IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR1130/16 & J23/15

In the matter between:

FREE STATE GAMBLING & LIQUOR AUTHORITY **Applicant**

and

PEHELO MOTANE N.O. **First Respondent**

MARINA TERBLANCHE N.O. **Second Respondent**

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

NEHAWU obo DINEO PATRICIA RANI **Fourth Respondent**

Heard: **31 August 2016**

Delivered: **10 March 2017**

JUDGMENT

TLHOTLHALEMAJE J

Introduction

[1] The applicant seeks an order reviewing and setting aside three interlinked rulings issued by the first and second respondents (Commissioners) under the auspices of the third respondent (CCMA).

[2] The first was a postponement ruling, in terms of which the applicant's request for a postponement at arbitration proceedings held on 2 October 2014 was declined by the first respondent (Commissioner Motake). The applicant further seeks to have the default award issued by Commissioner Motake on 6 October 2014 reviewed and set aside. In terms of the default award issued after a request for a postponement was declined, the fourth respondent (Ms Patricia Rani) was reinstated with retrospective effect, and awarded back-pay in the amount of R111 003.30.

[3] The third is a rescission ruling issued by the second respondent (Commissioner Terblanche) dated 20 November 2014, in terms of which the applicant's application for a rescission of the default award issued on 6 October 2014 was not determined on account of lack of jurisdiction.

[4] The two rulings and the default award being interlinked, a determination on the main issue of whether a postponement ruling was reviewable or not would be dispositive of the other applications. The late filing of the review application was condoned by Van Niekerk J on 7 June 2016, who had also ordered that the review application be heard on the same date together with the section 158(1)(c) application which was launched under case number JS23/15.

Background

[5] The facts of this matter are largely common cause. Ms Rani was employed by the applicant as a Stakeholder Liaison Officer. She commenced her employment with the applicant on 1 November 2007. She was dismissed on 6 June 2014, following upon an internal disciplinary hearing held on

31 May 2014 pertaining to six counts of alleged misconduct. She was ultimately found guilty of four of those, viz:

(1) "that you leaked confidential information of the Employer to a suspended Employee Relebogile Malefane, which disciplinary hearing was pending and you further colluded with the said Employee to defeat the ends of justice by fabricating evidence regarding her disciplinary hearing in order to defeat the ends of justice";

(2) "Gross dereliction of your duties and responsibility as a coordinator at the sobriety week event in Ficksburg on 20 September 2013 in that you failed and/ or neglected to safeguard and/or control the Employee's property in other words cool drinks that were removed by one Employee Relebogile Malefane who is working for another division";

(3) …

(4) "Gross negligence in that you failed to act in the best interest of the Employer by exposing property belong to the Employer to risk by leaving your bag containing R17 000.00 to R18 000.00 belonging to the Employer to an unauthorised Employee with Relebogile Malefane to be in possession thereof during the weekend of 13-15 September 2013"

(5) …

(6) "Gross negligence that you left soft drinks, about 24 cans, left overs of the sobriety event week event at Ficksburg held 13 September 2013 in possession of an unauthorised Employee Relebogile Malefane during the weekend of 13 September 2013 thereby failing to act in the best interest of the Employer".

[6] With the assistance of NEHAWU, Ms Rani had upon her dismissal, referred an unfair dismissal to the CCMA. After conciliation failed, the dispute was referred for arbitration, and was first enrolled before Commissioner Motake for arbitration on 21 August 2014. Proceedings were postponed at the request of the applicant, on the basis that its main witness was not available.

[7] The matter was re-scheduled to take place on 2 October 2014 at 09h00. Mr Motaung, the applicant's Legal Manager and representative at the proceedings again sought a postponement on the basis that the same sole witness, Ms Mathilda Gasela (Ms Gasela), was not available as she had to consult a medical doctor. At the time, Mr Motaung was not in possession of a copy of a medical certificate to confirm that indeed Ms Gasela was ill.

[8] Commissioner Motake stood the matter down until 14h00 to enable Mr Motaung to either ascertain whether Ms Gasela could be available, and if not, whether she would be in a position to make a medical certificate available for the benefit of the arbitration proceedings. On resumption, Mr Motaung indicated that he could not get hold of Ms Gasela despite two telephonic attempts, and could therefore not make available a copy of the medical certificate.

[9] Ms Rani as represented by Mr Mofokeng of NEHAWU had opposed the request for a postponement on the basis that it would be unreasonable to grant another postponement in view of the previous one granted, and further since there was no reasonable explanation for Ms Gasela not attending the proceedings. Commissioner Motake had considered the request and declined it as there were no acceptable grounds upon which postponement could be granted.

