THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Case No: PR324/2022

In the matter between:

PIETER JOHANNES DU PREEZ	**Applicant**
and	
SASOL MINING (PTY) LTD	**First Respondent**
RAYMOND DIBDEN, *N.O.*	**Second Respondent**
CCMA	**Third Respondent**

Heard: 26 November 2025.

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be on 13 January 2026.

JUDGMENT

THYS, AJ

[1] This matter has its birth in the employment relationship between Mr. Pieter Johannes Du Preez and his former employer, Sasol Mining (Pty) Ltd. That relationship ultimately disintegrated following allegations of misconduct levelled against Mr. Du Preez and after a disciplinary process, the allegations culminated in the termination of his employment contract.

[2] The dismissal gave rise to a dispute that was referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Commissioner, Raymond Dibden, having been duly appointed and after considering the evidence presented by both parties, concluded that the dismissal was fair.

[3] Where parties are unsuccessful at arbitration before the CCMA, or Bargaining Councils, two fundamental choices confront them. The first is to accept the outcome and bring the dispute to finality. The second is to challenge the award by way of review before this Court. It is, in essence, a moment of *flight or fight*.

[4] Mr. Du Preez elected not to accept the Commissioner's award and instead chose to fight. His right to exchange blows does not arise from sentiment but it is an

entitlement expressly conferred by the Constitution of the Republic of South Africa, 1996 (the Constitution) and statute. Section 23 of the Constitution guarantees everyone the right to fair labour practice, and this foundational right is given effect through the Labour Relations Act (the LRA)[1]. Section 145 of the LRA provides that any party to arbitration proceedings who alleges a defect in the award may apply to this Court for an order reviewing and setting it aside.

[5] This statutory provision ensures that CCMA (and Bargaining Council) arbitration awards are not immune from scrutiny, but remain subject to judicial oversight where misconduct, irregularities, jurisdictional errors, and so on is alleged.

[6] The necessary papers were duly exchanged between the parties, and the matter was eventually set down for hearing before this Court.

[7] However, during the presentation of heads of argument, Sasol Mining raised a preliminary issue, namely that the review application had been delivered out of time.

[8] The law makes it clear that an offensive against an award cannot be launched at leisure because Section 145 stipulates that the onslaught (in the form of a review application) must begin within six weeks of receipt of the arbitration award.

[9] The six-week period constitutes the statutory window within which a litigant must carefully scrutinise the arbitration award, consult the record, obtain legal advice where necessary, discern and formulate any grounds of review, and prepare the necessary papers and therein translate any perceived irregularities into a properly pleaded review application.

[1] Act 66 of 1995, as amended

[10] Once that period closes, the right is lost, and any attempt to strike thereafter is rendered legally impotent, save only for the issue of condonation, which may be sought and granted.

[11] This 'six-week' provision is peremptory in nature and serves to balance the right of employees to challenge arbitration awards with the need for finality in labour disputes.

[12] In this matter the arbitration award was served to the parties on 7 November 2022. This much is common knowledge or admitted by Mr. Du Preez. The question that arises is whether the review application was filed within the statutory six-week period, or whether it is late.

[13] To get the answer right is vital because the timeliness of a review application is not a matter of mere formality. If the application is filed late, the Court is deprived of jurisdiction to entertain it. This is for the reason that jurisdiction is the foundation upon which judicial authority rests, and without it, any order issued would be a nullity in law. In this regard, the Supreme Court of Appeal unanimously in *Vidavsky v Body Corporate of Sunhill Villas*[2] held that where there is an absence of jurisdiction, the resultant adjudication is null and void. In *Motala v Master of the North Gauteng High Court, Pretoria*[3] the same court held that a judge who lacks 'jurisdiction' issues orders that are invalid.

[14] There is another reason why it is important to get the answer to the said question right. This is because our Courts have latitude to indulge non-compliance with procedural '*rules*'. This means that even if there is no formal application for condonation, the court may still choose to overlook the non-compliance. This shows a degree of pragmatism and flexibility in handling procedural matters,

[2] [2005] 4 All SA 201 (SCA); 2005 (5) SA 200 (SCA).

[3] 2019 (6) SA 68 (SCA).

especially in the case of Labour Court review applications which are in nature considered urgent applications.

[15] However '*statutory time frames*' are more rigid because they relate to the Court's jurisdiction. This distinction give emphasis to the importance of adhering to statutory deadlines, as failure to do so can result in the Court being unable to entertain the case, without a formal condonation application.

[16] In the case of *Joseph and Others v Minister of Police and Others*[4] this Court illustrates, this principle or conclusion by showing, how this Court handled non-compliance with procedural rules versus statutory time frames. This Court in this regard, held that:

> *"[23] A distinction is to be drawn between condonation for non-compliance with time frames provided for in the Rules and those in the Act. In a case where there is non-compliance with the Rules, the court, in general, has latitude to indulge and may do so, even where there is no substantive application for condonation ..."*
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> *[24] The converse applies in cases involving time frames provided for in a statute. In statutory provisions, the issue of non-compliance is a jurisdictional fact which needs to be satisfied before the court can entertain the dispute. Thus where there is no compliance with provisions of a statute, the court would have no jurisdiction to entertain such a matter in the absence of condonation. This means that application for condonation is mandatory for non-complaince with statutory time frames unless provided otherwise.'*

[17] Thus, the determination of whether the review was lodged within the prescribed six-week period is not a peripheral issue but one that goes to the very competence

[4] (15017/2017) [2023] ZAGPJHC 488 (17 May 2023).

of this Court to adjudicate the matter. Only once this threshold is resolved can the Court proceed to consider the merits and eventually issue a judgment.

