



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR02/2020

In the matter between:

AMCU OBO FANIE KHOZA

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE WOOD
AND PAPER SECTOR**

First Respondent

COMMISSIONER TSHAYANA NO

Second Respondent

TIMRITE (PTY) LTD

Third Respondent

Heard: 23 October 2025

Delivered: Judgment was handed down on 19 January 2026, by email to the parties' legal representatives.

Summary: Application to review and set aside ruling of the third respondent. Application dismissed, no costs.

JUDGMENT

DANIELS J

Introduction

- [1] The applicant referred an alleged unfair labour practice, premised on a demotion, to the first respondent (Bargaining Council). The dispute was allocated to the second respondent (the commissioner) who was required to decide whether the applicant was unfairly demoted and, if so, the appropriate relief. The commissioner ruled that the applicant was not demoted. The applicant seeks to review and set aside the ruling.

Material facts

- [2] The third respondent ("the employer") is a member of the Bargaining Council where wages and terms and conditions of employment for the industry are negotiated. At the time, AMCU, the trade union representing its member, Mr Fanie Khoza, was not a party to the Bargaining Council.
- [3] The employer, in its implementation of the wage rates agreed upon at the Bargaining Council, decided that the salaries of those employees earning more than the Bargaining Council rates would be reduced and instead be paid as a 'service allowance'. The employer contends that these changes occurred after roadshows where the changes were discussed with employees. The employer contends that this change was necessary to ensure "equal pay for equal work" as required by the Employment Equity Act¹.
- [4] The applicant contends that changes to the salary structure of its member² was unfair because there was no agreement to such changes. The applicant argues that the change impacts on severance pay, UIF, as

¹ No. 55 of 1998

² Mr Khoza was employed as a forklift truck driver earning R27,75 per hour. During November 2018, his hourly rate was reduced by Timrite to R22,11 but from this time he received a service allowance of R5,54 per hour.

well as Sunday and overtime pay. In addition, the applicant contends, such changes were in breach of section 34(1) of the Basic Conditions of Employment Act.³

Legal principles and analysis

[5] In relation to arbitration awards issued by commissioners of the CCMA and Bargaining Councils, the test in reviews is settled. The court is required to ask whether the *“arbitration award [is] one which no reasonable commissioner could reach on the material before him or her?”* The test is known as the ‘reasonableness test’ or the ‘*Sidumo* test’ named after the case citation.⁴ However, where the ruling is jurisdictional, the question is whether the commissioner correctly determined the issue. The applicant’s case is premised on an alleged unfair labour practice arising from a demotion. Absent any demotion, the Bargaining Council had no jurisdiction.

[6] Accordingly, the first issue is whether the applicant discharged the onus to prove that the conduct of the employer constituted a demotion. In *Ndlela v SA Stevedores Ltd*⁵ (“*Ndlela*”) the presiding officer of the Industrial Court stated:

“Demotion is not a word which has some special meaning in labour law. It bears its ordinary meaning, namely 'to reduce to a lower rank or category'. The opposite of demotion is 'promotion'. The applicant would, after the reorganization, have retained his employment. He would have retained his grading according to the Paterson scale. There would have been no reduction in salary. He would be required to do the work of a foreman. Whilst doing that work his responsibilities would to some extent be less than they would have been as senior foreman but then at

³ No. 75 of 1997

⁴ *Sidumo and another v Rustenburg Platinum Mines Ltd and others* (2007) 28 ILJ 2405 (CC)

