



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


Signature

27/08/2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-107435

In the matter between:

A1 FINANCIAL SERVICES (PTY) LTD

APPLICANT

and

**COMMISSION FOR CONCILIATION MEDIATION
AND ARBITRATION**

FIRST RESPONDENT

COMMISSIONER JOSHUA AUGUST N.O

SECOND RESPONDENT

COMMISSIONER N.E.SAMUEL

THIRD RESPONDENT

JASON LEE SOULES

FOURTH RESPONDENT

Heard: 18 August 2026

Delivered: 27 August 2026

Review of a section 142A award making settlement agreement an arbitration award - review standard is correctness, not reasonableness - jurisdictional requirements satisfied – section 142A power correctly exercised - application dismissed.

JUDGMENT

HARVEY, J

- [1] This is an unopposed application to review and set aside an arbitration award issued by the third respondent commissioner on 13 June 2025. The award was made in terms of section 142A of the Labour Relations Act: it made a settlement agreement concluded between the applicant (the employer) and the fourth respondent (the employee) an arbitration award.

Background

- [2] The employee referred an unfair labour practice dispute to the CCMA. The matter was enrolled for conciliation on 10 April 2025. At the conciliation facilitated by the second respondent commissioner, the employer was represented by an official of the AHI Employers' Organisation, who was authorised to represent it.
- [3] During the conciliation proceedings the parties concluded a settlement agreement. The AHI representative signed the settlement agreement on behalf of the employer. She did so after obtaining a mandate to do so from the employer's designated internal representative, Ms Boer, from whom the AHI representative was authorised to obtain instructions.
- [4] In terms of the settlement agreement, the employer agreed to pay the employee R47,000 and the employment relationship was terminated by mutual consent. The settlement agreement also expressly records the parties' consent to its being made an arbitration award under section 142A of the LRA.
- [5] The employer says that Ms Boer did not in fact have the authority to authorise the AHI representative to agree to the terms of the settlement agreement. It disputed the validity of the settlement agreement and sought to rescind it, a step that it now accepts was misconceived, because the settlement agreement had not yet been made an arbitration award.
- [6] The employee applied to have the settlement agreement made an arbitration award in terms of section 142A of the LRA. Section 142A provides that '*the Commission may, by agreement between the parties or on application by a party, make any settlement agreement in respect of any dispute that has been referred to the Commission, an arbitration award.*'

- [7] The employer opposed the section 142A application on the basis that the settlement agreement had been concluded without proper authority. The third respondent commissioner rejected that contention and made the settlement agreement an arbitration award. That is the decision under review.

Section 142A of the LRA

- [8] Section 142A permits the Commission to make a settlement agreement an arbitration award where the requirements of the section are met. In *Molaba v Emfuleni Local Municipality*¹ the Court identified the requirements which must be satisfied before the Commission may exercise the power to make a settlement agreement an arbitration award under section 142A: the dispute which is settled must be a dispute which a party has the right to refer to arbitration or to the Labour Court; it must have been referred to the CCMA for conciliation; and the settlement agreement must be in writing.
- [9] Once the jurisdictional requirements of section 142A are satisfied, and the agreement has been made an arbitration award, it acquires the full status of an arbitration award: it is final and binding and may be enforced as though it were an order of the Labour Court.² Accordingly, unless and until it is rescinded or set aside on review, a Court cannot interfere with the terms of the settlement agreement which underlies it.
- [10] In *Hadio v CCMA*³ Molahlehi J, as he then was, considered whether the Labour Court can review a settlement agreement concluded under the auspices of the CCMA which has not been made an arbitration award. With reference to earlier authority, he confirmed that, as the commissioner facilitating the agreement has no decision-making power, such agreements cannot be reviewed under section 145 of the LRA. A settlement agreement is merely a contract and any challenge to it lies under the common law principles of contract. The learned judge added that even if a section 142A award were to be reviewed and set aside, that would not affect the settlement agreement: *'The settlement would still stand, and, until*

¹ *Molaba v Emfuleni Local Municipality* [2009] 7 BLLR 679 (LC) at par 6.

² *Department of Health v Jones* [2009] 3 BLLR 195 (LC).

³ *Hadio v CCMA* [2015] 12 BLLR 1207 (LC).

*set aside on [contractual grounds], would serve as a bar against any proceedings which may be instituted relating to the merit of the dispute which is its subject matter.*⁴

Test on review

- [11] Counsel for the employer submitted that the applicable review test is reasonableness.
- [12] However, the Court in *Primeserve Devendraft (Pty) Ltd v Wehncke N.O and Others*⁵ held that the standard applicable when a decision to exercise the section 142A power is taken on review is correctness, not reasonableness. This is because a section 142A award does not involve a determination of the merits of the dispute referred. The enquiry is only whether the statutory requirements for exercising the section 142A power were satisfied.
- [13] The employer's submission that the award in this matter is reviewable simply because the third respondent commissioner's decision was unreasonable therefore proceeds from the wrong test. The question for this Court is whether the commissioner was correct in making this settlement agreement an arbitration award.

Was the decision correct?

- [14] The jurisdictional requirements of section 142A were satisfied. It is common cause that the employee had referred an unfair labour practice dispute to the CCMA, that the dispute was capable of referral to arbitration, and that the parties concluded a written settlement agreement during conciliation. The parties had consented to the agreement being made an arbitration award, and the applicant had requested that the section 142A power be exercised.
- [15] The employer had opposed the section 142A application on the basis that the agreement was not binding because it had been concluded without proper authority. The commissioner was accordingly required to consider the argument

⁴ *Hadio v CCMA* (supra) at par 20.

⁵ *Primeserve Devendraft (Pty) Ltd v Wehncke N.O and Others* (JR2527/22) [2025] ZALCJHB 459 (2 October 2025) at [26]

concerning authority. Whilst I agree with the employer's legal representative that a commission ought not ordinarily to raise estoppel mero motu, in this case the question of authority properly arose for consideration because it was the basis upon which the employer opposed the application.

[16] In any event, that aspect of the commissioner's reasoning does not make her decision incorrect. On the objective facts, the jurisdictional requirements of section 142A were satisfied. The commissioner was therefore correct to make the settlement agreement an arbitration award.

[17] The application must accordingly fail.

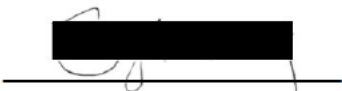
Additional relief

[18] The employer also asked this Court to set aside the underlying settlement agreement. That relief was not sought in the notice of motion and, in any event, for the reasons set out above, the settlement agreement and the section 142A award are distinct. A challenge to the agreement itself lies in contract. It cannot be set aside as consequential relief in this review application.

Order

[1] The application is dismissed.

[2] There is no order as to costs.



SJ Harvey

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv O'Connor instructed by Carlo Swanepoel Attorneys

For the Respondents: no appearance