



- (1) Reportable: Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR1352/21

In the matter between:

NEHAWU OBO MUDAU AND OTHERS

First Applicant

PSA OBO NTLOANA AND OTHERS

Second Applicant

and

COMMISSIONER MARTIN SAMBO

First Respondent

THE GENERAL PUBLIC SERVICE SECTOR

BARGAINING COUNCIL(FULL NAME)

Second Respondent

DEPARTMENT OF AGRICULTURE,

RURAL DEVELOPMENT, LAND AND

ENVIRONMENTAL AFFAIRS

Third Respondent

Heard: 4 February 2026

Delivered: 13 February 2026

JUDGMENT

H M VILJOEN, AJ

Introduction

- [1] This is an application in terms of section 145 of the Labour Relations Act,¹ (the LRA) to review and set aside an arbitration award issued by the First Respondent (Commissioner) on 17 May 2021, under the auspices of the General Public Service Sector Bargaining Council (the Second Respondent).
- [2] The Individual Applicants are members of the National Education, Health and Allied Workers Union (NEHAWU) and the Public Servants Association (PSA), employed by the Department of Agriculture, Land Reform and Rural Development (Third Respondent). They occupy the positions of Agricultural Advisors and Agricultural Training Officers.
- [3] The central controversy in this matter concerns the occupational classification of the Applicants. They contend that, by virtue of their academic qualifications, statutory registration, and the scientific nature of their duties, they fall within the category of “Scientists” as envisaged by GPSSBC Resolution 3 of 2009 (the Resolution) and the Occupational Specific Dispensation (OSD) Determination. Consequently, they claim entitlement to be translated to the OSD for Scientists.
- [4] The Third Respondent disputes this classification. It maintains that whilst the Applicants possess science degrees, their posts are designated for extension services and training rather than scientific research involving peer-reviewed publication. On this basis, the Department refused to translate the Applicants to the OSD scales applicable to scientists.
- [5] Aggrieved by this refusal, the Applicants referred an unfair labour practice dispute to the Bargaining Council. In the impugned award, the Commissioner dismissed the claim, finding that the Applicants did not meet the definition of a scientist for the purposes of the OSD.
- [6] The determination of this review does not turn solely on a factual enquiry into the Applicants’ daily tasks. Rather, it turns on whether the Commissioner

¹ Act 66 of 1995, as amended.

committed a material error of law by importing non-existent requirements into the definition of a "Scientist."

Preliminary Issue: Condonation

- [7] An interlocutory application for condonation for the late filing of the record was filed. Although the issue was raised, neither party persisted with argument on condonation at the hearing. In these circumstances, and insofar as condonation is required, it is granted.

The Factual Matrix

- [8] The Individual Applicants are employed by the Third Respondent as Agricultural Advisors and Agricultural Training Officers, occupying various grades and designations within the extension and advisory services. It is common cause that they possess tertiary qualifications in agricultural science, ranging from Bachelor of Science degrees to postgraduate qualifications, and that they are now registered with the South African Council for Natural Scientific Professions (SACNASP), established by the Natural Scientific Professions Act.² Although some Applicants obtained statutory registration after the initial implementation of the OSD, the instruments expressly provide for the translation of non-registered incumbents, and the evidence shows that the duties performed by registered and non-registered employees are substantively identical. The dispute therefore turns not on their registration status, but on the nature of their work.
- [9] The Applicants led oral evidence over several sittings. During the proceedings, and after several witnesses had testified, the parties reached a procedural agreement that was placed on record on 3 March 2021. The Applicants' representative recorded that the evidence already led would apply equally to all Applicants who had not testified, and that the Applicants would close their case on that basis. The Respondent expressly confirmed this arrangement, noting that the Applicants' witnesses "*say one and the*

² Act 27 of 2003.

same thing” and that it would “*stand and fall by what the other witnesses said*”. No party suggested that further evidence was required. This agreement forms part of the evidentiary record and defines the factual foundation of the dispute.

