



(1) Reportable Yes:   
(2) Of interest to other Judges:   
(3) Revised:

Signature

Date

21 May 2026

**THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

Case no: C38/2024

In the matter between:

**ROMATEX (PTY) LTD**

**Applicant**

and

**THE NATIONAL TEXTILE BARGAINING COUNCIL**

**First Respondent**

**COMMISSIONER NONHLANHLA DUBAZANE N.O.**

**Second Respondent**

Heard: 12 March 2026

Delivered: 21 May 2026

**Summary: (Review application - Bargaining council arbitration proceedings – Collective agreement – where a court, or a Commissioner of the CCMA for that matter, is tasked to interpret a written contract, or a Collective Agreement, it must give to the words used by the parties their plain, ordinary and popular meaning– where words in the contract speak with sufficient clarity, they must be taken as expressing the parties’ common intention – agreement provides for a Job Grading Committee to be set up to hear and decide disputes relating to the evaluation of jobs and/or that a procedure to resolve grading grievances should be agreed upon at plant level – no such process took place and therefore matter prematurely referred to the Council - arbitration award reviewed and set aside)**

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## JUDGMENT

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**MAY, AJ**

### Introduction

- [1] This is an unopposed application to review and set aside an arbitration award emanating from enforcement proceedings between the Applicant and the First Respondent under section 33 A of the Labour Relations Act<sup>1</sup> (LRA). The dispute placed before the second respondent, who was the duly appointed arbitrator in the proceedings, was whether the Applicant had contravened the provisions of the Main Collective agreement of the First Respondent. The current review application has been brought in terms of section 145 as read with section 158(1)(g) of the LRA.
- [2] In an arbitration award dated 4 December 2023, the second respondent decided that the Applicant has not complied with the Main agreement in that 19 of their sewing machinists were incorrectly graded, that there is no basis for the Applicant's objection to the compliance order and that the matter should be scheduled for arbitration. It is this award of the first respondent that forms the subject matter of the review application brought by the applicant.

### Background to the dispute

- [3] The Applicant is one of the largest textile manufacturers in South Africa and manufactures home textile products including bed linen, pillows, sheets, duvets and scatter cushions. The Applicant has been a member of the First Respondent since its formation in 2006.
- [4] On 29 September 2022, the First Respondent issued an inspection report and compliance order to the Applicant alleging that the Applicant was not compliant

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<sup>1</sup> Act 66 of 1995, as amended.

with the Main Agreement for the Textile Industry in that the First Respondent was of the view that the Applicant had failed to allocate the correct salary grade to their sewing machinists. It is common cause that the Applicant, at the time, employed 36 sewing machinists, 19 of whom were graded as grade 2 machinists and 17 as Grade 3.

- [5] Applicant objected to the compliance order on the basis that it disputed the First Respondent's determination in respect of the grade to be allocated to the position of sewing machinist within the Applicant's business. The matter was accordingly referred to the Second Respondent to arbitrate the dispute between the parties.

#### The evidence

- [6] At the arbitration, the First Respondent called Deon Simons as their sole witness. He is not a designated agent of the First Respondent, who would normally give evidence at compliance proceedings, but in fact the Provincial Secretary for SACTWU (The Southern African Clothing and Textile Workers Union). His testimony was that sewing machinists had complained to SACTWU that they were not being graded properly by the Applicant and thus referred the matter to the First Respondent. He testified that he had personally participated in the wage negotiations that led to the conclusion of the Wage agreements for 2022/2024.
- [7] He testified that the employees concerned are classified as Operators and should be graded as Grade 3 employees. He testified that there are 5 grades of employees, grade 1 being your general worker or cleaner, grade 2 is an employee with no thinking, just doing normal work that they are told to do and grade 3 is machine operators or machinists, grade 4 would be senior operators or machinists or versatile machinists and grade 5 would be supervisors.
- [8] He testified and referred to clause 2.7 of the agreement that provided that the parties agreed to meet outside of the negotiations to re-evaluate the grading structure and create a grading committee. He confirmed that the employer and Union had not met to engage on the grading committee or to reach agreement

on the grading of employees. His evidence was that the Union tried to unlock these discussion with the employer association but didn't get any joy from the employers.

