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

[redacted]

Signature

15/06/2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no:C04/2021

In the matter between:

MERRIMAN BP SERVICE STATION (PTY) LTD **Applicant**

and

MOTOR INDUSTRY BARGAINING COUNCIL (WESTERN CAPE) **First Respondent**

PIET VAN STADEN (*N.O.*) **Second Respondent**

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION **Third Respondent**

Heard: **16 April 2025**

Delivered: **15 June 2026**

Summary: (Opposed review – ruling on bargaining council's scope – Retail outlet on garage premises – errors of law and interpretation leading arbitrator to relay on incorrect criteria – interpretation of 'ancillary activity' considered - demarcation award set aside and substituted)

JUDGMENT

LAGRANGE, J

The nature of the case

[1] This is an opposed review application of an arbitrator's demarcation ruling made which determined that the employees in a Pick n Pay convenience store on the premises of a filling station fell within the scope of the registered scope of the Motor Industry Bargaining Council ('MIBCO' or 'the council').

[2] The issue essentially concerned whether, on a correct interpretation and application of paragraph g) of the definition of MIBCO's scope, the paragraph included the business of the Pick n Pay Express store. The provision identifies the following type of business as falling within the council's scope:

> *'...the business conducted by filling and/or service stations including ancillary activities forming part of a service station linked to the convenience store environment inclusive of the preparing, serving and selling of food/beverages to customers but excluding activities of separately registered establishments whose sole activities relates to the restaurant, tearoom and catering environment"*

(emphasis added)

The appropriate review test

[3] While there still reviews of demarcation awards in which the standard of reasonableness might have a place as the appropriate review test, the Labour Appeal Court has distinguished that type of case from those in which the issue concerns the correct interpretation of a statutory provision:

> *'Questions of interpretation and construction are clearly questions of law, Reasonableness is not a sufficiently exacting standard when it comes to reviewing statutory interpretations. The rule of law does not permit two contradictory, yet potentially reasonable, interpretations of a statute or other regulatory measure by which citizens order their lives."* [1]

[1] *National Bargaining Council for the Road Freight and Logistics Industry v Deysel and others* [2025] 8 BLLR 790 (LAC) at paragraph 44.

[4] Aside from that type of case, the 'polycentric and policy laden' nature of demarcation awards requiring a court to apply a 'light touch' on review remains the applicable standard. In *Deysel* the LAC reaffirmed that:

> *'This approach is undoubtedly correct where the demarcation award concerns the application of an agreed interpretation of a bargaining council's registered scope to a given set of facts, and the challenge to the award assumes the form of a reasonableness review. But where, as in the present instance, the issue is the interpretation of the appellant's registered scope and a ground for review that relies on a material error of law committed by the arbitrator, there is no room for deference.'* [2]

[5] As the facts of this case demonstrate, there will sometimes be both a demarcation ruling which gives rise to a dispute over the interpretation of the scope of a registration certificate or collective agreement and a dispute over the critical facts which determine whether a business falls within the correctly interpreted scope. In such a case, both standards of review are in play.

The factual matrix

[6] The Applicant, Merriman BP Service Station (Pty) Ltd ('Merriman'), operates a fuel service station in Stellenbosch under a BP franchise. In addition to the fuel operation, Merriman also operates a Pick n Pay Express convenience store located on the same premises as the service station, which is also a franchise business. Merriman was also the applicant party in the CCMA proceedings.

[7] The relationship between the two businesses in the case appears to be materially indistinguishable from the relationship existing between two similar businesses considered in the demarcation award in *Brighton Motors (Pty) Ltd v MIBCO* [3]. The chief difference between them lies in the level of detailed evidence before the arbitrator. In *Brighton Motors* there was extensive detailed

[2] At paragraph 29. See also *National Union of Metalworkers of South Africa v Commission for Conciliation, Mediation and Arbitration and others* [2022] 3 BLLR 209 (CC) at paragraph 52, which also endorsed the poly-centric test enunciated in *Coin Security (Pty) Ltd v CCMA and others* (2005) 26 *ILJ* 849 (LC).

[3] Case no WECT 5852-19 dated 21 June 2019.

evidence about the businesses, whereas in *Merriman's* case there was a significant paucity of detailed evidence, so the arbitrator had very little to deal with. Despite the difference in the depth of evidentiary material comparisons between the two cases can usefully be made. What is particularly noteworthy is that in *Brighton Motors* found the Express store did not fall under the scope of MIBCO.

