2021, some 3 months after the first part of the record was filed. The supplementary affidavit was served and filed on 12 August 2021, and the answering affidavit of the third and fourth respondents was served and filed on 22 September 2021. No reply was filed. On 4 August 2022, almost a full year after the pleadings closed, the applicant took steps to have the matter enrolled.
- [10] On 23 January 2024, the third and fourth respondents correctly brought a notice stating that the application is deemed withdrawn in terms of the Practice Manual. On 13 February 2024, Makhura J issued a directive that the matter be enrolled on the opposed motion roll for hearing. This was done. It appears that the third and fourth respondents consider this directive to be a finding on the issue of the deemed withdrawal. This is not the case. The directive is simply a case management step referring the matter for adjudication. That adjudication will include an assessment of the deemed withdrawal.
- [11] According to correspondence in the court file, a reinstatement application appears to have been served on the third and fourth respondent by the applicant on or about 5 November 2024, some 11 months after the Notice of Deemed Withdrawal and in excess of two years since a date was requested from the Registrar (being 4 August 2022). There is nothing to suggest that the reinstatement application was ever filed in the court file.

[12] It is incumbent on this court to consider the reinstatement application to the extent that it is before the court. In the unreported judgment of *Chasi v University of Johannesburg*², Snyman AJ stated the following:

[42] A referral as contemplated by section 191(11) is made by way of a statement of claim in terms of Rule 6 of the Labour Court Rules.³ Rule 6(1) prescribes that the statement of claim must be in a document form, *inter alia* containing the title of the matter, the case number assigned by the Registrar, and must be signed by the referring party concerned.⁴ Of particular relevance to the case *in casu*, Rule 6(1)(f) prescribes that the statement of claim must '*be delivered*'.

[43] As to what constitutes '*delivered*', this is dealt with in the definitions in Rule 1, where it is recorded that "*deliver*' means *serve on other parties and file with the registrar*'. In turn, '*serve*' is defined as meaning service in terms of Rule 4(1)...

[44] It follows from the above that a referral to this Court in terms of Rule 6 only exists when a statement of claim complying with all the provisions of Rule 6(1) is validly served on the respondent party, and then filed in Court. There is no delivery of the statement of claim until such time as both the service and the filing of the statement of claim has occurred.'

[13] While the above dictum addressed referrals in terms of Rule 6, the principles are equally as applicable to referrals under Rule 7A as well. On the basis that the State Attorney was not able to indicate that the reinstatement application was before Court, the only conclusion must be that it was served on the third and fourth respondent but not filed in the court file and therefore does not meet the threshold of being a proper referral before Court.

[14] In the absence of a reinstatement application for consideration, the review application has been deemed withdrawn and is not before this Court. On the basis that the review application has lapsed and is deemed withdrawn, and may not be reinstated until such time as the applicant is successful in applying

² [2022] ZALCJHB 275.

³ These are the Rules for the Conduct of Proceedings in the Labour Court (as amended), first promulgated by GN 1665 in GG 17495 of 14 October 1996.

⁴ See Rule 6(1)(a)(i) and (ii), and Rule 6(1)(c).

to have the lapsed application retrieved from the archive and reinstated, the matter must be struck from the roll.

[15] It is hereby ordered that:

Order

1. The matter is struck from the roll.
2. There is no order as to costs.

S. Saunders

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: Adv M Khumalo

Instructed by: State Attorney

For the Third Respondent: Adv PF Serogole

For the Fourth Respondent: MashifaneMoswane Attorneys