[9] He was then referred to the 2007 Main agreement and read into the record the post description of a grade 2 attendant-assistant and grade 3 machinist. His contention was that the person that operates a machine is an operator and not an attendant-assistant and therefore should be graded at grade 3. He disputed the grading system used by the Applicant and disputed that operators were placed in the correct grade even though the correct grading system was used (the Paterson grading system). He also referred to clause 4.8 which provided for a Job Grading Committee to be set up to hear and decide disputes and/or appeals relating to the evaluation of jobs. The decision of the job grading committee should be by simple majority based on a secret vote and should be final and binding. The committee should consist of an equal number of employer and employee representatives and should the committee not be able to reach a decision, either party would have the right to utilise applicable procedures in terms of the applicable law. Mr Simons confirmed that he was not aware whether a grading committee had been established at the Applicant.

[10] Mr Simons ended off his evidence by confirming that, with reference to the amendments and consolidated Main agreement, the version offered by the Applicant that the 19 employees in question were sewing machinists and thus graded under grade 2 and not grade 3 was incorrect. He likened them to the defined sewing machinists in the blanket section of the agreement who were graded at grade 3 and that in the Textile section, the employees are operators and thus should be graded at grade 3 and not grade 2.

[11] Under cross-examination, he confirmed that the blanket section and home textile sections are distinct. It was put to him that his contention that an attendant assistant at Grade 2 should be regarded as an Operator at Grade 3 because they operate a sewing machine was problematic because it would mean a grade 1 employee would needed to be graded higher just because they as part of their duties operate some kind of machine. A vacuum cleaner was used as an example. It was also put to him that the job descriptions in the

agreement was generic and that not all employers use those generic titles. He also confirmed that in the Home Textile sector the Paterson grading system is used. He confirmed that if the Paterson grading system grades a particular job as grade 2, then it would be safe to rely on that grading system.

- [12] He maintained during cross-examination that a machinist who is finishing and completing a product must be graded at grade 3 according to their level of skill. The fallacy of the contention was pointed out subsequently in cross examination when Mr. Nhliziyo, appearing for the Applicant, attempted to show that on such a literal interpretation of the agreement, a sewing machinist who doesn't have a Grade 10 qualification could never be graded at Grade 3.
- [13] Applicant called Ms Robyn Maré as their first witnesses and her evidence in essence was that she was an associate at Willis Towers Watson at the time and that she had analysed the organisation and had conducted a job evaluation for the posts of Quality, Safety, Health and Environment and for the sewing machinists. She compiled a report of the evaluation and confirm that she used the Paterson Plus electronic tool to conduct the grading. This is a software programme used to grade jobs scientifically and produce an outcome. According to her evaluation, using the relevant factors as testified to, the sewing machinists were graded as Paterson grade A1 to A3. She then discussed the grade with the Manager concerned and they then took the job context in line and went through the scoring sub factors. The sewing machinists were then ultimately graded as A3.
- [14] During cross-examination she conceded that, if regard is had to the generic titles in the main agreement, a sewing machinist would equal an operator in terms of the main agreement. She did state however that there would be differing levels of operators to consider. She stated that in her professional opinion there is a misalignment between the grade 3 generic title as per the main agreement and the definition. Her view is that the generic title of operator is too broad to match the descriptor. She further confirmed that she is aware that the Applicant has 2 levels of operators being grade 2 and grade 3 operators and she stated that they have different job titles and different job descriptions.

- [15] The Applicant's final witness was Stephen Rubidge who is the Deneb Group IR Executive of which the Applicant is a subsidiary. He oversees all IR and HR in the Group.
- [16] His testimony, in essence, was that sewing machinists referred to in the compliance order issued by the First Respondent have always been graded on grade 2 or Paterson A3/B1 grade as per the main agreement on the Home Textile table. He confirmed that the response from the First Respondent to their objection to the compliance order was that machinists/operators should be graded at B2 and not A3/B1. He testified that the First Respondent gave no reason as to why the sewing machinists should be graded as such. The First Respondent accepted that the Paterson method of grading is correct and thus the First Respondent's grading method to the contrary seemed arbitrary.
- [17] He confirmed that Willis Towers Watson were appointed to do a job evaluation and grading in 2022 and they had, after undertaking a scientific process to make the necessary determination, determined that the relevant grade would be A3. He confirmed that the main agreement requires that procedures to resolve grading grievances should be agreed upon at plant level. He stated that this was so because the First Respondent is not equipped to grade jobs as this requires a full understanding of the job and following a process relative to each class of employee.
- [18] He further confirmed that other employers in the industry have graded their sewing machinists at Grade 3 but that was because the First Respondent had indicated to them that they would be marked as being non-compliant if they didn't.
- [19] During cross- examination he was asked why the issue was not presented to their grading committee to resolve. He stated that no grievance was ever presented to them by anyone or the Union of any unhappiness relative to the grading. If a grievance had been raised, then due process would have followed in terms of the agreement. The first time they heard about a complaint was when the designated agent raised it with them. It was put to him that he ought to have referred the matter to the grading committee to make a determination

