



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: JR1355/22

In the matter between:

SAINT GOBAIN (GYPROC) BRAKPAN

Applicant

and

EVAH NGOBENI, N.O

First

Respondent

**THE NATIONAL BARGAINING COUNCIL
FOR THE CHEMICAL INDUSTRY**

Second

Respondent

JAMES MUNYAI & 3 OTHERS

Third

Respondent

Heard: 6 November 2025

Date delivered: 27 February 2026

This judgment was handed down electronically by circulation to the parties and legal representatives by email. The date and time for hand-down is deemed to be 27 February 2026.

Summary: Application for reinstatement of review application placed in archives. 60 day period in terms of the Practice Manual runs from date of the Rule 7A(5) notice. Not necessary to apply for condonation. If condonation is considered, grounds for condonation exist and condonation granted. Also competent for parties to agree to further extension(s) to file the record if record not filed within previous extended period(s).

JUDGMENT

SAVANT, AJ

Introduction

[1] This is an opposed application in terms of section 158(1)(a) of the Labour Relations Act¹ (LRA) and clause 16.2 of the 2013 Labour Court Practice Manual ("Practice Manual"). The applicant seeks to reinstate its lapsed review application filed on 24 July 2022 under the above case number, in terms of clause 11.2.3 of the Practice Manual. In its review application, the applicant seeks to review and set aside an arbitration award ("award") issued by the second respondent, the National Bargaining Council for the Chemical Industry ("bargaining council") under case number GAEK96-20 in favour of the third respondents on 10 May 2022.

Background

¹ No. 66 of 1995, as amended.

- [2] The applicant dismissed Mr. James Munyai, a former maintenance foreman for permitting Messrs. Jeremia Mtaki, Richard Marriot and Hennie Redelinghuys (hereinafter referred to as the “third respondents”) to exceed the requisite overtime limit. The applicant dismissed Messrs. Mtaki, Marriot and Redelinghuys for continuously working excessive overtime hours through callouts in collusion with Mr. Munyai.
- [3] In terms of the award, the first respondent (“arbitrator”) found that the third respondents did not commit the alleged misconduct. The arbitrator ordered their reinstatement, and for the respondent to pay them backpay equivalent to 16 months of remuneration.
- [4] The applicant avers that it failed to comply with clause 11.2.2 of the Practice Manual. Clause 11.2.2 of the Practice Manual requires the review record to be filed within 60 days of the date on which the applicant is advised by the Registrar that the record is received.
- [5] On 8 July 2022, the bargaining council sent correspondence to the applicant’s attorneys and to the Labour Court in terms of Rule 7A(2) and (3) of the then Labour Court Rules, notifying the applicant and the Registrar that the bargaining council files the arbitration record.
- [6] There was no notice, at least at that stage, sent by the Registrar in terms of Rule 7A(5) notifying the applicant that the record has been received and may be uplifted (per clause 11.2.1 of the Practice Manual).
- [7] Nonetheless, on 18 July 2022, the applicant collected the record from the Labour Court. The applicant thereafter took steps to transcribe and file the record. The applicant calculated the 60-day period referred to in clause 11.2.2 of the Practice Manual to run from the date that it uplifted the record from the Labour Court (i.e., from 18 July 2022). Working with this calculation, it was due to be filed by 10 October 2022.