[8] Merimman is the franchisee in respect of both businesses, which form part of its business activities. Neither franchise has a juristic identity separate from that of Merriman.

[9] During the evidence, it was established that if the overarching company were to face financial liquidation, the both entities would immediately cease operations and close down Factually, it was also noted that the store's assets and stock were legally tied to the singular entity, meaning the Sheriff of the Court could attach convenience store assets to satisfy debts incurred by Merriman.

[10] It is common cause that Merriman's fuel service station operations fall within the registered scope of the Motor Industry Bargaining Council (MIBCO), and that employees working on the filling station forecourt are accordingly subject to its jurisdiction. Merriman, however, disputes that employees engaged in the Pick n Pay Express store situated on the same premises as the filling station fall within the same scope. Pick n Pay cashier transactions are processed directly on Pick n Pay system and they have no capacity to process filling station payments. Although the level of detail of the evidence about the independence of the accounting and payment systems lacked the detail of the evidence in the *Brighton Motors* matter, it was not disputed.

[11] It is common cause and explicitly accepted by both parties that the Pick n Pay convenience store is located on the exact same physical premises as the fuel service station. Likewise, they agreed that the store offers goods and services commonly linked to a convenience store environment, including the preparing, serving, and selling of food and beverages to customers. However, whether they served the same customer base remained indeterminate on the sparse evidence presented.

[12] At some stage during the very brief evidence-in-chief of Mr Anmer, the operations manager, who testified for Merriman, the following exchange took place:

> *'MR VAN VUUREN: So, Mr Anmer, in your opinion, if sorry, let me start from here. Does the Pick n Pay store staff, I am referring to the staff, only work for the Pick n Pay Express?*
>
> *15 Do they support the filling station in any way?*
>
> *MR ANMER: They support.*
>
> *MR VAN VUUREN: So, if the Pick n Pay staff were to close, hypothetically speaking, would it impact on the filling station's business?*
>
> *MR ANMER: No, it wouldn't impact on them at all.*
>
> *MR VAN VUUREN: So, in your view, if that were to happen, would the filling station be able to continue trading without any problems?*
>
> *MR ANMER: Correct. So, we had one occasion when, by way of example Commissioner, where we had instances where unfortunately the forecourt has been shut down due to technical issues with the pumping system, and a point in case, obviously the Pick n Pay continues to trade independently, while the forecourt has been shut down.'*

[13] The MIBC contends that the convenience store constitutes an ancillary activity forming part of the service station business and therefore falls within the scope of its registered industry.

The arbitrator's reasoning

[14] The arbitrator noted various case authorities on how to approach the kind of determination he had to make. He cited the general approach set out in *Greatex Knitwear (Pty) Ltd v Viljoen & others* [4]:

> *'"(a) The meaning of 'industry' as used in the agreement, is determined. This usually requires the interpretation of some definition appearing in the agreement. It seems that a restrictive interpretation is often applied, cutting*

[4] 1960(3) SA 338 (T) at 344H-345D

down the scope of the qeneral words in the definition. Although not specifically invoked, the mode of interpretation appears to be that applied in Venter v R 1907 TS 915 (cf Rex Scapszac and Others 1929 TPD 980; Rex v Ngcobo 1936 NPD 408; Rex v Goss 1957 (2) SA 107 (T) at 110).

(b) The activities of the employer (personal and by means of his employees) are determined.

(c) The activities and the definition (as interpreted) are now compared. If none of the activities fall under the definition, caedit quaestio; if some of the activities fall under the definition, a further question arises: are they separate from or ancillary to his other activities? If they are separate he is engaged in the industry (unless these activities are merely casual or insignificant - Rex v C. T.C. Bazaars (SA) Ltd 1943 CPD 334); if they are ancillary to his other activities, he is not engaged in the industry (unless these ancillary activities are of such a magnitude that it can fairly be said that he is engaged in the industry within the meaning of the definition (AG Tvl v Moores SA (Pty) Ltd 1957 (1) SA 190 (A)). (My emphasis and underlining)

(d) Inherent in this approach is the possibility that an employer may be such in more than one industrv (Rex v Giesker & Giesker 1947 (4) SA 561 (A) at p 566), despite the difficulties that may arise from such a situation (cf Rex v Auto-PaHs (Pty) Ltd and another 1948 (3) SA 641 (T) at 648)."

