



(1) Reportable: NO
(2) Of interest to other Judges: No

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: D62/25

In the matter between:

CATALER SA

Applicant

and

DISPUTE RESOLUTION CENTRE

First Respondents

COMMISSIONER LEON PILLAY

Second Respondent

NUMSA obo CHUNILAL ZUBAIR CAMERON

Third Respondent

Heard: 19 February 2026

Delivered: 13 March 2026

JUDGMENT

MAESO AJ

1. This is an application in terms Section 145 of the Labour Relations Act to review and set aside the rescission ruling handed down by the second respondent on the 2 February 2025.
2. The applicant seeks an order substituting this ruling with an order granting the rescission of the default award dated 17 December 2024 and directing that the matter be set down for arbitration before an arbitrator other than the second respondent.

BACKGROUND

3. Section 144 of the Labour Relations Act allows an arbitration award or ruling to be rescinded on specific grounds. These include where the award was erroneously sought or, erroneously made in the absence of any party affected by that award or, where the award is made in the absence of a party, on good cause shown.
4. The arbitration in this matter was scheduled for the 12 December 2024. The applicant failed to attend. In the absence of the applicant, the second respondent proceeded with the arbitration and issued a default award in which he found the dismissal of Mr Cameron to be substantively unfair. In terms of that order, Mr Cameron was reinstated into the employ of the applicant.
5. On the 19 December 2024, two days after becoming aware of the default award, the applicant launched an application for rescission in terms of Section 144 of the Labour Relations Act.

6. In the application for rescission, the applicant explained that it had attended conciliation on the 11 September 2024 and after conciliation failed and the matter was referred to arbitration, it instructed its attorney to prepare an application for legal representation.
7. The deponent to the founding affidavit in support of the rescission application concedes that she “missed” the notice of set down emailed to the applicant on the 7 November 2024. The deponent alleges that she only became aware that the dispute had been set down when she received the default award on the 17 December 2024. It was at that time that a search of her inbox was performed, and the unopened email containing the set down date was located.
8. The deponent records that she is normally a very organized employee and that it was very unusual for her to overlook a set down date. When describing this event to the court, Mr Kirby-Hirst representing the applicant, did not add any frills to the explanation and openly described the explanation as “it is what it is”.
9. In his ruling, the second respondent accepted that the deponent may have missed the email to which the notice of set down was attached. He goes on to conclude that

“unfortunately, however, any employer that fails to attend an arbitration can state the same as an explanation for non-attendance”.
10. It was for this reason that the second respondent considered that the deponent should have provided “evidentiary support” for the oversight and dismissed the rescission application.

11. Section 144 of the Labour Relations Act permits rescission of an arbitration award that was erroneously sought or erroneously made in the absence of any party affected by that award, or in which there is ambiguity or an obvious error or omission or if granted as a result of a mistake common to the parties or if made in the absence of any party, on good cause shown.
12. It is accepted that the test for good cause in rescission applications involves a consideration of two factors. The first being the explanation for the default and this must be assessed whether the explanation is a reasonable one and *bone fide*. The second factor is whether the applicant has on the face of it, a *prima facie* defense. In other words, the applicant in a rescission application, must show prospects of success in the main application must be considered.
13. ***In Shoprite Checkers (Pty) Ltd v CCMA and Others [2007] 10 BLLR 917 (LAC) (918)***, the court confirmed the following:-

“The test for good cause in an application for rescission normally involves the consideration of at least two factors. Firstly, the explanation for the fault and secondly whether the applicant has a prima facie defense”
14. The court went on to refer to ***Northern Province Local Government in the Association v CCMA and Others***¹ which stated:-

“An applicant for the rescission of a default judgment must show good cause and prove that he at no time denounced his defense, and that he has a serious intention of proceeding with the case. In order to show good cause, an applicant must give a reasonable explanation for his default, his explanation must be made bone fide, and he must show that he has a bone fide defense to the plaintiff’s claims”.