[10] Pursuant to this agreement, evidence was led from six witnesses:

10.1. Mr Thinavhuyo Lesley Mudau,

10.2. Mr Rueben Mpono Maleka,

10.3. Mr Collen Ntlowana,

10.4. Ms Poppy Ramodibe,

10.5. Mr Maisela Jacob Madisha, and

10.6. Dr Windy Thamaga.

[11] Their evidence collectively provided a detailed account of the scientific content of the Applicants’ daily functions.

[12] Mr Mudau testified that his duties include conducting literature reviews of scientific journals and technical reports, designing and implementing demonstration trials, interpreting laboratory analyses of soil, water and leaf samples, and developing fertilisation and remediation plans. He described preparing technical manuals, production guidelines and training materials based on scientific principles, and conducting training sessions for farmers and extension officers. He explained that these tasks require the application of agronomic, soil science and crop science knowledge.

[13] Mr Maleka, a PSA negotiator and signatory to Resolution 3 of 2009, testified regarding the intention of the OSD and the meaning of “Scientist” within the Resolution. He confirmed that agricultural science is a recognised field of natural science and that the OSD was intended to align with the statutory framework established by the Natural Scientific Professions Act.

- [14] Mr Ntlowana testified that he was appointed in 2010 as an Agricultural Scientist (Crop Production) and later redesignated as an Agricultural Advisor without any change to his duties. He described his functions in detail, including cultivar selection, fertiliser calculations, pest and disease identification, chemical recommendations, calibration of planting and fertilisation equipment, and the design and execution of demonstration trials. He testified that these duties require scientific expertise and that he performs them independently.
- [15] Ms Ramodibe and Mr Madisha gave similar evidence, describing their work in crop production, soil analysis, pest management, technology transfer, and the development of scientific advisory materials. They confirmed that their duties have remained consistent since their appointment and that they apply scientific principles in their daily work.
- [16] Dr Thamaga, a Specialist Agricultural Advisor, testified that all members of her section perform scientific functions and that their duties have remained unchanged over time. She confirmed that the work involves scientific analysis, interpretation of laboratory results, and the application of scientific knowledge in advising farmers and developing technical materials.
- [17] Importantly, the Respondent did not challenge the factual description of these functions in cross-examination. Its witness, Dr Mabelane, did not dispute that the Applicants performed the tasks described. She accepted that agricultural science falls within the OSD and conceded that the Applicants *“could be scientists”*. Her evidence was confined to the legal characterisation of the work, namely her view that a “scientist” for OSD purposes is someone who generates new knowledge published in peer-reviewed journals. No factual challenge was put to any Applicant witness regarding the scientific nature of their duties.
- [18] The factual evidence of what the Applicants actually do was not disputed in cross-examination. The Respondent did not challenge the factual description of the tasks performed — including literature reviews, demonstration trials, laboratory interpretation, and the development of technical manuals — but

only the legal characterisation of those tasks. In terms of the rule in *Browne v Dunn*, that factual evidence must therefore be accepted. See *Browne v Dunn*,³ *Small v Smith*⁴ and *Berry & Donaldson (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*.⁵ A party is required to put its opposing version to a witness. Where it fails to do so, it is generally precluded from later disputing that evidence.

- [19] Having not disputed the description of the Applicants' functions, the Third Respondent's defence rested solely on Dr Mabelane's view that a "scientist" for OSD purposes is someone who generates new knowledge published in peer-reviewed journals. Because the Applicants do not publish in such journals, she argued that they fall outside the definition.
- [20] The Commissioner accepted this reasoning, distinguishing between the "Job Purpose" in Annexure B and what he considered the substantive definition of a Scientist. He reasoned that duties such as "assessment" and "evaluation" overlap with the role of an "Extension Officer", a term derived from the Department's internal distinction between "Research" (generating knowledge) and "Extension" (conveying knowledge). By applying this internal rubric, the Commissioner concluded that the Applicants are Extension Officers by definition, regardless of the scientific complexity of their work.