instead of appointing an external consultant to do the grading. He confirmed that he was unaware of the grievance and had he been aware they would have referred the issue to the committee as required.

#### The award

- [20] The arbitrator correctly identified the main and crisp issue for her to determine as being whether the sewing machinists were correctly graded at grade 2. She finds that she accepted the version preferred by the First Respondent that an operator and a sewing machinist is one and the same thing and uses Ms Maré's confirmation in support thereof. On this basis she concludes that the agreement clearly reflects that an operator should be graded at grade 3 and stated that no exceptions are listed.
- [21] She further confirms that if there were any dispute about the grading, the parties are required to follow that process which, according to the agreement, is that parties should agree on procedures to resolve grading grievances at plant level. She further states, correctly in this Court's view, that the job grading exercise undertaken by the Applicant without agreeing with the Union on the procedure to follow to resolve the grading grievance was arbitrary and that the aggrieved party should have utilised the provisions in the agreement to resolve any dispute.
- [22] She also, correctly in this Court's view, refers to clause 4.8 of the 2007 agreement as still being applicable as well insomuch as it hadnt been amended by the subsequent versions of the agreement. The contention being that a process or hearing of the dispute relative to the grievance should have taken place.
- [23] She then finds that she is persuaded by the evidence that the 19 sewing machinists were graded incorrectly, that the Applicant's objection is unfounded and the matter should proceed to arbitration on the merits.

#### Grounds of review and evaluation

- [24] Applicant contends that, the award is reviewable on the basis that:

- 24.1 The arbitrator committed a gross irregularity in that she failed to apply her mind to the evidence before her which demonstrated that the grade 2 machinists were in fact correctly graded. A reasonable arbitrator would have concluded that the Applicant had correctly graded its grade 2 sewing machinists;
- 24.2 She misconstrued the evidence placed before her and the factors she ought to have considered to arrive at the correct decision when she accepted that an operator and a sewing machinist is one and the same thing; and
- 24.3 She committed misconduct in relation to her duties as an arbitrator when she failed to allow the Applicant's representative to sit in on the proceedings.
- [25] The First Respondent, did not oppose the application.
- [26] The applicant sourced the legal basis for its review application in section 158(1)(g) of the LRA, which empowers this Court to review the performance of any function provided for in the LRA on any grounds that are permissible in law. Grounds permissible in law would include a material error of law and/or where, owing to an error of law, an arbitrator misconstrues the true nature of the dispute and asks herself the wrong question, thus depriving the parties of a fair trial of the issues. This Court must ask itself whether the decision arrived at by the arbitrator was one that no reasonable arbitrator could have come to. If the answer to that is in the affirmative then the decision falls to be set aside.<sup>2</sup>
- [27] It is always necessary and important for the Court to enquire into and consider the merits of the matter and the entire evidence on record in deciding what is reasonable.<sup>3</sup> In *Herholdt v Nedbank Ltd and Another*<sup>4</sup> the Court said:

'... A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors

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<sup>2</sup> *Sidumo v Rustenburg Platinum Mines Ltd* 2008 (2) BCLR 158 (CC) at para 119 (*Sidumo*).

<sup>3</sup> *Duncanmec (Pty) Ltd v Gaylard NO and Others* (2018) 39 ILJ 2633 (CC) at para 41.

<sup>4</sup> *Herholdt v Nedbank Ltd (COSATU as amicus curiae)* [2013] 11 BLLR 1074 (SCA) at para 25.

of fact, as well as the weight and relevance to be attached to the particular facts, are not in and of themselves sufficient for an award to be set aside but are only of consequence if their effect is to render the outcome unreasonable.’

