



- (1) Not Reportable: Yes/NO
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: JR 251/20

In the matter between:

ESKOM HOLDINGS SOC LIMITED

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

COMMISSIONER SILAS SEGOLE N.O.

Second Respondent

NATIONAL UNION OF METALWORKERS

obo MARVIN BOITSHEPO CHARLIE

Third Respondent

Heard: 27 November 2025

Delivered: 19 January 2026

JUDGMENT

SALOOJEE, AJ

Introduction

- [1] This is an application to review and set aside an award of the second respondent (Commissioner) in which the third respondent (employee) was reinstated and awarded compensation.
- [2] The applicant also seeks to reinstate the application in terms of clauses 11.2.2 and 11.2.7 of the repealed Practice Manual (Practice Manual) and condonation for the late issuing of the application.

Background

- [3] The employee was charged with two charges of misconduct:

‘You are alleged to have contravened Misconduct 2.13, ‘Without authorization utilises Eskom’s labour, material, transport equipment and assets to his/her advantage or to the advantage of another’

Count 1: in that you in the month of July 2018 you visited 5 Rissik Street using Eskom’s vehicle registration number FGY 837 FS without authorization.

Count 2: in that you in the month of July 2018 you visited 5 Rissik Street using Eskom’s vehicle registration number CCT 186 FS without authorization.

You are alleged to have contravened Misconduct 2.29, ‘Commits an act or omission that is detrimental to Eskom.’

In that Eskom copper cable was found at 5 Rissik Street on 13 July 2018, in which you were implicated as being involved in delivering cables to this address.’

- [4] The employee was found guilty on the second charge, that the employee contravened Misconduct 2.29 by committing an act or omission that is detrimental to Eskom and was dismissed.
- [5] The employee referred an unfair dismissal dispute to the first respondent (CCMA) which was allocated for hearing to the Commissioner.

- [6] The Commissioner's award was on the exclusion of a voice recording from a potential witness in terms of the Law of Evidence Amendment Act 45 of 1988 (LEAA).

The reinstatement application

- [7] This is an application to condone non-compliance with clauses 11.2.2 and 11.2.7 of the Practice Manual.
- [8] The applicant raised two arguments in support of the reinstatement.
- [9] The first argument is that the Practice Manual has no application after its repeal and that this court has no jurisdiction to determine the matter.
- [10] On 17 July 2024, the Rules regulating the conduct of the proceedings of the Labour Court (New Rules) came into operation and repealed the previous rules for the Labour Court (Rules) and the Practice Manual.
- [11] Clause 11.2.2 of the Practice Manual required applicants to file the record of proceedings at arbitration within sixty days of the registrar advising that the record has been received. Failure to do so resulted in the penalty of the applicant having been deemed to have withdrawn the application, and the applicant was required, in the absence of consent from the respondent, to make an application for an extension of time.¹
- [12] Clause 11.2.7 of the Practice Manual required applicants to ensure that all the necessary papers were filed within twelve months of issuing the application. Failure to do so resulted in the penalty of the application being archived and regarded as lapsed. Applicants were required to show good cause why the application should not to be archived or be removed from the archive.
- [13] The New Rules contain no transitional provisions to provide for the continuation or cessation of penalties contained in the Practice Manual after its repeal.

¹ Clause 11.2.3 of the Practice Manual.

- [14] The Interpretation Act² has application and the judgments in *National Bargaining Council for the Road Freight Industry & others v Attorney-General, Witwatersrand Local Division, Johannesburg & others*³ and *Latiff v Donro (Pty) Ltd*⁴ confirmed the application of the Interpretation Act to the Rules.
- [15] The Labour Appeal Court in *Samuels v Old Mutual Bank*⁵ held that the Practice Manual was binding and was enforced to give effect to the Rules.
- [16] Consequently, the Interpretation Act applies to the Practice Manual, which is an order made under the authority of law and applied as having the force of law.
- [17] Section 12(2)(d) of the Interpretation Act states that a repealed law shall not affect any penalty incurred against any law so repealed.
- [18] In *National Bargaining Council for the Road Freight Industry & others v Attorney-General, Witwatersrand Local Division, Johannesburg & others*⁶ this court considered whether prosecutions in terms of fixed term industrial council agreements were competent after the lapse of a transitional period to the new Labour Relations Act. It was held that:
- ‘In light of s 12 of the Interpretation Act, offenders can be prosecuted despite the repeal of the applicable statute for offences committed before the repeal. That is unless it is clear that the contrary was intended...’⁷
- [19] This court has jurisdiction to determine the reinstatement application as there is no contrary intention in the New Rules on the transitional application of clauses 11.2.2 and 11.2.7 of the Practice Manual and Section 12(2)(d) of the Interpretation Act applies.
- [20] Lastly, the judgment in *Total Mashiane v Safety and Security Sectorial Bargaining Council*⁸ held that commencement of the New Rules deprives this

² Act 33 of 1957.