- [8] The applicant received the transcribed record of the arbitration proceedings during late September 2022. It states that “transcriptions were quite voluminous, consisting over 740 (seven hundred and forty) pages, and of poor sound quality”. It ascertained that about 3 or 4 days of evidence was missing, noting that arbitration was heard over various days between July 2020 and April 2022.
- [9] The applicant accordingly secured an extension from the third respondents’ representative, the General Industries Workers Union of South Africa (“GIWUSA”) to file the record by 4 November 2022. I pause to mention that during this time, all or some of the third respondents were represented by GIWUSA. The applicant also managed to obtain missing portions of the record from the bargaining council. On 12 October 2022, the Registrar furnished a notice in terms of Rule 7A(5) to the applicant. The applicant then took steps to obtain the missing portions of the record from the Labour Court and transcribe them.
- [10] After obtaining a quotation to transcribe the missing portions of the record on 18 October 2022, the applicant’s attorney made internal queries following up on the status of the transcription thereof. It appears that there was a delay in the applicant paying the transcribers to transcribe the missing portions of the record. The applicant avers that it requested “to be facilitated” on 19 October 2022 but this request “landed upon on the desk of a person that was no longer employed” by the applicant. Ultimately, the transcribers were paid, and the missing portions, transcribed.
- [11] The applicant sent proof of payment (to the transcribers) to its attorneys on 9 November 2022. Around this time, GIWUSA sent a letter to the applicant’s attorneys, stating that because the record was not filed by 4 November 2022 (i.e., the extended period agreed to by the parties to file the record), the review application was “deemed to have been withdrawn” in terms of clause 11.2.3 of the Practice Manual. GIWUSA stated further that if the applicant refuses to reinstate its members, it will institute contempt proceedings against the applicant’s Chief Executive Officer and its Human Resources Manager.

The applicant's attorney states that he did not request a further extension before 4 November 2022, due to a very heavy workload.

- [12] On 16 November 2022, the applicant filed the incomplete record. On 23 November 2022, GIWUSA emailed the applicant's attorney complaining that the applicant filed the incomplete record. That same day (23 September 2022), the applicant's attorney emailed GIWUSA, explaining that the outstanding portion of the record was sent to the transcribers, which comprises of approximately 4 more days of evidence and of an inspection in loco. The applicant's attorney also mentioned that he expected to receive the complete record by the beginning of December 2022 and that he intended to file a reinstatement application and a condonation application for the late filing of the record.
- [13] On 24 November 2022, GIWUSA emailed the applicant's attorney, stating that it empathises with his predicament but that his request for a further extension should have been made prior to 4 November 2022. GIWUSA stated further that there was no review application currently before the Labour Court.
- [14] On 6 December 2022, the transcribers completed transcribing the remaining portions of the record, consisting of over 640 pages, which was delivered on 8 December 2022. Working with the date agreed to by the parties of 4 November 2022, when the record was meant to be filed, the record was thus filed appropriately 27 days late.
- [15] It should also be noted that GIWUSA filed an answering affidavit to the applicant's reinstatement application on 10 January 2023, seemingly on behalf of all of the third respondents. Two of the third respondents filed a further answering affidavit on 26 July 2023, namely, Messrs. Marriot and Redelinghuis. They have sought leave of this court to do so and there was no objection from the applicant. Accordingly, I consider the second answering affidavit properly before this court. I note that Messrs. Marriot and Redelinghuis state in their answering affidavit that they wish "to add" to the first answering affidavit. For convenience, I therefore do not distinguish

between the two answering affidavits filed by the third respondents for purposes of this judgment, unless specific reference is given to either of the answering affidavits. For convenience, unless indicated otherwise, I also do not distinguish between Messrs. Marriot and Redelinghuis from the other third respondents.

Evaluation

When did the 60-day period commence?

[16] As stated above, on 8 July 2022, the bargaining council notified the applicant and the Registrar that it filed the record. The applicant collected the record from the Labour Court on 18 July 2022. At the time, the Registrar had not filed a Rule 7A(5) notice. Nonetheless, the applicant assumed that the 60-day period commenced from the date that it uplifted the record (i.e., from 18 July 2022).

[17] Is this assumption correct? In my view, it is not. Clause 11.2.2 of the Practice Manual states that: "...records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received" [added emphasis]. Clause 11.2.1 provides that the applicant must uplift the record within seven days of the Registrar notifying the applicant that the record has been received. I note that the new Labour Court Rules contain similar wording. In terms of the new Labour Court Rules, the period to transcribe the record commences when the Registrar informs the applicant that the record is ready for collection.²

[18] The Supreme Court of Appeal in *Natal Joint Municipal Pension Fund v Endumeni Municipality*³ has held that:

"The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it

² See *inter alia* Rule 37(9), (10) and (14).

