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

3 August 2026
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case no: 2025-056945

In the matter between:

TO ANYWHERE CARRIERS Applicant

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION First
Respondent

COMMISSIONER MAUREEN DE BEER Second Respondent

WILLIAM XOLANI MXANDA Third Respondent

Heard: 29 July 2026

Delivered: 3 August 2026

Summary: An application to review and set aside an arbitration award ordering a former employer to pay a former employee, *inter alia*, amounts deducted from the employee's salary before the employee's dismissal. The deductions were for damages caused by the employee during his employment. Whether the employee ought to have pursued the claim under section 34 rather than section 73 of the

BCEA. If the claim could be pursued under section 73A of the BCEA, whether the employer's contentions that the deductions were lawful under section 34 of the BCEA should have been upheld. Where the requirements in section 34(2) are met, an employer must still obtain an employee's agreement to effect deductions in terms of section 34(1)(a) of the BCEA.

JUDGMENT

GANDIDZE, J

Introduction

[1] The applicant employer, To Anywhere Carriers, is the former employer of the third respondent employee, Xolani Mxanda (Mxanda). The applicant dismissed Mxanda for reasons irrelevant to this application. What is relevant is that after his dismissal, Mxanda lodged a claim with the Commission for Conciliation, Mediation and Arbitration (CCMA), alleging that the applicant owed him money. The commissioner who arbitrated the dispute found in favour of Mxanda on some of the claims and dismissed the others. The only claim relevant to this review application in terms of section 145 of the Labour Relations Act[1] (LRA), is the commissioner's finding that the deductions made from Mxanda's salary during his employment with the applicant were unlawful because they were not in compliance with section 34 of the Basic Conditions of Employment Act[2] (BCEA). The award is dated 18 March 2025 and was issued in case number WECT2516/23.

[2] The applicant seeks an order reviewing and setting aside the finding that it must repay Mxanda R46 690.46, and substituting it with a finding that the CCMA lacked jurisdiction to determine a section 34 BCEA claim. In the alternative, the applicant seeks an order that the deductions were in compliance with section 34 of the BCEA, therefore lawful; that Mxanda accepted that it could make the deductions; and that, in any event, the dispute related to a sanction short of dismissal, hence an unfair labour practice, and

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[1] Act 66 of 1995, as amended.

[2] Act 75 of 1997, as amended.

therefore Mxanda was required to seek condonation for the late referral of the dispute to the CCMA and did not do so.

[3] Mxanda opposes the application and defends the award.

[4] Before Mxanda filed the answering affidavit, the commissioner filed an explanatory affidavit in response to the founding affidavit, reiterating the findings she set out in the award. In oral argument, Mr Van Zyl for the applicant submitted that this was quite unusual. There is merit to that submission. However, other than the commissioner denying that she committed an irregularity as alleged, an issue this court will determine, the applicant has not been prejudiced by the filing of an explanatory affidavit that merely repeats what is already contained in the award. In any event, whether the review application will succeed is determined by what is contained in the award, not by the explanations provided by the commissioner in the affidavit.

[5] Another preliminary issue is that the applicant failed to meet the time limits for filing the heads of argument and sought condonation. Having regard to the explanation for the delay, the fact that Mxanda, who is legally represented, did not oppose the application, and the absence of prejudice to Mxanda from the late filing of the heads of argument, the court is persuaded that condonation is warranted. Accordingly, condonation will be granted.

[6] Mxanda also raised the issue that the notice in terms of Rule 37(20)(b) of the Rules Regulating the Conduct of the Proceedings of the Labour Court[3] (Labour Court Rules) was filed one day late, and that the applicant did not seek condonation for the late filing. The applicant's heads of argument do not address this issue, and Mxanda did not pursue it in the heads of argument. As the delay was minimal and Mxanda did not suffer any prejudice from the one-day delay, condonation will be granted.