[28] In sum, the review test has a logical chronology. First, it is determined if there is a failure or error on the part of the arbitrator. Second, and where there is such a failure or error, it must be shown that the outcome arrived at by the arbitrator was unreasonable as a result. This reasonableness consideration envisages a determination, based on all the evidence and issues before the arbitrator, as to whether the outcome the arbitrator arrived at can nonetheless be sustained as a reasonable outcome, even if it may be for different reasons or on different grounds.<sup>5</sup> It would only be if the outcome arrived at by the arbitrator cannot be sustained on any grounds, based on that material, and the irregularity, failure or error concerned is the only basis to sustain the outcome the arbitrator arrived at, that the review application would succeed.<sup>6</sup>

#### Application

[29] There is no doubt that both parties had the chance to have their say in relation to the matter, the arbitrator correctly identified the dispute as determining whether the probabilities favoured the evidence of the Applicant or the First Respondent and the arbitrator understood the nature of the dispute clearly, as is apparent from the award. The applicant challenges the fact and disputes that the arbitrator dealt with the substantial merits of the dispute and accordingly challenges that the decision is one that a reasonable decision-maker could reasonably have arrived at. This Court is of the view that whilst the arbitrator did apply her mind to the facts and the evidence, that her findings that an operator and a sewing machinist are one and the same is in fact supported by the evidence of the witnesses, she did commit a gross irregularity when she failed to allow the Applicant’s representative to sit in on the proceedings. The

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<sup>5</sup> See: *Fidelity Cash Management Service v Commission for Conciliation, Mediation and Arbitration and Others* (2008) 29 ILJ 964 (LAC) at para 102.

<sup>6</sup> See *Campbell Scientific Africa (Pty) Ltd v Simmers and Others* (2016) 37 ILJ 116 (LAC) at para 32; *Anglo Platinum (Pty) Ltd (Bafokeng Rasemone Mine) v De Beer and Others* (2015) 36 ILJ 1453 (LAC) at para 12.

irregularity however does not alter the outcome and is immaterial in the circumstances.

- [30] Her finding however that the 19 sewing machinists are in fact incorrectly graded is, in this Court's view, premature and therefore unreasonable.
- [31] In what can be regarded as one of the leading cases dealing with the parole evidence rule, *Scottish Union and National Insurance Company Limited v Native Recruiting Corporation Limited*<sup>7</sup> one finds the following:

"Now in construing a contract we must not only consider the intention of one party, as we do in construing a will or an act of the legislature, but we must see what both parties intended, and we must guard ourselves against making a contract for the parties. We have no right, because we may think that the contract is a hard bargain, to lean towards a construction more reasonable to the insured than the contract constituted by the words of the document ... We must gather the intention of the parties from the language of the contract itself, and if that language is clear, we must give effect to what the parties themselves have said; ... it has been repeatedly decided in our courts that in construing every kind of written contract the court must give effect to the grammatical and ordinary meaning of the words used therein. In ascertaining this meaning, we must give to the words used by the parties their plain, ordinary and popular meaning, unless it appears clearly from the context that both the parties intended them to bear a different meaning. If, therefore, there is no ambiguity in the words of the contract, there is no room for a more reasonable interpretation than the words themselves convey. If, however, the ordinary sense of the words necessarily leads to some absurdity or to some repugnance or inconsistency with the rest of the contract, then the court may modify the words just so much as to avoid that absurdity or inconsistency but no more." (My emphasis.)

- [32] These principles have consistently been followed in our courts. In *Total SA (Pty) Ltd v Bekker NO*<sup>8</sup> Smalberger JA said:

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<sup>7</sup> 1934 AD 458 at pp 465 to 466.

<sup>8</sup> 1992 (1) SA 617 (A) at pp 624 I to 625 B.

"What is clear, however, is that where sufficient certainty as to the meaning of a contract can be gathered from the language alone it is impermissible to reach a different result by drawing inferences from the surrounding circumstances ..... The underlying reason for this approach is that where words in the contract, agreed upon by the parties thereto, and therefore common to them, speak with sufficient clarity, they must be taken as expressing their common intention ....."