¹ [2001] 5 BLLR 539 (LC) at 545, para 16

15. The Labour Appeal Court in **MM Field Construction CC v Steel Engineering and Allied Workers Union of SA and Others**² said:-

“Those two essential elements ought nevertheless to be assessed mechanistically and in isolation. Whilst the absence of one of them would usually be fatal, where they are present, they are to be weighed together with relevant factors in determining whether it would be fair and just to grant the indulgence.”

16. Dealing with willful default, the court in **Harris v ABSA Bank Limited t/a Volkskas**³ confirmed:-

“Before an application in rescission of judgment application can said to be “willful default”, he or she must bear knowledge of the action brought against him or her and of the steps to required to avoid the default. Such an applicant must deliberately being free to do so, fail or omit or take the step which avoids the default and must appreciate the legal consequences of his or her actions”.

17. There is no evidence that the applicant was *male fides* or willfully defaulted. It was not disputed that the application to rescind the default award was made two days after the deponent became aware of the default award. This is an indication of someone who is a serious litigant and who immediately puts steps in place to right the wrong caused by an oversight. This is not the case of the deponent being aware of the date but ignoring same. Given that she had attended conciliation, there was every indication that the matter was proceeding to arbitration.

18. Overlooking the email to which the set down was attached was a mistake. This was conceded by Mr Kirby-Hirst in addressing the court. Mistakes of this nature are not unusual. The deponent to the founding affidavit is not the first employee to

² [1994] 15 ILJ 1310 (LAC)

³ [2006] 4 (SA) 527 (T)

overlook an email containing correspondence from a bargaining council. It is highly unlikely that the deponent will be the last employee to do so. These are practical considerations that the court must consider taking into account today's modern electronic communication environment. The facts of this matter point to it being unduly harsh to bar the applicant from defending its position at arbitration.

19. The second respondent raises the point that accepting the defense of oversight allows for abuse. I am satisfied that if the facts of each case are carefully assessed to determine the veracity of an explanation to ensure that it is not *male fides* or willful conduct, the concerns raised by the second respondent will be adequately addressed.
20. No explanation was given why the first respondent sent an sms notification to the third respondent confirming the date of the arbitration but did not offer the same courtesy to the applicant. Had it elected to do so, this entire issue would have been avoided. The very reason that a practice has been adopted to notify parties of hearings by way of sms is to avoid set down dates being lost in a trail of emails that make their way into an employee's inbox on any given day.
21. When dealing with the prospects of success, the second respondent acknowledges that the third respondent was found guilty of the charge of insolence and not guilty of the charge relating to the refusal to obey a lawful instruction.
22. In his ruling, the second respondent confirms that the applicant provided a copy of the chairperson's findings as an annexure to the application for rescission. The application for rescission included a copy of the chairperson's notes summarizing the evidence placed before him. The second respondent makes no reference to these notes. The chairperson's reasons confirmed that Mr Cameron had emailed a

response to the applicant's management shift patterns in disrespectful terms. Mr Cameron understood the email to be disrespectful of applicant's management as he offered to apologize for this communication. The chairperson finds that the language used by Mr Cameron was highly disrespectful and constituted a disregard for management's authority. Furthermore, the chairperson finds that Mr Cameron knew "full well whom he was addressing" in his emails and that the email was sent at the time when he was tired and disorientated did not lack any merit.

23. It is the court's view that the combined assessment of the explanation for overlooking the set down date and the prospects of success in the main application, leaves the conclusion that good cause was established.
24. For this reason, it required the second respondent to grant rescission and to allow the matter to be properly ventilated in arbitration. This would have been the logical and fair decision to make as it would allow the applicant to explain its position and at the same time would afford Mr Cameron an opportunity to state his case before a commissioner.
25. Refusing to grant the rescission was in these circumstances unreasonable, and the ruling must be set aside.

ORDER:

- (i) The application for review succeeds.

- (ii) The rescission ruling issued by the second respondent is reviewed and set aside.
- (iii) The ruling is substituted with an order granting rescission of the default arbitration award dated 17 December 2024.
- (iv) There is no order as to costs.

MG MAESO

Acting Judge of the Labour Court of South
Africa

Appearances:

Applicant: Mr Kirby-Hirst
McGregor Erasmus

First Respondents : Ms S Mbotho
NUMSA obo Chunilal Zubair Cameron