[15] The arbitrator began his legal analysis by establishing the core function of the business, concluding that the primary and dominant enterprise of Merriman BP Service Station (Pty) Ltd was fuel sales. Guided by established demarcation precedents such as *S v Sidersky* and *Greatex Knitwear,* the arbitrator reasoned that the character of an industry must be determined by the nature of the enterprise for which the employer and employees are associated, rather than the individual duties of specific workers. Because the core function of the filling station business was part of the motor industry, any secondary or attached activities would fall under that industry unless they were of sufficient magnitude to constitute a standalone business. A consequence of this is that employees performing exactly the same work, could fall within the scope of an industry if their work was integrated within an establishment in the industry, but might not do so if they worked in a completely separate establishment.

[16] The arbitrator's primary factual finding was that the entire business operation was conducted under a single, unified legal entity. Specifically, the business

was registered as Merriman BP Service Station (Pty) Ltd, trading under the name and style of the fuel service station. Both the BP fuel forecourt and the Pick n Pay franchise shop were owned by this single corporate entity and operated on the same physical premises.

[17] The arbitrator also considered if the Express store was 'ancillary' to the filling station business, having previously referred to the characterisation of the concept of 'ancillary' in the judgment of this court in *Coin Security (Pty) Ltd v CCMA & others*[5]. In this regard, he noted that Merriman did not deny that staff of the Express store were involved in preparing, serving and selling food and beverages to customers (of the filling station). Furthermore, he also placed significant reliance on factual evidence and witness concessions regarding the structural dependency of the convenience store. He found that the Pick n Pay store could not survive independently of the BP filling station. Finding that the Express store was dependent on the existence of the filling station, the arbitrator concluded that it was ancillary to the latter.

[18] The arbitrator interpreted the phrase "separately registered" strictly to mean separate corporate or legal entity registration rather than distinct brand franchising. Because the Pick n Pay store was not a separately registered corporate entity from the BP station, the arbitrator reasoned that the exclusionary clause did not apply and the shop could not be legally excluded from MIBCO's scope.

[19] By way of comparison with the *Brighton Motors ,*

19.1 the filling station and the convenience store establishments were owned by a single entity in both cases;

19.2 the franchisors in both instances were BP and Pick n Pay;

19.3 the employers maintained distinct, separate operating and accounting systems in each of the two establishments;

[5] [2005] 7 BLLR 672 (LC) : *'[58] ….In resolving the question of whether operations are ancillary, it should be borne in mind that 'ancillary to' has a specialized meaning in the context of demarcation. Ancillary business operations are business operations rendering services to existing customers or clients of the main business. Whilst what is ancillary is a question of degree that is not the only enquiry. Ancillary business is also required as a matter of both language and law to be performed as ancillary to or, put differently, to support existing business within a defined customer base (R v Goss 1956 (3) SA 194 (T) at 196).'*

19.4 in *Brighton Motors* there was evidence that employees in the two establishments were not interchangeable, while there was no express evidence on this factor in *Merriman's* case, and

19.5 in *Brighton* the evidence was that the service station could continue operating if the store ceased to operate, whereas in *Merriman* there was a suggestion in the evidence of the operations manager that the business of the store was dependent on the existence of the filling station.

[20] The findings of the two awards diverge in important respects, namely:

20.1 in *Brighton* the arbitrator found the Express store was more than a convenience store and did not form part of the filling station environment, but in *Merriman* the arbitrator held that because the store was dependent on the fuel station's existence it supported the main business and was ancillary to it;

20.2 in *Brighton* the arbitrator emphasised that the filling station and store were two distinct businesses which answered to two separate corporate franchisors, while *Merriman* emphasised the fact the two businesses were part of one company;

20.3 *Brighton* held that the entities were operationally distinct with separate point-of-sale systems with distinctly determined profit margin parameters, whereas *Merriman* held that this was not enough to distinguish one business from the other, and

20.4 the arbitrator in *Brighton* did not consider the overlap between the customer base of the filling station and the store, focusing instead on the fact that customers of one entity could not pay for services or products of the other, but *Merriman* found, drawing support from *Coin Security,* that the Express store existed to serve and support the filling station's customers.

The review application

[21] Merriman's grounds of review in part concern alleged errors of law in the interpretation of the provision and in part rest on the alleged misconstruction of the evidence.

