



(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: 2026-117883

In the matter between:

MARTIN DEON VAN ROOYEN

APPLICANT

and

COLLEGE OF CAPE TOWN

RESPONDENT

Heard: 18 August 2026

Delivered: 27 August 2026

Settlement agreement - section 158(1)(c) read with section 158(1A) of the LRA - mutual separation agreement not shown to have been concluded in settlement of a referable dispute - application dismissed.

JUDGMENT

HARVEY, J

[1] This is an unopposed application to make a settlement agreement concluded between the parties an Order of Court.

[2] Section 158(1)(c) of the Labour Relations Act (LRA) empowers this Court to make a settlement agreement an order of court. That provision must be read with section 158(1A), which provides that, for purposes of section 158(1)(c), a settlement agreement means a written agreement in settlement of a dispute that a party has the right to refer to arbitration or to the Labour Court.

[3] The agreement is annexed to the notice of motion. It is described as a Mutual Separation Agreement between the applicant, Mr Van Rooyen (the employee), and the respondent, the College of Cape Town (the employer). Under the heading 'Background' the agreement records that

'2.1 The Employer proffered certain disciplinary charges alleging misconduct on the part of the Employee;

2.2 The Employee has defended himself against these allegations and has pleaded not guilty to these allegations;

2.3 No findings adverse to the Employee have been made in the proceedings;

2.4 The parties have consulted with a view to resolving the disciplinary proceedings and determination of the Employee's continued employment and have reached agreement on the terms upon which the Employee's services will be terminated;

2.5 The terms of the Employee's termination of employment are recorded below.'

[4] The agreement does not record the existence of any dispute which either party had the right to refer to arbitration or to this Court.

[5] The relevant background narrated in the founding affidavit filed in support of the relief sought is:

'10. There has been a lot of turmoil within the College of Cape Town. Amidst this turmoil I was charged in a disciplinary inquiry after I had made several protected disclosures. I pleaded not guilty and defended myself as best as I could.

11. Before the disciplinary inquiry concluded, we settled.

12. *The College of Cape Town via its representatives concluded a settlement agreement with me, in terms of which I was to be paid until the end of February 2026.*

13. *I was firstly suspected (sic). I did not refer a dispute to the CCMA to contest the fairness of my suspension.'*

Is the agreement one contemplated in section 158(1)(c) read with 158(1A)?

- [6] Having raised my concern as to whether the agreement was a settlement agreement as contemplated by section 158(1)(c) read with section 158(1A), I stood the matter down to afford the applicant's legal representative an opportunity to consider those provisions and later invited her to prepare supplementary heads of argument. The Court is indebted to her for her thorough treatment of the subject in her argument and in her heads.
- [7] The applicant's case is that a dispute arose from his protected disclosures and the occupational detriments he allegedly suffered as a consequence, including his suspension. His legal representative submitted that, at the very least, the suspension gave rise to a dispute concerning the lawfulness and fairness of the respondent's conduct. She submitted that the fact that the applicant did not refer that dispute did not mean that it did not exist.

Evaluation

- [8] In *Greeff v Consol Glass*,¹ the Labour Appeal Court held that, to fall within section 158(1A), an agreement must be in writing, must be in settlement of a dispute, and that dispute must be one which a party has the right to refer to arbitration or to the Labour Court. The agreement must therefore have as its genesis a dispute of the kind contemplated in section 158(1A).²
- [9] *Greeff* also makes clear that the dispute need not already have been referred before the agreement is concluded. It is sufficient that the dispute is of a kind

¹ *Greeff v Consol Glass (Pty) Ltd* (2013) 34 ILJ 2385 (LAC); [2013] ZALAC 7, at paras 19 and 25.

² *Greeff* supra at para 19.

which, if unresolved and once the procedural requirements have been met, may be referred to arbitration or to the Labour Court.³

- [10] I accept the submission that the applicant's failure to refer any dispute concerning his protected disclosures or his suspension is not determinative. The difficulty lies elsewhere. Section 158(1A) requires not only the existence of a dispute capable of referral, but that the agreement sought to be made an order of court was concluded in settlement of that dispute.
- [11] The founding affidavit places the protected disclosures, the applicant's suspension and the disciplinary proceedings within the factual background to the agreement. The settlement agreement itself, however, does not identify any dispute concerning a protected disclosure, an occupational detriment or an unfair suspension as the dispute which it settles. It records instead only that disciplinary charges had been brought against the applicant, that he had pleaded not guilty, and that the parties had consulted with a view to resolving the disciplinary proceedings and determining the applicant's continued employment.
- [12] The existence of disciplinary proceedings, and the applicant's denial of the allegations against him, undoubtedly disclose a disagreement between the parties. But the employer's allegations of misconduct and the applicant's denial of them are not themselves a dispute that either party had the right to refer to arbitration or to this Court. Nor does the fact that the agreement brought the disciplinary proceedings and the employment relationship to an end establish that it was concluded in settlement of the protected-disclosure / occupational-detriment disputes now relied upon.
- [13] Even assuming that a dispute concerning an occupational detriment or an unfair suspension existed and was capable of referral, the applicant must still establish that the agreement was concluded in settlement of that dispute. On the papers before me, that nexus has not been established.
- [14] The applicant's representative also submitted that, unless the agreement is made an order of court, he would be deprived of an effective means of

³ *Greef* supra at para 25.

enforcing it. That is not so. The fact that an agreement does not fall within section 158(1A) does not render it unenforceable as a contract.

[15] I am not persuaded that the agreement is a settlement agreement as contemplated in section 158(1)(c), read with section 158(1A) of the LRA.

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: Ms Monqo, Herold Gie Attorneys

For the Respondent: no appearance