<u>Brief background facts</u>

[7] Mxanda was employed by the applicant as a code 14 driver based at the Bellville depot. The applicant is an auto carrier company that transports customers' vehicles within and outside the Republic. It also stores customers'

[3] *Published*: GN 4775, G. 50608 of 3 May 2024. *Commencement: 17 July 2024* - GN 5038, G. 50929 of 12 July 2024.

vehicles on its premises, on a short- or long-term basis, before and after transport, as necessary.

[8] The deductions from Mxanda's salary were for damage to vehicles after he started a carrier truck on the applicant's premises to prevent the battery from running flat, then left it unattended, resulting in it rolling and damaging other customers' vehicles, a structure, and the truck itself.

[9] The applicant investigated the incident, and the outcome was that Mxanda must repay the employer R89 655.61 for the damages caused by negligence. While the applicant contends that Mxanda was subjected to a disciplinary hearing and an outcome was issued in terms of which Mxanda was also issued with a final written warning, in addition to repaying the damages, Mxanda denied that a disciplinary hearing was convened or that he was issued with a final written warning as a sanction. He also denied that he was issued with the outcome report but accepted that he was informed that deductions would be made from his salary. The commissioner's findings that the applicant followed a fair procedure prior to effecting the deductions are not being challenged, hence they stand.

[10] What is not disputed is that Mxanda complained about the deductions, and that his request for a 15% deduction rather than 25% was not acceded to. He did not formally challenge the decision, with the consequence that deductions were made from his salary every month from April 2022 until October 2022.

[11] In November 2022, Mxanda was dismissed for reasons unrelated to the damages. He unsuccessfully challenged the dismissal before the CCMA.

[12] In December 2022, he referred a dispute to the CCMA in terms of section 73A of the BCEA, alleging that the applicant owed him money in respect of outstanding salary, including deductions from his salary, payment for training other employees, a R300 donation deduction without his consent, a long-distance driving incentive of R1080, commission for cars collected, and payment for sick leave and annual leave.

<u>The arbitration proceedings and the award</u>

[13] At the outset, the applicant submitted that the CCMA lacked jurisdiction to deal with Mxanda's claim, relying on the court's decision in *O'Reilly v Commission for Conciliation, Mediation and Arbitration, Johannesburg and Others*[4] (*O'Reilly*). The commissioner dismissed the point *in limine*, finding that the case did not address section 73A of the BCEA, the provision under which Mxanda referred his dispute to the CCMA.

[14] The applicant's second preliminary point, that Mxanda should have referred a dispute to the CCMA as an unfair labour practice within 90 days, was also dismissed for the same reason as the first.

[15] Mxanda testified that he was not solely to blame for the truck rolling. It is unnecessary to set out his defence in detail, or that of the witnesses[5] called by the applicant on the issue, as the commissioner found him negligent and responsible for the damage. The commissioner also found that the applicant followed a fair procedure to establish the extent of the damages. Those findings are not challenged in these proceedings, and they stand.

[16] Marius Van Zyl testified that the contract of employment provides that an employee is responsible for damages or losses caused by negligence, and hence Mxanda agreed to the deductions being made. The commissioner rejected the evidence.

[17] Van Zyl also testified that by the end of November 2022, R46 690.46 had been deducted from Mxanda's salary and that no civil action had been commenced to recover the outstanding damages. The principle of set-off had been applied to the damages incurred.

[18] In assessing the evidence and the law, the commissioner referred to 73A of the BCEA and held that she was required to determine whether Mxanda was owed any amounts and, if so, whether the principle of set-off applied. The commissioner upheld the claims for commission for collecting cars in the amount of R658, R1080 in respect of the driving incentive, and R46 690.46, being the amount deducted from Mxanda's salary during the period from April

[4] (JR2395/19) [2022] ZALCJHB 33 (28 February 2022).

[5] Faith Khumbula, Kyle Hobson and Marius Van Zyl.

