



Not Reportable

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT CAPE TOWN

Case no:C647/2023

In the matter between:

HUIS WITTE KRUIJN

Applicant

and

LIZA LILY SILINGILE AND 26

First Respondents

OTHERS

COMMISSION FOR CONCILIATION

Second Respondent

AND MEDIATION

MARTIN RABIE

Third Respondent

Date of Hearing: 25 February 2026

Date of Judgment: 10 June 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and

release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 26 May 2026.

JUDGMENT

BARTHUS AJ

Introduction

- [1] This is an unopposed review application in which the Applicant seeks to review and set aside the arbitration award issued by the Third Respondent (the arbitrator) under case number WECT7005-22.
- [2] A principal challenge to the award is that the CCMA lacked jurisdiction to entertain the dispute because the Respondents (the employees) did not seek condonation for the full period of delay. Their condonation application addressed only a delay of 64 days, calculated from 22 September 2021, whereas the evidence later showed that the dispute arose in 2017.
- [3] The Applicant accordingly seeks to have the arbitration award reviewed and set aside on jurisdictional grounds and on the basis that the arbitrator materially erred in his evaluation of the unfair discrimination claim.
- [4] The Applicant has raised the following four grounds of review.

First Ground:

- [5] The employees alleged that they became aware of the discrimination on 22 September 2021. Hence their submission that their referral was 64 days late. The CCMA considered their application and granted condonation.
- [6] During the arbitration proceedings it became evident that the dispute arose during 2017. The arbitrator captured this in his award as follows:

“During 2017, Dries Roos, the Manager at Huis Witte Kruin at the time, called her around an employee’s unhappiness about the salary scales.

Employees became aware of the wages of employees through printing that was done on scrap papers containing those salary details on the reverse side.”

- [7] The employees applied for condonation for the late referral of their 2021 dispute but did not seek condonation for the period from 2017 to 2021.
- [8] The Applicant contends that the arbitrator should have paused proceedings when it became apparent that the cause of action arose in 2017.
- [9] It is contended that the CCMA lacked jurisdiction to hear the case due to this procedural failure.

Second Ground: Discrimination Findings

- [10] The arbitrator found that only one of the five allegations put forward by the employees were proven. He found that the employer unfairly discriminated against the employees by paying Surina Rust (“Rust”) a higher salary in comparison to other carers based on race.
- [11] The arbitrator failed to appreciate that the employees’ claim of discrimination was aimed only at Rust, a white female appointed in 2013. Her appointment predates the appointments of all the complainants save for one.
- [12] Rust’s qualifications include:
 - a) Matric, Advanced Home Care Nursing - Level 3, and Lifesaver certificates.
 - b) 11 years and 5 months of relevant work experience.
 - c) 8 years’ experience in nursing care.
 - d) 3 years’ experience in administration.
- [13] According to the evidence, Rust’s appointment was at the top of the upper scale which was commensurate with her qualifications and experience.

- [14] The arbitrator failed to consider that other employees with less experience earned less, and that Rust's salary was at the top of her scale.
- [15] The arbitrator accepted Magrieta Townsend's ("Townsend") evidence and concluded that the Employer discriminated against her. This, despite evidence showing that two other coloured female employees, who started their employment after Townsend earned more than she did.
- [16] Townsend testified that it was unfair but only compared herself to Rust. Townsend however conceded that Ms Cupido who is a coloured female earned more than her.
- [17] Moreover, Townsend only had a standard nine (grade 11) high school certificate and no other qualifications.
- [18] The arbitrator held in his award that Chantel Mitchel, a coloured female, earned R2150.00 per month against Rust's salary of R3572.00, despite being appointed at the same time as Rust.
- [19] The arbitrator failed to consider that the following facts distinguished Rust from Mitchel:
- a) She had no work experience upon her appointment, having only completed her practical hours from Homebase Care training at Huis Wittekruijn when she was appointed.
 - b) According to the employer's records, Mitchel only had a grade 9 high school certificate.
 - c) Mitchel conceded that the certificate she obtained was a Level 1 Home Care Nursing Certificate whereas Rust had obtained an Advanced Level 3 Certificate.
- [20] The arbitrator placed great emphasis on the fact that Rust's salary was pegged at a certain notch. The Commissioner found that *"If there was a justifiable reason for paying Rust at the rate, why was there a need to peg Rust's salary for 3 years with no increase? To my mind it is a tactical acknowledgment that Rust's salary was unjustifiably higher than the other carer's salaries"*.