³ (2012) 2 All SA 262 (SCA) at para 18.

legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.” [added emphasis]

[19] The Constitutional Court has stated that the approach to (statutory) interpretation is a “unitary” exercise, meaning that “interpretation is to be approached holistically: simultaneously considering the text, context and purpose”.⁴

[20] In my view, there is no ambiguity in the Practice Manual when the 60-day period commences for purposes of filing the record. Clauses 11.2.1 and 11.2.2 are clear. Clauses 1.1 and 1.3 of the Practice Manual, in the context of its purpose, state that:

“This practice manual is modelled on similar manuals that apply in various Divisions of the High Court. The manual aims to promote access to justice by all those whom the Labour Court serves. It is also intended to promote

⁴ *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (6) SA 1 (CC) (11 June 2021) at para 65.

consistency in practice and procedure, and to set guidelines on the standards of conduct expected of those who practise in the Labour Court.

The manual addresses the need to maintain respect for the court as an institution, and to promote efficiency in the adjudication of disputes. It is hoped that the practice manual will also improve the quality of the court's service to the public, and promote the statutory imperative of expeditious dispute resolution."

- [21] The promotion of consistency in practice and procedure and expeditious dispute resolution is evident through various clauses in the Practice Manual regulating strict time periods for the prosecution of matters.
- [22] Furthermore, whilst collecting a record without notification from the Registrar may, depending on the circumstances, be commendable and encouraged, the periods within which to uplift and file records in terms of clauses 11.2.1 and 11.2.2 (once notified by the Registrar) are meant to allow for easier oversight whether an applicant has complied with those time frames (as opposed to when an applicant uplifts the record, possibly in circumstances absent notification from the Registrar). Presumably, clauses 11.2.1 and 11.2.2 were also intended to assist the Registrar with internal monitoring and/or for administrative processes.
- [23] Of course, this does not mean that a litigant must take a nonchalant approach or do nothing if the record is not forthcoming or that a litigant must necessarily await the Rule 7A(5) notice after the CCMA or relevant bargaining council files the record. Appropriate steps must be taken to avoid falling foul of the relevant time periods, such as in terms of the Practice Manual to avoid the matter being deemed withdrawn and/or placed in archives, etc.
- [24] As the rule 7A(5) notice was served on the applicant on 12 October 2022 and the record was filed within 60 days from that date, there was no need for the applicant to have filed its reinstatement application.

Condonation

[25] However, to the extent that I am incorrect, I turn to consider the applicant's reinstatement application.

[26] The Labour Appeal Court ("LAC") in *Samuels v Old Mutual Bank*⁵ has held that:

"In essence, an application for the retrieval of a file from the archives is a form of an application for condonation for failure to comply with the Court Rules, timeframes and directives. Showing good cause demands that the application be *bona fide*; that the applicant provide a reasonable explanation which covers the entire period of the default; and show that he/she has reasonable prospects of success in the main application, and lastly, that it is in the interest of justice to grant the order. It has to be noted that it is not a requirement that the applicant must deal fully with the merits of the dispute to establish reasonable prospects of success. It is sufficient to set out facts which, if established would result in his/her success. In the end, the decision to grant or refuse condonation is a discretion to be exercised by the court hearing the application which must be judiciously exercised."

Extent of and explanation for the delay

[27] As mentioned above, by agreement between the parties, the record was due to be filed by 4 November 2022. However, it was only filed on 8 December 2022. In *Overberg District Municipality v IMATU obo Spangenberg & others*⁶ the review record was due to be filed by 7 June 2018 but was only filed on 8 July 2018. Working with a similar time frame, the court held that the delay was about a third longer than the stipulated deadline and was of the view that

⁵ (2017) 38 ILJ 1790 (LAC) at para 17.

⁶ (2021) 42 ILJ 1283 (LC).

it was a “significant delay, but not notably excessive”. I align with these sentiments. Whilst the delay is not minor, it is not unduly excessive.

[28] Insofar as the reasons for the delay in filing the record are concerned, although further clarity could have been furnished in respect of some of the time periods, I am satisfied that the applicant was not tardy in taking steps to file the record and presented a reasonable explanation for the late filing of the record. The time taken to transcribe the record, including its missing portions is not out of the ordinary, or unreasonable.