2022 to October 2022. The remaining claims were dismissed. There is no challenge to the dismissal of some claims, or to the upholding of the claims in respect of collecting cars and the driving incentives. The only claim forming the subject matter of the review is the deductions from Mxanda's salary.

[19] The basis for upholding the claim of R46 690.46 was that, although Mxanda was at fault for the vehicle rolling, having known that the handbrake was faulty and sensitive, the truck was parked on an incline, and Mxanda should never have left the vehicle idling as per the K53 standard, the applicant could only make deductions from Mxanda's salary for the damages if 'prescribed formalities' set out in section 34(1)(a) and 34(2) of the BCEA had been complied with. With reference to *Padayachee v Interpak Books (Pty) Ltd*[6] *(Padayachee),* the commissioner held that those prescribed formalities include conducting a fair hearing to determine the employee's liability and obtaining a written agreement from the employee to reimburse the employer. The commissioner found that the requirement to obtain a written agreement was not complied with; hence, the deductions were not compliant with section 34 of the BCEA. Set off could not be applied for that reason, and the applicant had to repay the amounts deducted. The commissioner also ruled that the employer could institute action against Mxanda to recover the R46 690.49.

<u>Grounds for review and the applicant's submissions</u>

[20] As I understand it, there are five grounds of review. The first is the primary ground, and the other four apply only if the court dismisses the first.

[21] The first ground is that the CCMA lacked jurisdiction to determine the dispute regarding the application and interpretation of section 34 of the BCEA, read with section 73A. The dispute ought to have been referred to this court for adjudication, as held in *O'Reilly*, which found that claims in terms of the BCEA are regulated by section 77 of the BCEA, which confers exclusive jurisdiction on this court to deal with such matters, except where the BCEA provides otherwise, and that there was no provision in the BCEA which confers jurisdiction on the CCMA to determine section 34 BCEA claims. The

[6] (2014) 35 ILJ 1991 (LC).

submission was therefore that the CCMA may only arbitrate disputes concerning statutory amounts owed in terms of section 73A of the BCEA, to the exclusion of deductions from an employee's salary. Therefore, by determining a claim for deductions, the commissioner exceeded her powers.

[22] In the alternative, if the court dismisses the jurisdictional point and finds that the CCMA had jurisdiction to determine the claim, the court must find that, in terms of section 34(2) of the BCEA, a written agreement is not required before an employer can make deductions. Deductions in terms of section 34(2) of the BCEA can be made in the absence of a written agreement provided all the requirements set out in that provision are complied with. This is because section 34(1)(a) is subject to subsection (2), and therefore, when section 34(2) is relied upon, the requirements in section 34(1) need not be complied with. Otherwise, section 34(2) would have had a paragraph (e) requiring the employee to agree in writing, and that paragraph was omitted for a reason. The submission is that unless the court interprets section 34(2) as contended by the applicant, that provision serves no purpose as employees could still refuse to give permission for the deductions to be made even after a fair process has established that they were negligent, in which case employers will not be able to make deductions from an employee's salary, even if all the requirements in section 34(2) are met. The submission was further that the only other recourse would be for such an employer to institute civil proceedings against an employee who has been found guilty of negligence and of causing the employer loss, or to write off the loss or dismiss the employee, and that this could not have been the intention of the legislature. Reliance was placed on the decision in *Stein v Minister of Education and Training and Others*[7] *(Stein),* which held that a written agreement is not required where the requirements in section 34(2) of the BCEA are met.

[23] The third ground of review is that Mxanda accepted the outcome of the disciplinary hearing through his conduct. His only concern was that the deduction be 15%, not 25%. He complained but did not declare a dispute after the disciplinary outcome, did not file a grievance, nor did he challenge the

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[7] (J415/20) [2020] ZALCJHB 147 (14 May 2020).

deductions on the basis that they were unlawful. Therefore, Mxanda accepted the applicant's right to deduct, thereby negating the need for a written agreement.