⁵ (1992) 13 ILJ 663 (IC)

times which may have been for as long as five months in the year, he would have been required to act as a superintendent. Whilst so acting, his responsibilities would have been far more onerous and responsible than they would have been as a senior foreman. He could not have thought that what the employer was doing was to make it clear to him and to all and sundry that they thought that he was not capable of fulfilling his former functions. It was clear to him and to all others that the respondent regarded him as so capable that he would be the most senior in the hierarchy of foremen and the one who would do the most difficult work when such work was required. That being so, the mere change in title and the fact that at times he may be required to perform work of lesser importance than he previously performed is not, in my opinion, demotion. It was argued that there would eventually be a reduction in salary because his increments in future would be slightly less so that he is brought on a par with the other foremen. That may have happened. It is also possible that it would not have happened. That his real income would have dropped is most unlikely because when acting as a superintendent he would receive the salary and the other benefits attached to that position including provision of transport or making available means of transport. Financially he would have been no worse off. As far as status is concerned he was in my opinion clearly no worse off. He was the most senior of the foremen and demonstrated to be capable of being a superintendent. But even if I am I wrong and even if that position would amount to a demotion, he was offered a transfer to the clean cargo division as a foreman.” (own emphasis)

[7] As is apparent from what is set out above, *Ndlela* did not find that changes to remuneration, or remuneration structure, by itself will constitute a demotion. The presiding officer considered all the factors including the employee's status, responsibilities, as well as remuneration.

[8] In *SA Police Service v Salukazana & others*⁶ (“SA Police Services”) this court stated: “*Demotion can manifest itself in many ways. It can arise*

⁶ (2010) 31 ILJ 2465 (LC) at para 19

through the reduction of salary, change in terms and conditions of employment and indeed transfer.” In *SA Police Services*, the respondent had been transferred to a new position and contended that his transfer was a demotion (although he remained on the same grade and his salary and benefits were unchanged) because his status had diminished given that he no longer reported to the area commissioner but a subordinate. *SA Police Services* is also not authority for the proposition that any changes to remuneration, or remuneration structure, absent changes to status or responsibilities, constitutes a demotion.

- [9] In *Nxele v Chief Deputy Commissioner, Corporate Services, Department of Correctional Services & others*⁷ (“*Nxele*”) the Labour Appeal Court held:

“... the mere fact that the appellant's rank and remuneration were not going to change does not mean that the transfer to Pollsmoor could not or did not constitute a demotion. I agree, too, that the status, prestige and responsibilities of the position are relevant to the determination of whether or not a transfer in a particular case constitutes a demotion.”

(own emphasis)

- [10] *Nxele* is not authority for the submission that changes to remuneration, or remuneration structure, by itself, will constitute a demotion. The abovementioned quotation must be understood in context - diminution of position, rank, status or responsibilities normally result in the reduction of remuneration.
- [11] It is trite that the “unfair labour practice” in section 186(2) of the Labour Relations Act⁸ is a closed list and does not include every conceivable unfair act by employers. For instance, the definition (of unfair labour practices) includes unfair conduct by an employer in relation to “benefits” but does not do so in relation to remuneration. Although, depending on

⁷ (2008) 29 ILJ 2708 (LAC) at para 88

⁸ No. 66 of 1995

the circumstances, benefits may be part of an employee's remuneration, 'remuneration' remains a separate, and broader, concept. I cannot ignore the fact that the drafters of the LRA made a deliberate decision to include unfair conduct by an employer in relation to benefits but not in relation to remuneration.

- [12] What is set out above does not suggest that an employer is free to conduct itself unlawfully in relation to an employee's remuneration or remuneration structure. Remuneration, and remuneration structure, are issues that are ordinarily embedded in the employment contract, and any breach of such contract may be challenged in either the Labour Court or civil courts.
- [13] In this matter, the applicant did not contend that there was any diminution to its member's position, rank, grade, status, dignity, or responsibilities. Insofar the changes to the employee's remuneration structure have the effect that his remuneration is unilaterally reduced, this may constitute a breach of his employment contract. Insofar as such conduct is also unfair, this does not fall within the scope of the unfair labour practice.

Conclusion

- [14] For the reasons set out above, the application is dismissed. Costs were not actively pursued by the parties and there are no extraordinary circumstances justifying costs. There is therefore no order as to costs.
- [15] In the circumstances, the application is dismissed with no order as to costs.

RN Daniels
Judge of the Labour Court of South Africa

Appearances

For the Applicant:

Adv S Saunders

Instructed by LDA Inc

For the Third Respondent:

Adv Tshivhase

Padi Inc

LABOUR COURT