Error of interpretation

[22] Merriman argues that the arbitrator misinterpreted the phrase 'separately registered' to be a reference to registration as a company rather than what it somewhat awkwardly referred to as 'distinct brand franchising'. Similarly, it contends that the arbitrator failed to appreciate that an 'establishment' refers to the physical location of a business not whether it is a registered company.

[23] It is undoubtedly true that much of the arbitrator's decision rests on his finding that both businesses were owned by one company, Merriman (Pty) Ltd and neither had separate juristic identities. A consequence of this interpretation would be that if the BP franchise and the Express franchise held by Merriman were instead housed by Merriman under two separate companies, each wholly owned by it, then the arbitrator would have held that the Express store was not in the same sector as the filling station. Thus, merely by rearranging the corporate entity owning the business, the sector into which the store fell could be altered.

[24] A demarcation dispute is concerned with whether certain employees are employed in a sector or an employer is engaged in a sector. That is the jurisdictional mandate of the arbitrator making the determination as described in Section 62(1)(a) of the Labour Relations Act, 66 of 1995, *viz:*

> *'62 Disputes about demarcation between sectors and areas*
>
> *(1) Any registered trade union, employer, employee, registered employers' organisation or council that has a direct or indirect interest in the application contemplated in this section may apply to the Commission in the prescribed form and manner for a determination as to-*
>
> *(a) whether any employee, employer, class of employees or class of employers, is or was employed or engaged in a sector or area;…'*

The question is whether the employee or employer is employed or engaged in a particular type of economic activity, irrespective of whether the employer is a juristic entity or natural person.

[25] If incorporation as a form of registration was not intended, it does raise the question what is meant by '*separately registered*'? It would be perfectly conceivable for either or both business establishments to be owned by different sole traders, and hence neither being 'registered' in the sense of registration as an act of incorporation under the Companies Act 71 of 2008. In the case of a sole trader owning the Express business and accordingly not being 'separately registered' as a corporate entity, would that be the deciding factor whether an establishment '*whose sole activities relates to the restaurant, tearoom and catering environment*' fell within the scope of MIBCO or not? Simply posing that question illustrates it would be an absurd basis for distinguishing which entity fell with the scope the sector covered by MIBCO. This interpretation is supported by the use of the term 'establishments' rather than referring to 'companies' or 'employers'

[26] Although this interpretation does not entirely resolve what was intended by the phrase 'separately registered', for present purposes it suffices that it was clearly not intended to differentiate between employers who were incorporated and those which were not. Hence, the incorporated status of the owner or owners of the two establishments under consideration is not determinative of whether a convenience store facility is an activity which is ancillary to, and forms part of, the filling station.

[27] By erroneously placing so much reliance on ownership as a criterion, the arbitrator failed to consider the degree of operational interconnection between the store and fueling establishments. Not only was this an error of law, but it also misdirected his evaluation of which facts were relevant.

Failing to apply the requirement of ancillary activity properly to the facts

[28] Secondly, Merriman argues that, despite referring to the description of what constitutes an ancillary business in the *Coin Security* case, the arbitrator failed to appreciate the lack of certain evidence to support his conclusion that the

Express store was ancillary to the filling station. Merriman highlights the fact that there was no evidence that the Express store and forecourt shared the same customer base which it argues is a pre-requisite for finding that the store is an ancillary activity forming part of the filling station. In the absence of proof of a complete overlap between customers of the filling station and the store, he could not have found the store was an ancillary activity forming part of the filling station.

[29] In finding that the Express store staff were involved in the preparation and serving of food and beverages to customers, without having evidence that they served only existing customers of the filling station business, the arbitrator reached a conclusion that was untenable on the evidence before him.

[30] This ground of review is not simply a question of the correct application of the term 'ancillary' in the context of clause g) of the MIBCO scope, but unavoidably also entails applying the correct interpretation of the term in that context.

[31] I am not sure that it necessarily follows from the description of an ancillary business in *Coin Security*[6], that the customer base of a convenience store must completely overlap with that of the filling station before it can be described as ancillary in the sense of servicing the customers of the latter. The fact that the convenience store may also render a service to customers who stop at the premises only to go to the Express store, would not preclude the store from still performing an ancillary function, in the supportive sense, by providing services to all the customers of the filling station, which is a defined customer base. In any event, Merriman is correct that there was no evidence on which the arbitrator could conclude that the store only served the filling station customers.

[32] To properly understand the concept of what is 'ancillary', an appreciation of the facts in *Coin Security,* which gave rise to the interpretation of the term is helpful. They provide a useful practical illustration of the practical use of the term in the demarcation dispute context.