- [21] The evidence however shows that Rust could not receive further increases because she was at the top of her salary scale and could go no higher. Similarly, Ms Cupido, was also at the top notch of her scale and not eligible for further increases beyond what is statutorily required.
- [22] The Applicant submitted that the arbitrator misinterpreted evidence regarding salary pegging and failed to evaluate the reasons for salary differences properly.

Third Ground of Review: mischaracterisation of evidence

- [23] Rust's payslip formed part of the employees' bundle. The Applicant argued that this evidence was not contradicted and should have been accepted as a true copy of the payslip.
- [24] The arbitrator dismissed the document as hearsay evidence in the absence of Rust's testimony to confirm that it was indeed a copy of her payslip.

Fourth Ground of Review

- [25] The Arbitrator only heard from Mitchell, Zacharias and Townsend but found that all of the 27 employees succeeded in proving their case. The remainder of the employees (23) did not put forward their own qualifications and a case as to whether the employer discriminated against them.
- [26] The Arbitrator did not establish a causal link between the evidence led and his finding that "*the Respondent failed to prove that the discrimination was otherwise justified, rational and fair.*"
- [27] The Applicant contends that the arbitrator incorrectly concluded all employees proved discrimination despite many not providing individual evidence.
- [28] The employer demonstrated that salary levels depended on qualifications and experience, not race, and that similar employees (in the same race

designation) earned more than some of the complainants. This evidence was disregarded.

Analysis

- [29] The jurisdictional issue relating to the unexplained 4-year delay in referring the dispute is dispositive of this matter.
- [30] The record shows that the employees became aware of the salary discrepancy between themselves and Rust during 2017, a fact noted by the arbitrator in the award.
- [31] Once it became apparent that the dispute had arisen some four years earlier than alleged, the arbitrator ought to have required the employees to address that delay by way of a supplementary condonation application. In the absence of any explanation for that period, the decision to proceed to arbitration was not rationally connected to the evidence before him. The statutory period for referring an unfair discrimination dispute is six months; the referral was therefore inordinately late.
- [32] I agree with the Applicant's submission that it was incumbent on the arbitrator to require a further condonation application in respect of the period between 2017 and 2021. At the very least, the date advanced by the employees was inconsistent with the evidence that emerged during the arbitration.
- [33] The late referral of the dispute constitutes a failure to comply with a statutory provision and not a time limit prescribed by the rules¹.
- [34] The applicable principles governing condonation are well established.^[2] On the facts of this case, the absence of any explanation for the period between 2017 and 2021 is fatal to condonation.
- [35] The arbitrator's acknowledgment of when the dispute arose, coupled with his failure to address the inordinate delay, renders the award reviewable and liable to be set aside.
-

[36] In light of that conclusion, it is unnecessary to determine the remaining review grounds.

[37] I note, however, that the record appears to contain evidence that the salary differentials were linked to qualifications, experience and length of service rather than race. In my view, the employees failed to present credible evidence to support an unfair discrimination claim.

[38] That said, given the dispositive jurisdictional finding, it is neither necessary nor appropriate to make definitive findings on the merits.

Order

1. The arbitration award issued by the Third Respondent under case number WECT7005-22 is reviewed and set aside.
2. The condonation ruling is set aside and substituted with an order refusing condonation for the late referral of the unfair discrimination dispute.
3. There is no order as to costs.

V Barthus AJ
Acting Judge of the Labour Court

Representatives:

For the Applicant: E Geldenhuys

Instructed by MacGregor Erasmus Attorneys

For the Respondent: No appearance

^[1] Employment Equity Act 55 of 1998 s 10(2).

^[2] *National Union of Mineworkers v Council for Mineral Technology* (1999) 20 ILJ 2037 (LAC) para 10; *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) 532C–F; *National Education Health and Allied Workers Union on behalf of Mofokeng and Others v Charlotte Theron Children's Home* (2004) 25 ILJ 2195 (LAC) para 23.

LABOUR COURT