[29] However, it bears mentioning that although GIWUSA took issue with the applicant for failing to timeously file the record by the agreed date, being 4 November 2022, it is unfortunate that the parties did not attempt to agree to a further extension within which the applicant could have filed the record. It appears that the parties were under the misapprehension that the applicant needed to request a further extension from the respondent *before* the expiry of the extended agreed time frame (i.e., before 4 November 2022). After GIWUSA sent a letter to the applicant’s attorneys on 8 November 2022 complaining that the record was not filed and threatening contempt proceedings, the applicant filed an incomplete record. On 24 November 2022, GIWUSA emailed the applicant’s attorney, stating that a request for a further extension should have been made prior to 4 November 2022. It appears that the applicant was also of the view that it was required to request the third respondent’s consent prior to the expiry of 4 November 2022.

[30] I do not believe that it was only competent for the applicant to request the third respondents’ consent prior to the expiry of the extended time frame (i.e., prior to 4 November 2022). Clause 11.2.2 of the Practice Manual states that records must be filed within 60 days of the date on which the applicant is advised that the record has been received. Clause 11.2.3 provides that the applicant will be deemed to have withdrawn the application, unless the applicant has during the “prescribed period” requested the opponent’s consent for an extension of time. If consent is refused, the applicant may apply to the Judge President in chambers for an extension of time. The

prescribed period referred to here is the 60-day period (referred to in clause 11.2.2). To illustrate this point, it may not be practicable to apply to the Judge President if an applicant requires 1 or 2 extra days to file a record over and above an agreed extended time frame. In other words, the spirit of the Practice Manual did not bar the parties from agreeing to further time periods, if need be, after the expiry of an extended time frame or time frames. This is in line with clause 1.3 of the Practice Manual, which is to “promote efficiency in the adjudication of disputes” and to “the statutory imperative of expeditious dispute resolution”, especially considering this court’s general backlog for the finalisation of disputes. Thus, had the parties further engaged on an extended time frame within which the record could have been filed, it may have averted this application altogether and a significant delay in the finalisation of the review application, assuming the applicant’s reinstatement application is successful. This is not to suggest that extended time frames should always be agreed.

Prejudice

[31] The applicant submits that it will be unduly prejudiced should its reinstatement application be dismissed. In support of this contention, it submits that if its application is granted, the third respondents can still oppose the review application. On the other hand, the applicant would be saddled with an arbitration award in favour of the third respondents and with substantial associated financial liability, without any further recourse. The applicant also argues that the delay is not of such a magnitude that it would cause undue prejudice to the third respondents.

[32] The third respondents contend that the “balance of prejudice” favour them. The third respondents aver that they should not have to defend a review application lacking in merit. Mr. Redelinghuis, who deposed to the second answering affidavit, states that he has been unemployed since his dismissal. He also refers to various financial hardships faced by him and his family.

[33] Whilst I have no doubt that the third respondents are experiencing prejudice in some manner or form, especially Mr. Redelinghuis, I tend to agree with the applicant that if its reinstatement application is granted, the third respondents would still have an opportunity still to defend the review application. Furthermore, although the parties were under no legal obligation to do so, had the parties agreed to a further extension to file the record, in all probability, finality would have been reached in the matter by now and/or it would have averted a significant delay.

Incomplete record

[34] The third respondents averred that various portions of the record were not filed. They urged this court to dismiss the reinstatement application in that a complete record has not been filed. Mr. Lennox for the applicant argued that the applicant's review application stands and falls by the record that has been filed. The applicant argued that the question regarding the adequacy of the record would be best be answered by this court if and when the review application is determined. I agree with the applicant that it would not be appropriate to dismiss its reinstatement application over the missing portions of the record. The review court would be best placed to deal with that issue.