[33] A 1971 demarcation order under the Industrial Conciliation Act 28 of 1956 determined that the cash-in-transit (CIT) operation of the employer was

[6] See footnote 4 above.

engaged in the Motor Transport Undertaking (Goods) which fell under the jurisdiction of the Industrial Council for the Motor Transport Undertaking (Goods) (ICMTU). More than a decade later, the company created an assets-in-transit (AIT) division. In 1996 it unsuccessfully applied for a declaratory order from the High Court that the main ICMTU agreement did not apply to it. The matter came to a head later in 1998 when the company dismissed striking employees and their union referred the dismissal dispute to the Road Freight Bargaining Council, which by then had superseded the ICMTU. This raised the issue of demarcation and ultimately an award was handed down. The employer argued that the transport of goods was merely incidental or ancillary to its main business which was securing the assets. However, the arbitrator found that securing the assets was ancillary to the transport thereof, which was the main business.

[34] The Labour Court summarised the outcome :

> *'[30] The commissioner found that the applicant had failed to prove that the transportation of assets by its AIT division is ancillary to the securing of such assets. Further that the main business of the AIT division is the transportation of assets for reward. Ancillary to such transportation is the security element, in that security is required during the transportation given that the latter occurs under circumstances often of extreme danger and high risk. Transportation by the AIT division is not incidental to securing the assets but central to the business of the division. The applicant's AIT business had not been distinguished from Fidelity which also operates within the AIT sector defined as the transportation of goods for hire or reward by means of road transport in the Republic of South Africa. The sector had for almost two decades been demarcated as falling within the road transportation industry and not the security industry. The applicant would derive a competitive advantage against its competitors which would not promote a system of orderly collective bargaining at sectoral level.'*

[35] So, in *Coin Security*, the term 'ancillary' was used to describe activity as a necessary incidental activity which supported the main existing business. However, if one considers the judgment in *R v Goss* [7], in determining if the limited printing services the seller of printing machinery provided to its customers, the court in that case was not looking at whether that activity was an incidental but unavoidable feature of its main activity, but to what extent the

[7] 1956 (3) SA 194 (T) at 196).

machinery maker's provision of a limited printing service to its customers entailed it performing a significant part of such work. From the judgment, it appears that it was only the last stage of the process it was involved in and that did not require skilled labour to perform.[8] This, and the fact that it only provided the service to buyers of the machines it sold, led the court to conclude that *'These considerations lead me to the conclusion that this branch of the company's activities can fairly be said to be ancillary to its main business and that the company is not engaged in the Newspaper and Printing Industry within the meaning of the definition.'* [9] Contrary to what *Coin Security* stated, the court in *Goss* did not state categorically that it was a necessary requirement that an 'ancillary' business had to be one that supported the existing main business within a defined customer base. Moreover, the emphasis is on the scale of activities which are not part of the main business, as a determinant of whether they are ancillary.

[36] The dual usage of the word as an adjective is also reflected in the definition in the Shorter Oxford Dictionary, which captures both the sense of ancillary being something necessarily incidental to a function and that it can merely mean something additional to a function:

> *'A. adjective. 1. Subservient, subordinate; auxiliary, providing support; now esp. providing essential support or services to a central function or industry, esp. to hospital or medical staff'*[10]

[37] If one interprets the crucial wording in clause g) to refer to the provision of essential support, it would imply that the phrase *'...the business conducted by filling and/or service stations including ancillary activities forming part of a service station linked to the convenience store environment'* would read *'… the business conducted by the filling and/or service stations including essential support activities forming part of a service station linked to the convenience store environment'*. It is difficult to conceive what the essential support activities forming part of a service station incorporating a convenience store might

[8] At 195G-196A

[9] At 196G-H

[10] 6ed, 2007, OUP.

include, short of the service station providing everything needed to run a convenience store. On the other hand if one interprets the term in context of the clause to mean auxiliary or additional, the entire phrase would read: *'… the business conducted by the filling and/or service stations including auxiliary activities forming part of a service station linked to the convenience store environment'*. The latter formulation suggests simply that if a filling station also performs additional functions that include running a convenience store the store would fall within the ambit of MIBCO, which seems to make more sense. In any event, if the first interpretation was adopted, there was no evidence whatsoever that the filling station itself conducted any of the functions needed to operate the Express store.