[24] The fourth ground is that the CCMA lacked jurisdiction to determine an unfair labour practice dispute referred to it outside the 90-day period prescribed by section 191(1)(b)(ii) of the LRA. The submission was that, although the dispute was referred as a section 73A BCEA claim, Mxanda was effectively challenging the outcome of a disciplinary process that imposed a sanction short of dismissal, namely a final written warning and a salary deduction, and therefore he ought to have filed an unfair labour practice claim in terms of section 186(2)(b) of the LRA.

[25] The fifth and final ground is that if the dispute was one under section 73A of the BCEA, it ought to have been referred to the CCMA within a reasonable time. However, Mxanda took 8 months to do so, which was unreasonable. He was required to apply for condonation. The further submission was that Mxanda would not have referred the dispute but for the dismissal.

[26] In conclusion, the submission is that no reasonable commissioner would have reached the same findings, that the commissioner failed to apply her mind to the evidence and the law, and that she did not determine the real dispute between the parties.

<u>Mxanda's submissions</u>

[27] He referred a section 73A BCEA claim to the CCMA, which deals with disputes concerning unpaid amounts owed to employees earning below the threshold. He did not refer a claim in terms of section 34 of the BCEA. As a defence, the applicant contended that he owed it money and that the set-off principle applies. In that context, the CCMA is empowered to arbitrate disputes concerning non-compliance with section 34 of the BCEA when determining a section 73A claim. This is what distinguishes *O'Reilly*, where the employee referred a section 34 BCEA claim to the CCMA.

[28] All the requirements in sections 34(1) and 34(2) of the BCEA must be met for the deductions to be lawful. This means that written consent is required, even where the requirements in section 34(2) are met. The only alternative to

obtaining written consent is section 34(1)(b), which permits deductions required or permitted in terms of a law, collective agreement, court order or arbitration award. In the absence of written proof that Mxanda agreed to the deductions, the applicant could not rely on section 34 of the BCEA to justify them. Even if the disciplinary outcome was that Mxanda was guilty of negligence, the deductions could be made in terms of section 34 of the BCEA only if he agreed to them. Therefore, the commissioner was correct to order the applicant to repay Mxanda the amounts deducted from his salary.

[29] No condonation was required because Mxanda did not refer an unfair labour practice dispute to the CCMA.

[30] If the award is reviewed and set aside, Ms Van Wyk, for Mxanda, implored the court to exercise its powers under section 145(4) of the LRA to determine the dispute in the manner it considers appropriate, or to make any order it considers appropriate regarding the procedures to be followed in determining the dispute. In other words, if the court found that Mxanda's claim was a section 34 BCEA claim over which the CCMA did not have jurisdiction, the court with jurisdiction over such matters should determine that dispute, as it is empowered to do by section 145(4) of the LRA.

<u>Evaluation</u>

Jurisdiction

[31] The starting point is that Mxanda's claim was brought under section 73A of the BCEA, which provides as follows:

> '**73A Claims for failure to pay any amount**
>
> (1) Despite section 77, any employee or worker as defined in section 1 of the National Minimum Wage Act, 2018, may refer a dispute to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of this Act, the National Minimum Wage Act, 2018, a contract of employment, a sectoral determination or a collective agreement.
>
> (2) Subsection (1) does not apply to employees or workers earning in excess of the threshold prescribed by the Minister in terms of section 6 (3).

(3) An employee or worker, other than the employee or worker referred to in subsection (1), may institute a claim concerning the failure to pay any amount contemplated in subsection (1) in either the Labour Court, the High Court or, subject to their jurisdiction, the Magistrates' Court or the small claims court.

(4) The CCMA must appoint a Commissioner in terms of section 135 of the Labour Relations Act, to attempt to resolve by conciliation any dispute that is referred to the CCMA in terms of subsection (1).

(5) The CCMA must commence the arbitration of a dispute contemplated in subsection (1) immediately after certifying that the dispute remains unresolved in terms of section 135 (5).'