[18] In order to meaningfully answer the question of timeliness, it is important to have regard to the fact that the arbitration award was issued and received by the parties (and by Mr. Du Preez in particular) on 7 November 2022. From this date, the statutory six-week period must be calculated. Section 145 of the LRA employs the phrase "delivered *within six weeks*," which raises a subtle but important interpretive question as to whether this statutory formulation alters the ordinary reckoning of time and, if so, what consequence follows for the present application?

[19] Fortunately, this Court is not required to wrestle with the interpretive dilemma unaided, because the Labour Appeal Court has already pronounced on the meaning of the six-weeks in *South African Transport and Allied Workers Union (SATAWU) and Another v Tokiso Dispute Settlement and Others*[5]. In that matter, the said Court carefully considered the computation of the six-week period and clarified that the statutory wording does not displace the established principles of time calculation. The Court had the following to say regarding the issue of six weeks:

> "*[16] What remains is to determine whether the application was filed within the period of six weeks after publication of the award to the parties on the basis that 5 October 2005 was the date of publication of the award. Mr Mphahlani initially submitted that the last day for delivery of the award was 16 November 2005. But when it was pointed out to him that this meant the application was delivered late, he submitted that 19 November was the last day. I do not agree with his second submission.*
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> *[17] The calculation of this period is done not in accordance with section 4 of the Interpretation of Statutes Act 33 of 1957 by excluding the first and*

[5] (2015) 36 ILJ 1841 (LAC).

> *including the last day unless the last day is a Sunday or public holiday which is then excluded, but in terms of the civil method. See LC Steyn Die Uitleg van Wette (Juta 1981 5th Ed) at 174-175. In terms of this method, the first day is excluded so that the period runs from the next day. Therefore the review application had to be filed before 17 November. As the application was filed on 17 November 2005, it was not filed timeously. It was one day late. Strictly speaking an application for condonation was required. Where an application is filed but a day or two out of time then in the absence of prejudice an application from the bar may have sufficed. Even this was not done.*"

[20] The *SATAWU v Tokiso* judgment provides authoritative guidance on how the six-week period must be reckoned, and it is to that precedent that this Court now turns. In other words, applying the method of time calculation as confirmed in *SATAWU v Tokiso* to the present matter, the computation unfolds as follows:

20.1 The date of receipt of the arbitration award was 7 November 2022.

20.2 In accordance with the civil method of computation, the first day is excluded; accordingly, the period commenced on 8 November 2022.

20.3 From that date, a continuous period of six weeks (42 days) must be counted, including weekends and public holidays, so that the calculation properly reflects the statutory time frame. To illustrate the point:

20.3.1 8 November 2022 to 14 November (day seven, week one);
20.3.2 15 November 2022 to 21 November (day fourteen, week two);
20.3.3 22 November 2022 to 28 November (day twenty one, week three);
20.3.4 29 November 2022 to 5 December (day twenty eight, week four);
20.3.5 6 December 2022 to 12 December (day thirty five, week five);
20.3.6 13 December 2022 to 19 December (day forty two, week six).

[21] On this reckoning, the final permissible day for lodging the review application was 19 December 2022. Any filing thereafter, including Mr. Du Preez's application which was on the parties' version "delivered" on 20 December 2022, falls outside the statutory period. In other words, the arbitration award was served on 7 November 2022, which is excluded from the calculation, so the count commenced on 8 November 2022. The forty-second day fell on 19 December 2022, being the last permissible day to file the review. The papers were, however, "delivered" on 20 December 2022, the forty-third day, rendering the application one day late.

[22] For practical purposes the six-week period within which a review application must be launched is calculated as forty-two calendar days from the day following service of the arbitration award. The day of service is excluded, and the count commences on the next day. The forty-second day therefore serves as the yardstick for determining whether a review application is timeous. Any application delivered on the forty-third day or thereafter is late and requires condonation, regardless of how minimal the delay may be.

[23] The court, in this regard, in *Ellerine Holdings Ltd v CCMA and Others*[6] held that where the non-compliance relates to a statutory provision then failure to comply with those provisions goes to jurisdiction.

[24] Therefore, even if the delay in this matter is but a single day, the principle remains that statutory time limit must be respected.

[25] This Court thus cannot simply overlook Mr. Du Preez's delay informally because it compromised a statutory time period and jurisdiction is only properly engaged once condonation is sought and granted.

[6] (2002) 23 ILJ 1282 (LC).

[26] The sum total of the above mentioned reality is that without condonation, the application is defective, cannot be entertained, and any judgment issued in its absence would be a nullity. The future enquiry, if any, into condonation is therefore unavoidable.

[27] It is important to note that while the present calculation indicates that the review application was delivered one day outside the forty-two day period, this determination is not cast in stone. This is for the reason that it appears that delivery, rather than service, may in fact have taken place after 20 December 2022. However, that issue can properly be addressed in the course of any condonation application, should one be pursued in the future.

[28] It must in conclusion be appreciated that the order made here under does not dispose of the matter on its merits. Accordingly, in the event that the merits of the application are pursuant at a later stage, the issue of costs occasioned by this application shall stand over for determination together with the merits.

[29] Should the merits not be pursuant, the employer may nonetheless set the matter down, independently of and apart from the merits, for determination of the costs occasioned by this application, in accordance with the rules of court.

[30] In the circumstances, and given the principles outlined, the following order is made:

1. The review application is struck from the roll, for want of jurisdiction.

2. The costs of this application shall be costs in the cause.

M. Thys

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr. Ivan Lambrechts.

Instructed by Lovius Block Attorneys.

For the Respondent: Mr. Chris Morkel

Instructed by JR Attorneys.