Analysis

The Legal Status of the OSD Instruments

- [21] The OSD finds its origin in PSCBC Resolution 1 of 2007, the framework agreement mandating the introduction of Occupational Specific Dispensations across the public service. This framework was given specific effect for the science sector by GPSSBC Resolution 3 of 2009. Both instruments are binding collective agreements and confer substantive rights

³ (1893) 6 R 67 (HL).

⁴ [1954] 3 All SA 62 (SWA).

⁵ [2022] ZALCJHB 184 at para 18.

that cannot be unilaterally varied by an employer's implementation directive, such as Circular 5 of 2009.

- [22] Resolution 3 governs several professional categories, including Scientists, and requires registration with the relevant statutory council as a prerequisite for translation. The Natural Scientific Professions Act,⁶ establishes SACNASP and defines the categories of persons eligible for registration as natural scientists. By requiring statutory registration, the bargaining parties aligned the OSD with the statutory definition of the profession. Annexure B, as an administrative implementation directive, must therefore be read consistently with the Act and the Resolution.

The Material Error of Law: Text vs. Gloss

- [23] The proper starting point is the definition of "Scientist" as created by the OSD instruments themselves. Read together, Resolution 3 of 2009, Annexure B to Circular 5 of 2009, and the Natural Scientific Professions Act establish the operative definition for OSD purposes.

23.1. Resolution 3 identifies "Scientists" as an occupational category requiring statutory registration with SACNASP.

23.2. The Act recognises Agricultural Science as a field of natural scientific practice and requires registration for persons who apply scientific principles and methods within such a field.

23.3. Annexure B provides the functional content of the category: a Scientist is an employee who performs work involving research, assessment, evaluation, development, innovation or protection in order to ensure the sustainable use of natural resources and to contribute to a knowledge economy. This functional definition is elaborated through the Key Performance Areas, which include conducting research, performing assessments and evaluations, interpreting scientific data, developing and implementing scientific solutions, and providing scientific and technical advice.

⁶ Act 27 of 2003.

- [24] Notably, none of these instruments requires the generation of peer-reviewed publications or the creation of new scientific knowledge as a prerequisite for falling within the occupational category of “Scientist”.
- [25] The Commissioner’s rejection of the Applicants’ claim was based on his finding that they did not meet the definition of a scientist in Annexure B to Circular 5 of 2009. Even assuming that Annexure B is the controlling document, the Commissioner’s application of it was flawed.
- [26] The text of Annexure B defines the purpose of a Scientist as assisting in “*research, assessment, evaluation, development, innovation and protection*” to ensure the sustainability of resources and contribute to a knowledge economy.
- [27] It does not contain the words “peer-reviewed publication”, “academic journals”, or “generation of new knowledge”. These requirements were introduced through the oral testimony of Dr Mabelane. By accepting this gloss, the Commissioner relied on a criterion not found in the governing instruments.
- [28] Annexure B is an administrative directive. It cannot narrow the scope of the OSD created by Resolution 3, nor can it override the statutory definition embedded in the Act. To the extent that it is read as imposing a narrower definition, such a reading must yield to the higher-order instruments.
- [29] Had the Commissioner confined himself to the text, he would have found that the Applicants’ duties correspond directly with the performance areas listed in Annexure B. The evidence established that:
- 29.1. Agricultural Training Officers conduct literature reviews and develop technical training manuals.
 - 29.2. Agricultural Advisors conduct research on cultivars in collaboration with industry bodies.

29.3. Both categories of employees conduct assessments, interpret soil and water samples, and design demonstration trials to test new technologies.

[30] This evidence was not challenged. The Commissioner's conclusion that the Applicants do not meet the definition of a scientist is therefore not one that a reasonable decision-maker could reach.

[31] A similar issue arose in *Gala v Daniel Seopela N.O and Others (Gala)*,⁷ where the Court held that an arbitrator commits a reviewable irregularity by failing to interpret Resolution 3 of 2009 holistically and by relying on departmental classifications rather than the OSD instruments themselves. In *Gala*, the arbitrator ignored the job description of an Agricultural Advisor, the Memorandum of Understanding describing scientific duties, and the requirement in clause 13.1 that translation must follow the post occupied at the time of implementation. The same error occurred in the present matter. The Commissioner relied on the Department's internal "extension versus research" distinction and imported a requirement of peer-reviewed publication that appears nowhere in the OSD. As in *Gala*, this constituted a material error of law that rendered the outcome unreasonable.