[38] Thus, while the argument that the lack of evidence of the extent of an overlap between the customer bases is not a complete answer to whether the Express store was ancillary to the filling station, it is apparent that an activity can be ancillary simply on account of being a subsidiary component of the business. It also highlights that an 'ancillary activity' of a business is one that is conducted by the main business *as part of* its activities. This interpretation accords better, in my view, with the sense in which it is meant in clause g) of the MIBCO scope clause. The lack of anything more than being on the same premises and owned by the same company, without evidence of any operational integration is not enough to bring the Express store within the scope of the ancillary activity of the filling station.

[39] On this basis, the arbitrator's interpretation of an 'ancillary activity' in the context of the phrase *'ancillary activities forming part of a service station linked to the convenience store environment'*, as relating to whether the store was dependent on the filling station and the 'support' it gave to the filling station is not grounded in clause g) was a clear misdirection.

[40] Further, he seized on the statement of Mr Anmer that the staff of the Express store 'supported' the filling station but ignored his subsequent testimony to the effect that the filling station business would not be affected by the closure of the store and *vice-versa.* This is the basis of a third ground of review that he took the statement that the store staff 'supported' the filling station out of context.

[41] It is true the Express store would not exist if the filling station was not there, but that does not make it ancillary to it, it just means if there was no filling station, the store could not have been established on the same premises. In any event the support relates to 'ancillary activities' of the filling station, not to the historical order in which the businesses were established.

[42] The evidence, limited though it was, clearly showed that the filling station and the Express store were operationally independent even if owned by the same entity. Other than the fact that they were on the same premises and that there was no doubt a mutual benefit to each of being located together, the fact that they are complimentary to each other does not mean the Express store is subsumed as an incidental or ancillary activity of the filling station business. Its operation is not integrated with those of the filling station.

Conclusion

[43] The arbitrator's analysis was superficial and his findings were the result of him making one or more errors of law in interpreting paragraph g) of the MIBCO scope. Had he not made these errors he would have focused firstly on whether there were ancillary activities *of the filling station* which were linked to a convenience store environment. That would have led him to ask if the activities of the Express store were really part of the filling station's activities, or conducted independently of it. It should then have been apparent that they ran as separate businesses side by side and that the Express store was not an activity of the filling station, even in an ancillary away.

[44] Accordingly, he would have come to the same conclusion as the arbitrator in the *Brighton Motors* matter. In passing, it must be noted that there are circumstances where it can be said that a convenience store is an ancillary part of the filling station business, as illustrated in the arbitration award of *Bergzicht Motors (Pty) Ltd and MIBCO*[11], in which the operational arrangements of the convenience store and the filling station were more integrated.

[11] CCMA award WECT 13117-19 issued on 9 October 2019

[45] In the Constitutional Court decision in *National Union of Metalworkers of South Africa v Commission for Conciliation, Mediation and Arbitration and Others* [12] it was held that, despite the special character of demarcation decisions, a court may substitute the award of a commissioner if it is in as good a position as the commissioner to make the decision and considering whether the decision of the commissioner was a foregone conclusion[13].

[46] Given the limited evidence before the arbitrator, which was also before the court, and the effect of correcting his errors of interpretation I am persuaded that he would not have come to the conclusion he did reach but that he would have been compelled to find that the Pick n Pay Express Store was not an ancillary activity forming part of the BP filling station linked to the convenience store environment, and accordingly did not fall within the scope of clause g) of MIBCO's scope.

[47] On the question of costs, I am satisfied both parties had a legitimate interest in obtaining certainty on the substantive issue and it would not be appropriate in fairness or law to make a cost order.

Order

1. The demarcation award of the Second Respondent dated 13 November 2020 issued under CCMA case no WECT 8994-20 is reviewed and set aside

2. The said award is substituted with a finding that: The employees engaged by the Applicant in the Pick n Pay Express store do not fall within the scope of the Motor Industry Bargaining Council.

3. No order is made as to costs.

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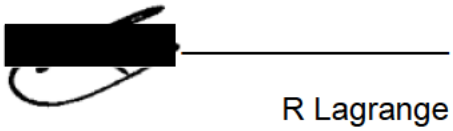
[12] [2022] 3 BLLR 209 (CC); (2022) 43 ILJ 530 (CC); 2022 (7) BCLR 813 (CC)

[13] At paragraphs 69-71



R Lagrange

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: --- F Rautenbach
Instructed by: ---CK Attorneys

For the Respondent: ---MIBCO