[32] Therefore, section 73A applies where an employer fails to pay any amount. In this case it is not in dispute that the applicant did not pay Mxanda his full salary for the period April to October 2022, because it believed it could deduct the damages it suffered because of Mxanda's actions. Mxanda's salary was due in terms of the employment contract. Because Mxanda earned below the earnings threshold, he could refer the dispute about the amounts not paid to the CCMA for arbitration. Section 73A confers jurisdiction on the CCMA to determine claims for money that an employer failed to pay to an employee earning below the earnings threshold.

[33] The above summary of section 73A of the BCEA disposes of Mr Van Zyl's argument that the CCMA lacked jurisdiction to determine Mxanda's claim, which was referred to the CCMA in terms of section 73A of the BCEA. The submission that section 73A applies only to statutory payments ignores the fact that subsection (1) specifically refers to a failure to pay an amount in terms of the contract of employment. Mxanda was entitled to a salary in terms of the contract of employment.

[34] *O'Reilly* did not hold that the CCMA lacks jurisdiction to determine a section 73A claim. In fact, *O'Reilly* could not have said that the CCMA lacks jurisdiction to determine a section 73A claim, because that would be contrary to section 73A itself. In *O'Reilly,* the employee pleaded section 34 of the BCEA as her cause of action, and the court was correct that the CCMA does

not have jurisdiction over a section 34 BCEA claim. In this case, Mxanda pleaded section 73A of the BCEA. In *Gcaba v Minister for Safety & Security & Others*[8], the Constitutional Court held that jurisdiction is determined by the pleadings, that where jurisdiction is challenged at the outset, the pleadings are the determining factor, and that it is not for the court to say that the facts asserted by the applicant would also sustain another claim[9]. I would add that it is not for a respondent to tell an applicant which cause of action to pursue based on the defence it intends to advance.

[35] Recently, with specific reference to the BCEA, the Labour Appeal Court, in *Sahara African Living (Pty) Ltd v Solidarity obo Members*[10], held as follows:

> '[42] I deal first with the Labour Court's findings in terms of the alleged breach of contract and breach of section 34 of the BCEA. A breach by the appellant of section 34 is not a cause of action that was pleaded by the employees, nor does the pre-trial minute make any reference to that section. In other words, the appellant was never asked to meet a claim based on any breach of section 34. It was not open, in these circumstances, to the Labour Court to find, as it did, that the appellant had breached section 34 of the BCEA or to account for this, as the Court appeared to do, in the assessment of the amount of compensation to be paid by the appellant to the employees.'

[36] Therefore, the CCMA or this court must determine the claim on the basis of the pleaded case. In CCMA proceedings, the referral form and the pre-arbitration minute constitute the pleadings. Mxanda's referral form cites section 73A of the BCEA as the cause of action, and he was entitled to choose it. The CCMA has jurisdiction over that cause of action. It was not for the respondent to say that Mxanda should seek relief under section 34 of the BCEA, which, in any event, would fall outside the CCMA's jurisdiction. Nor is it for this court to say which cause of action Mxanda should have pursued. A

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8 (2009) 30 ILJ 2623 (CC).

9 At para 75.

10 [2025] JOL 70136 (LAC).

litigant chooses a cause of action to pursue, and the claim should be decided on that basis.

[37] A related issue is whether Mxanda failed to refer the section 73A BCEA dispute to the CCMA within a reasonable time, and whether he was required to apply for condonation for the late referral. The submission has no merit. Section 73A is silent on the issue. Employees earning above the threshold who cannot refer disputes under section 73A have three years to institute such claims in this Court. There is no reason why that same time frame should not apply to section 73A claims, as doing so would advantage employees who earn above the earnings threshold and disadvantage those who earn below the earnings threshold and are compelled to refer disputes to the CCMA in terms of section 73A.

[38] The submission that the dispute was one about an unfair labour practice, which ought to have been referred to the CCMA within 90 days, must fail for the same reason as the argument that the dispute was one in terms of section 34 of the BCEA.