The Application of the Resolution to Late Qualifiers

[32] The OSD instruments draw a clear distinction between three categories of employees:

(a) *Employees in service on 30 June 2009*

[33] Clause 13.2.3 of Resolution 3 of 2009 expressly provides that employees who were permanently appointed and performing the duties of the post satisfactorily as of 30 June 2009 must be translated to the OSD as a once-off measure, even if they were not registered with SACNASP at the time. Their lack of registration does not disqualify them from translation.

⁷ [2022] ZALCJHB 26.

(b) *Employees appointed between 1 July and 1 October 2009*

[34] Circular 5 of 2009, clause 3(a)(x), extends this once-off translation dispensation to employees appointed during this transitional window. These employees, too, may be translated despite not being registered at the time of appointment.

(c) *Employees appointed after 1 October 2009*

[35] This group stands differently. They fall outside both the once-off translation provision in clause 13.2.3 and the transitional dispensation in clause 3(a)(x). For them, the OSD operates purely as an appointment regime, not a translation regime. To qualify for placement into an OSD post, they must meet the full appointment requirements, including statutory registration with SACNASP, at the time of appointment.

[36] None of the Applicants appointed after 1 October 2009 were registered scientists when appointed, nor were they appointed into OSD posts. Their claim to translation cannot succeed.

Conclusion

[37] The Commissioner misconceived the nature of the enquiry by testing the Applicants' duties against a witness's subjective opinion rather than the text of the OSD instruments. On the undisputed facts, the Applicants perform scientific work as defined in the relevant instruments.

[38] The dispute turns on the interpretation of the OSD instruments, and the factual evidence is uncontested. In these circumstances, remittal would serve no purpose. This Court is in as good a position as the Commissioner to determine the matter, and substitution is appropriate.

[39] In the premises, the following order is made:

Order

1. Condonation is granted for the late filing of the record, and the review application is reinstated.

2. The arbitration award issued by the First Respondent under case number GPBC2177/2018 dated 17 May 2021 is reviewed and set aside.
3. The award is substituted with the following order:
 - 3.1 It is declared that the Applicants, employed as Agricultural Advisors and Agricultural Training Officers and appointed on or before 1 October 2009, fall within the occupational category of "Scientists" as defined in GPSSBC Resolution 3 of 2009.
 - 3.2 It is declared that the Applicants appointed after 1 October 2009 are not entitled to translation under Resolution 3 of 2009.
 - 3.3 The Third Respondent is ordered to translate the Applicants referred to in paragraph 3.1 above, to the Occupational Specific Dispensation (OSD) for Scientists in accordance with the translation keys and salary scales contained in Clause 13 of Resolution 3 of 2009.
 - 3.4 The translation shall be effective retrospectively from:
 - 3.4.1 1 July 2009 for those Applicants who were in the employ of the Third Respondent on 30 June 2009; or
 - 3.4.2 The date of appointment, for those Applicants employed between 1 July 2009 and 1 October 2009 (both days inclusive).
 - 3.5 The Third Respondent is ordered to calculate and pay to each Applicant mentioned in paragraph 3.1 above, the difference between the remuneration they actually received and the remuneration they would have received had they been correctly translated or placed.
4. The payment referred to in paragraph 3.5 shall:
 - 4.1 Be effected within 90 (ninety) days of the date of this order; and

4.2 Carry interest at the prescribed legal rate from time to time, calculated from 17 May 2021 to the date of final payment.

5 There is no order as to costs.

H.M. Viljoen

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. Ngutshana

Instructed by: Mudau and Netshipise Attorneys

For the Respondent: Adv. Vukeya

Instructed by: Lamula KB Attorneys

LABOUR COURT