³ (1999) 20 ILJ 170 (LC).

⁴ (2004) 25 ILJ 2219 (LC).

⁵ [2017] 7 BLLR 681 (LAC) at para 15.

⁶ (1999) 20 ILJ 170 (LC).

⁷ Ibid at para 15.

⁸ Unreported, Case No. JR 1623/21 [2024] ZALCJHB 432 handed down on 13 November 2024.

court from the discretion to enforce the Practice Manual. I respectfully disagree, as the Interpretation Act was not considered.

- [21] The applicant's second argument is that the applicant complied with the time frame to deliver the record, and no reinstatement is necessary.
- [22] The CCMA delivered an incomplete record to the Registrar, who issued a notice in terms of Rule 7A(5). Upon discovery of the incomplete record, the applicant informed the Registrar and the employee. The complete record was later delivered to the Registrar, who issued a second notice in terms of Rule 7A(5). The supplementary founding affidavit was delivered within the required time from the second notice in terms of Rule 7A(5).
- [23] The reinstatement succeeds as the applicant showed good cause that the supplementary founding affidavit was delivered within the required time from the second notice in terms of Rule 7A(5).

Condonation for the late issuing of the application

- [24] The applicant's reasons for the four months lateness in issuing the application relate to its internal processes for assessing suitable matters to oppose and the customary December break.
- [25] The applicant dedicated much of the founding affidavit to the workings of its internal system for vetting matters to oppose.
- [26] The employee opposed the condonation application on financial prejudice, that the delay resulted in a loss of income for these months. However, there are two issues that mitigate against the employee. Firstly, despite the employee's complaint of prejudice that the answering affidavit in the review application was filed four months late, the employee filed an answering affidavit in the condonation application almost a year out of time. Secondly, the employee was awarded reinstatement and would suffer no financial prejudice if this application is dismissed.
- [27] I am satisfied that the applicant provided a satisfactory explanation for the delay, and the condonation application succeeds.

The review application

- [28] There is one ground of review to consider, that the Commissioner committed an irregularity by excluding a voice recording of a potential witness, Tiego Rejoice Rasello (Rasello), in terms of the Law of Evidence Amendment Act 45 of 1988 (LEAA).
- [29] The basis of the review is that the Commissioner failed to appreciate the probative value of the voice recording that was damning to the employee's case, and that the Commissioner required an onus that was beyond a reasonable doubt.
- [30] The admission of hearsay evidence is governed by section 3(1) of the LEAA. The Labour Appeal Court in *Exxaro Coal (Pty) Ltd v Chipana and Others*⁹, held that the application of section 3(1) of the LEAA in arbitration proceedings is based on fairness.
- [31] The voice recording was excluded as Rasello was unwilling to participate in the arbitration to corroborate the recording, it would not be fair to delay the arbitration to secure Rasello's attendance, and the recording was obtained by questionable means.
- [32] The Commissioner gave effect to section 3(1) of the LEAA by considering that Rasello, the person upon whose credibility the probative value of such evidence depends, was unwilling to give evidence at arbitration. Further, the Commissioner satisfied the standard of fairness by taking into account Rasello's refusal to give evidence, the need to ensure the speedy resolution of matters and minimising legal costs.
- [33] The applicant's argument that the Commissioner failed to appreciate the probative value of the voice recording requires the application of section 3(1)(c)(iv) of the LEAA.
- [34] Section 3 of the LEAA allows the admission of hearsay evidence under limited circumstances. The first is if parties to arbitration agree to admission of

⁹ [2019] 10 BLLR 991 (LAC) at para 24.

hearsay evidence, the second is if the person upon whose credibility the probative value of such evidence depends gives evidence, and the third sets out all the requirements required in the absence of agreement or absence of confirmation from the person upon whose credibility the probative value of such evidence depends.

[35] The probative value of the recording in section 3(1)(c)(iv) of the LEAA cannot be read in isolation, as all the requirements in section 3(1)(c) of the LEAA must be satisfied. The applicant's argument is misdirected and cannot succeed, as it relies on a selected portion of the LEAA and has not addressed the requirements of section 3(1)(c)(iv) of the LEAA and the applicant's argument that the Commissioner applied a higher standard to the admission of the voice recording cannot be sustained.

[36] Consequently, the review application is dismissed.

[37] On the issue of costs, the applicant was successful in the opposed reinstatement and condonation applications. The applicant's prospects of success in this application were obvious and should not have been opposed. It is fair, based on the success of both parties, that each party should pay their own costs.

[38] In the results, the following order is made:

Order

1. The application is reinstated.
2. The late filing of the supplementary founding affidavit is condoned.
3. The review application is dismissed.
4. Each party to pay their own costs.

YF Saloojee

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant: Johan Biggs

Instructed by: Motsoeneng Bill Attorneys Inc.

For the Respondent: Masilo Ceril Malematja

Instructed by: Mashabela Attorneys

LABOUR COURT