[39] The above findings address review grounds one, four and five. The grounds that remain relate to whether the applicant raised a valid defence to Mxanda's claim.

<u>Deductions from remuneration</u>

[40] In defence of Mxanda's section 73A BCEA claim, the applicant's case was that the deductions from Mxanda's remuneration were for loss and damage he caused, and that this is permitted in terms of section 34(2) of the BCEA. It is best to reproduce section 34 of the BCEA, which provides as follows:

> **'34 Deductions and other acts concerning remuneration**
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> (1) An employer may not make any deduction from an employee's remuneration unless-
>
> *(a)* subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
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> *(b)* the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

(2) A deduction in terms of subsection (1) *(a)* may be made to reimburse an employer for loss or damage only if-

(a) the loss or damage occurred in the course of employment and was due to the fault of the employee;

(b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;

(c) the total amount of the debt does not exceed the actual amount of the loss or damage; and

(d) the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.

(3) A deduction in terms of subsection (1) *(a)* in respect of any goods purchased by the employee must specify the nature and quantity of the goods.

(4) An employer who deducts an amount from an employee's remuneration in terms of subsection (1) for payment to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, law, court order or arbitration award.

(5) An employer may not require or permit an employee to-

(a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or

(b) acknowledge receipt of an amount greater than the remuneration actually received.

[41] Therefore, in terms of section 34(1), deductions are permissible in two instances. The first is in terms of subsection (1)(a), but subject to subsection (2), when an employee agrees to the deduction in writing. The second is subsection (1) (b), when the deduction is required or permitted in terms of a law, collective agreement, court order or award.[11]

[11] See *South African Municipal Workers Union v Matjhabeng Local Municipality* [2024] 7 BLLR 771 (LC).

[42] In this case, the applicant did not rely on the second requirement, even though it raised the issue of set-off, which could fall under section 34(1)(b). It relied on the first requirement, that is, section 34(1)(a), and submitted that where an employer effects deductions for loss and damages, and the requirements in section 34(2) are all complied with, then it is unnecessary to obtain the employee's written agreement. In the alternative, it submitted that Mxanda accepted the outcome of the enquiry, and hence accepted the applicant's right to deduct, negating the need for a written agreement.

[43] Therefore, the question is the meaning of section 34(1)(a) read together with section 34(2) of the BCEA. Do the provisions mean that deductions from an employee's salary for loss or damage can be made only with the employee's written consent and subject to compliance with section 34(2)? Or do they mean that an employer can make such deductions where the requirements in section 34(2) have been met, even if the employee has not consented to the deduction in writing in terms of section 34(1)(a)?

[44] In this case, the commissioner found that the requirements set out in section 34(2) were complied with. Although, on review, Mxanda takes issue with some of those findings, he did not file a cross-review. As a result, he is bound by them, and the court cannot interfere with them on review. The only question that remains is whether, where the requirements set out in section 34(2) are complied with, an employer must still obtain an employee's written agreement to effect the deductions.

[45] Because the requirement for a written agreement in section 34(1)(a) is subject to subsection (2), an employer seeking to make deductions from an employee's remuneration for losses and damages must comply with section 34(2) and obtain the employee's written consent to the deduction of 'a debt specified in the agreement'. Compliance with section 34(2) alone is insufficient. A written agreement specifying the debt is also required. Mr Van Zyl's submission that section 34(2) lacks paragraph (e), which refers to a written agreement, overlooks that the provision is subject to section 34(1)(a), which requires a written agreement. Therefore, a paragraph (e) in section 34(2) would have been tautologous.

[46] An interpretation of the provision that a written agreement is dispensed with when the requirements set out in section 34(2) will lead to a situation where employers will allege compliance with section 34(2) and effect the deductions, even though an employee denies being negligent.