- [33] What is accordingly very clear is that, where a court, or a Commissioner of the Commission for Conciliation, Mediation and Arbitration for that matter, is tasked to interpret a written contract, or as in the present case, a Collective Agreement, it must give to the words used by the parties their plain, ordinary and popular meaning and if there is no ambiguity in the words of the contract, they must be taken as expressing the parties' common intention.
- [34] A perusal of both the transcript of the arbitration proceedings as well as of the arbitrator's award does not yield any indication of the fact that the Arbitrator was alert to the fact that she had to first of all make a determination whether the words of the Collective Agreement were unclear or ambiguous. A perusal of the transcript of the arbitration proceedings as well as the arbitrator's award further discloses that the way the arbitrator herein approached the matter was that she simply assessed the evidence adduced before her, which evidence did not at all deal with what the intention of the parties were at the time of entering into the Collective Agreement. Had she considered the Collective agreement appropriately she would not have proceeded beyond her finding that it provides for a Job Grading Committee to be set up to hear and decide disputes and /or appeals relating to the evaluation of jobs and/or that a procedure to resolve grading grievances should be agreed upon at plant level. It is clear that a dispute has arisen in this respect activating the relevant provisions related to a dispute at plant level. What the First Respondent ought to have done in these circumstances is facilitate the dispute resolution provisions provided for in the main agreement so that a proper grading could be agreed upon.
- [35] This grading may accord with the interpretation offered by Mr Simons from the Union or it may accord with the expert opinion of Ms Maré. In either event, the First Respondent and consequently this Court, must guard against the

temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used because 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.<sup>9</sup>

- [36] Her findings are therefore unreasonable in the circumstances in this respect and as a result cannot stand. A reasonable arbitrator would have concluded that the dispute is premature and should be referred back to the parties to comply with the Collective agreement in relation to the disputes in respect of grading grievances. As such the award is not reasonable and stands to be reviewed and set aside. It also follows that the determination that the Applicant is non-compliant is also premature and the Applicant is accordingly entitled to be considered compliant until such time as dispute around the grading is determined.

#### Costs

- [37] In terms of the provisions of section 162(1) of the LRA, this Court has a wide discretion where it comes to the issue of costs. This Court has said with regard to costs in employment disputes in *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and Others*<sup>10</sup> in exercising this discretion, which is that when making a costs order in a labour matter, a presiding officer is required to consider that costs are not ordinarily awarded, the principle of fairness must be considered, and due regard must be had to the conduct of the parties.
- [38] In this instance, the case had some complexity / novelty to it. The applicant acted reasonably in pursuing the review application, given the award of the Second Respondent and the First Respondent, correctly in the Court's view, did not oppose the application. Overall considered, in my view, the scales where it

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<sup>9</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

<sup>10</sup> (2021) 42 ILJ 2371 (CC) at para 35. See also *Zungu v Premier of the Province of Kwa-Zulu Natal and Others* (2018) 39 ILJ 523 (CC) at para 25; *Long v South African Breweries (Pty) Ltd and Others* (2019) 40 ILJ 965 (CC) at para 30.

comes to costs are equally balanced, and as such, the ordinary principle as set out above that costs do not follow the result should carry the day. Therefore, I am satisfied in this case that no order as to costs is appropriate and would be fair.

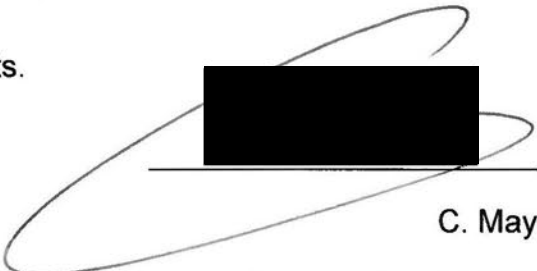
### Conclusion

[39] It follows therefore that the application should be granted. Substitution is appropriate where the full record is available to the court and where a judge is in the same position as a commissioner would be to make an appropriate award. The correct finding ought to have been that the dispute has been prematurely referred to the First Respondent and that the issue should be referred to the Job Grading Committee to hear and decide the dispute in terms of the Collective agreement.

[40] In the premise the following order is made:

### Order

1. The arbitration award is reviewed and set aside.
2. The award is substituted with an award that the dispute referred to the First Respondent is premature and should be referred to the Job Grading Committee of the Applicant to hear and determine the dispute related to the evaluation of the relevant sewing machinists.
3. Each party will pay their own costs.

  
C. May

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Mr. C Nhliyiyo, Edward Nathan Sonnenberg Inc.

LABOUR COURT