Prospects of success

[35] As held by the LAC in *Samuels*, the applicant need not fully deal with the merits of the dispute to establish reasonable prospects of success. It is sufficient for it to set out facts which, if established would result in its success. This court has also referred to this test setting a "relatively low threshold".⁷

[36] The applicant contends that the award stands to be reviewed and set aside in that the arbitrator reached a decision that a reasonable decision maker could not reach.

⁷ At para 64 of *Overberg*.

- [37] The applicant in its founding affidavit to its review application, which it has incorporated into its reinstatement application, avers that the arbitrator ignored its evidence that there was a “persistent pattern and collusion between Munyai and the other three Respondents to have them benefit financially from the overtime in breach of the Applicant’s rule”. It states *inter alia* that Mr. Munyai was responsible for rostering employs who could be on standby in the event of a callout and that he scheduled Messrs. Redelinghuis, Marriot and Mtaki almost exclusively to attend to callouts under suspicious circumstances.
- [38] In the third respondents’ answering affidavit in the review, which has been incorporated to the second answering affidavit in the reinstatement application, the third respondents aver that since they “were unaware that callouts or being on standby count as overtime, they could not have intended to evade the relevant prohibition...”. They aver further that it follows that Mr. Munyai therefore unintentionally surpassed the overtime threshold. In the third respondents’ heads of argument (filed by Messrs. Redelinghuis and Marriot), with reference to the award, they state that one of the applicant’s witnesses, Ms. Gill Abrahams, an administrator, corroborated the third respondents’ version that a callout and overtime were added together after charges were levelled against them, and that overtime did not incorporate a callout.
- [39] In the third respondents’ answering affidavit in the review, they do not seem to dispute that Mr. Munyai was responsible for rostering Messrs. Redelinghuis, Marriot and Mtaki for callouts. They state that *inter alia* that “responding to a call-out is not suspicious and requires no explanation apart from an employee obeying an order issued by their ‘superior’”. However, in the third respondents above heads of argument, they contend, again, with reference to the award, that the evidence confirmed that Mr. Munyai did not roster the third respondents for callouts. Rather, it was done by others.

- [40] The applicant also submits that the arbitrator's finding that the applicant applied discipline inconsistently, is unreasonable on the evidence and could not have been reached by another reasonable decision maker. The arbitrator found that it is trite that the third respondents had to prove that the applicant applied discipline inconsistently and that the applicant had to "justify the deviation". The applicant concurs with this finding and submits that the third respondents did not meet this onus in that they did not submit any evidence that other employees committed the same offence.
- [41] The third respondents raised the issue of inconsistency, providing specific examples thereto, apparently only while cross-examining the applicant's witnesses.
- [42] All in all, I believe that the applicant has set out sufficient facts, which "if established", will result in its success in the review, particularly with reference to its contention that there may have been collusion between the third respondents concerning the amount of possible overtime worked. I express some reservations regarding the applicant's inconsistency argument in that the applicant agrees with the arbitrator's finding that the third respondents had to prove that the applicant applied discipline inconsistently. Such an onus is at odds with the LAC's finding that employees ought to only raise the issue of inconsistency, though "openly and unequivocally so that the employer is put on proper and fair terms to address it".⁸ As mentioned, it appears that the third respondents only raised the issue of inconsistency when cross-examining the applicant's witnesses. Nonetheless, the review court will best be placed to deal with this issue in due course, if condonation is granted.
- [43] On a conspectus of the above, I believe that it will be in the interest of justice for the applicant's review application to be reinstated. The applicant has rightly so in my view, not persisted with seeking costs against the third respondents.

⁸ *NUM on behalf of Botsane v Anglo Platinum Mine (Rustenburg Section)* (2014) 35 ILJ 2406 (LAC) at para 39.

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

Order

1. The applicant's review application under the above case number is removed from archives and/or is reinstated.
2. There is no order as to costs.

MI Savant

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: Advocate MA Lennox
Instructed by: Snyman Attorneys

For the third respondents
(Messrs. Redelinghuis & Marriot): Advocate C de Kock & Advocate D Seale
Instructed by: Carelse Khan Inc. t/a CK Attorneys

For the further third respondents
(Messrs. Munyai and Mtaki): No appearance