[47] The applicant's alternative argument that Mxanda accepted its right to make the deductions, thereby negating the need for a written agreement, ignores section 34(1)(a), which requires a written agreement specifying the debt. Consent to the deduction is proved by producing a written agreement signed by the employee, agreeing to a specified debt.

[48] Mr Van Zyl's submission that employees could refuse to sign the agreement is hypothetical. It was never the applicant's case that Mxanda was presented with an agreement he was required to sign and that he refused to do so.

[49] In the award sought to be reviewed, the commissioner relied on *Padayachee*, which held that the employer was required to obtain the employee's written agreement before making deductions for loss and damage, even where the requirements in section 34(2) were met. I agree with that approach, but I also wish to express a view on the decision.

[50] In *Padayachee*, the employer relied on section 34(1)(b) to justify the deductions. In my interpretation of section 34(1)(b), no written agreement is required when that provision is relied upon, as it makes no mention of one. It is in section 34(1)(a) that a written agreement is mentioned. As I determined above, deductions are made either in terms of section 34(1)(a) or section 34(1)(b). Therefore, to the extent that *Padayachee* might be read to have held that, where section 34(1)(b) is relied upon, a written agreement is still required, that is not my interpretation of section 34(1) of the BCEA.

[51] I considered the *Stein* decision on which Mr Van Zyl relied. Nowhere in that decision[12] did the court hold that a written agreement is not required when the requirements in 34(2) of the BCEA are met. In fact, the decision does not even mention section 34 of the BCEA. The application was dismissed for lack

[12] By Mahosi J.

of urgency, unless Mr Van Zyl provided an incorrect citation of a decision. When the matter was re-enrolled on the normal roll, the court[13] determined the matter under section 34(5) of the BCEA, a different provision from the one we are concerned with. The decision in *Stein* is of no assistance to the issues that needed to be decided in this matter.

[52] In oral argument, Ms Van Wyk also relied on clause 4.6.2 of the Regulations cited in the Padayachee judgment. Despite a diligent search, I could not locate the Regulations in question. Instead, I found the General Administrative Regulations, 1998 (Government Notice R1438 of 1998), which do not contain clause 4.6.2. I could not pursue the submission further.

[53] The deductions made by the applicant were unlawful, as Mxanda did not consent in writing. Therefore, the award must stand.

<u>Costs</u>

[54] As this is a review application governed by the LRA, the principle that costs follow the result does not apply. Costs are governed by section 162 of the LRA, which requires the court to consider the requirements of law and of fairness.

[55] The applicant filed a review application that required the court to consider the same arguments it had raised in the arbitration proceedings, which were dismissed. Mr Mxanda has patiently waited for the award to be complied with, and he must now enjoy its benefits, together with interest. He must not be left out of pocket for opposing the review application. Although Mr Van Zyl is not a legal practitioner, the papers and his submissions made it clear that he is familiar with legal proceedings, yet he relied on a decision that did not support his submission. The court does not take such matters lightly. In addition, the Rule 37(20) Notice and the heads of argument were filed late, and condonation (for the late filing of the heads of argument) was sought, an indulgence. It cannot expect Mxanda to bear the costs in respect of an

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[13] In *Stein v Minister of Education and Training and Others* (J41520) [2021] ZALCJBH 42 (15 November 2021).

indulgence it sought. Taking all of the above into account, the applicant must bear Mxanda's costs.

[56] In the premises, I make the following order:

<u>Order</u>

1. Condonation for the late filing of the Labour Court Rule 37(20) Notice and the applicant’s heads of argument is granted.

2. The review application is dismissed.

3. The applicant is ordered to pay William Mxanda’s costs on a party-and-party scale.

T. Gandidze

Judge of the Labour Court of South Africa

<u>Appearances</u>

For the Applicant:	Mr Marius Van Zyl
Instructed by:	Risk and Legal Compliance: To Anywhere Carriers
For the Respondent:	Ms Chante Van Wyk
Instructed by:	Laas & Scholtz Inc.