



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

 11 SEPTEMBER 2026
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C461/2023

In the matter between:

GAVIN ADAMS

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

First Respondent

NE SAMUEL N.O.

Second Respondent

DEPARTMENT OF THE PREMIER

Third Respondent

Heard: 9 September 2026

Delivered: 11 September 2026

Summary: (Review application – applicant applied for post at a lower salary level than the one he occupies - it is trite that a promotion for the purposes of section 186(2)(a) involves a move by an existing employee to a higher rank or position that carries greater status, responsibility and authority – dispute not related to promotion and therefore neither CCMA nor Bargaining Council having jurisdiction – review dismissed)

JUDGMENT

MAY, AJ

Introduction

- [1] This is an opposed application to review and set aside a jurisdictional ruling issued by the Second Respondent under the auspices of the First Respondent.

Background

- [2] Applicant referred a dispute to the General Public Services Sectoral Bargaining Council (GPSSBC) averring that the Third Respondent's failure to shortlist him for the post of Education Training and Development Practitioner at salary level 9 constitutes an unfair labour practice related to promotion as contemplated in Section 186 (2) (a) of the Labour Relations Act¹ (LRA). Applicant at the time was employed by the National Department of Trade and Industry in the capacity of Director: Regional Industry Development at salary level 13.
- [3] At the hearing of the matter, the Third Respondent raised a jurisdictional objection that the dispute does not relate to an unfair labour practice because the post that the Applicant applied for was at a much lower level than the one he occupied at the time.
- [4] The arbitrator, Commissioner Retief Olivier, with reference to *Jele*² and *Malatji*³ held that it is trite that a promotion for the purposes of section 186(2)(a) involves a move by an existing employee to a higher rank or position that carries greater status, responsibility and authority.

¹ Act 66 of 1995, as amended.

² *Jele v Premier of the Province of Kwazulu-Natal and others* (2003) ILJ 1392 (LC) at para 1398.

³ *Malatji v City of Tshwane Metropolitan Municipality and Others* (2019) ZALCJHB 300

- [5] Given that the Applicant's dispute did not fall within the ambit of a promotion, the arbitrator ruled that he could not assume jurisdiction in a dispute that falls outside of the definition of an unfair labour practice and thus found that the GPSSBC does not have jurisdiction.
- [6] The Applicant thereafter referred the matter to the First Respondent who appointed the Second Respondent to arbitrate the dispute. The Applicant contended before the Second Respondent that the First Respondent has the authority to overturn the arbitrator's ruling and determine the dispute notwithstanding the fact that the post applied for did not relate to a promotion.
- [7] The Second Respondent, with reference to Sections 145 and 158 of the LRA, confirmed that the exclusive jurisdiction to review decisions rests with the Labour Court. The Second Respondent further held, with reference to *Dairybelle*⁴ and *Driveline Technologies*⁵ that the CCMA is *functus officio*. She accordingly found that the CCMA lacks jurisdiction to hear the dispute.

Evaluation

- [8] When the jurisdiction of an arbitrator is in question, the issue for determination is whether he or she objectively had jurisdiction in law and fact because a finding that the arbitrator had jurisdiction, because he or she might reasonably have assumed as much, "*is wholly untenable in principle*". In other words, the question of the reasonableness of the Commissioner's decision does not arise and in effect, the Commissioner's decision is of no real consequence. The Court must decide the issue of jurisdiction *de novo* on the basis of the record filed in the review proceedings.⁶
- [9] During argument, the Applicant conceded that the legal basis of both awards is correct. The concession was correctly made. As pointed out by Mr Tsegarie, who appears for the Third Respondent, there is simply no case made out for a

⁴ *Dairybelle (Pty) Ltd v Lupondwana N.O. and others* (C679/2001)

⁵ *NUMSA & others v Driveline Technologies (Pty) Ltd and another* (2000) 21 ILJ 142 (LAC) at para 15.

⁶ See: *Moses v Commission for Conciliation, Mediation and Arbitration and Others* (2019) 40 ILJ 2371 (LC) at paras 11 and 12 citing *SA Rugby Players' Association and Others v SA Rugby (Pty) Ltd and Others* (2008) 29 ILJ 2218 LAC at para 39 and *Phaka and Others v Bracks NO and Others* (2015) 36 ILJ 1541 (LAC) at paras 29 and 31.

review of the Second Respondent's award, which is sought by the Applicant, let alone Commissioner Olivier's award, which is belatedly sought in the Applicant's amended notice of motion. The awards are both correct and are thus unassailable.

- [10] The Applicant in Court sought the Court's guidance on what remedies he may still have available to him if any to challenge the decision not to shortlist him. It is not appropriate for a Judge, even an acting Judge, to act as an advocate, attorney or legal advisor⁷ and as such I have urged the Applicant to approach a legal representative for advice on the matter.

Costs

- [11] The most appropriate order as to costs is that both parties remain responsible for their own costs.

- [12] In the premise the following order is made:

Order

1. The application for review is dismissed.
2. There is no order as to costs.



C. May

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Applicant in person

For the third respondent : Adv. C Tsegarie instructed by the State Attorney, Cape Town.

⁷ Article 14 (3)(b) of the Judicial Code of Conduct adopted in terms of Section 12 of the Judicial Service Commission Act 9 of 1994.