[10] In his founding affidavit to the review application, Mr Motaung contended that that the refusal to grant the application for postponement under the circumstance mentioned above infringed upon the applicant's rights in terms of the law of natural justice. He contended that the refusal to grant a postponement was irrational and unreasonable, and that Commissioner Motake committed gross misconduct in relation to his duties as:

a) The arbitration proceedings were set-down for a hearing at 09h00, but had only commenced at 14h00. The matter would not have been finalised on the day in question and would have been postponed in any event;

b) The refusal to grant the postponement curtailed the arbitration proceedings and 'robbed' the applicant of an opportunity to present its case;

c) Commissioner Motake failed to consider the effect of an adverse cost order against the applicant for the granting of condonation, and should have considered granting costs against the applicant having postponed the matter.

d) Commissioner Motake's findings were based on speculative arguments, and the sole witness could not be reached as she was ill. These were circumstances beyond Motaung's control which Commissioner Motake failed to take into account.

Evaluation

[11] As it was correctly pointed out on behalf of the applicant, if the refusal of the postponement was reviewable, it followed that the default award could not stand. Similarly, if the ruling is found to be unassailable, this should be the end of the applicant's case. The starting point with postponements at the CCMA is its rule 23[1], which sets out the procedures parties are required to follow in order to postpone arbitration proceedings. In accordance with this rule, proceedings may be postponed by agreement between the parties, and

[1] Rule 23 provides that—

"(1) An arbitration may be postponed—

(a) by agreement between the parties in terms of subrule (2); or

(b) by application and on notice to the other parties in terms of subrule (3).

(2) The Commission must postpone an arbitration without the parties appearing if—

(a) all the parties to the dispute agree in writing to the postponement; and

(b) the written agreement for the postponement is received by the Commission more than seven days prior to the scheduled date of the arbitration.

(3) If the conditions of subrule (2) are not met, any party may apply in terms of rule 31 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the Commission before the scheduled date of the arbitration.

(4) After considering the written application, the Commission may—

(a) without convening a hearing, postpone the matter; or

(b) convene a hearing to determine whether to postpone the matter.

there would be no need for them to appear if the written agreement for the postponement was received more than seven days before the scheduled date. The CCMA is obliged to postpone the proceedings under sub-rule (2)(a). Where there is no agreement however, a party must still make an application to be considered under sub-rule (3).

[12] The provisions of rule 23 do not exclude the possibility of an application for a postponement being made at the proceedings themselves, as the provisions of rule 31(10) enjoins a Commissioner to determine any application in a manner deemed fit. Furthermore, in accordance with the provisions of rule 31(8), the requirements of rule 31, and by implication, of rule 23 may be dispensed with, where an application for a postponement was brought on the scheduled date of an arbitration and where good cause exists for treating the matter as an urgent application.

[13] Other than the above provisions, Commissioners have a useful guide in the form of the *CCMA Practice and Procedure Manual*[2], in terms of which *inter alia*, the Commissioner has a discretion to be exercised judicially, whether an application for postponement should be granted or refused. In circumstances, as in this case, where an application was brought on the date of the arbitration proceedings, such an application should only be considered if it is shown that good cause exists for treating the application as urgent. Factors to be considered in this regard include the explanation for not seeking consent from the other party timeously; whether the other party was given sufficient notice of the intended application; the prejudice to the other party; whether the application is *bona fide* and not merely used as a delaying tactic; or whether if the request is granted, a cost order can fairly compensate the prejudice or potential prejudice to the other party.

[14] Other factors to be considered include whether the explanation given for the request was full and satisfactory; whether the application is opposed; the history of previous postponements; the importance of the case; the prospects

[2] Chapter 15.

of success of the party applying for a postponement; the costs to the CCMA; public interest and the quest for expeditious resolution of disputes. Ultimately, the Commissioner's discretion must be exercised judicially and for substantial reasons and not capriciously or on any wrong principle[3].

[15] In *Carephone (Pty) Ltd v Marcus NO and Others*[4], Froneman DJP (as he then was) reiterated that an application for postponement was not a matter of right. It is an indulgence granted by the court to a litigant in the exercise of a judicial discretion[5]. With regards to proceedings before the CCMA, Froneman DJP further held that:

> "There are at least three reasons why the approach to applications for postponements in arbitration proceedings under the auspices of the commission under the LRA is not necessarily on a par with that in courts of law. The first is that arbitration proceedings must be structured to deal with a dispute fairly and quickly (s 138(1)). Secondly, it must be done with 'the minimum of legal formalities' (s 138(1)). And thirdly, the possibility of making costs orders to counter prejudice in good faith postponement applications is severely restricted. . . "[6]

[16] Emanating from the above and other jurisprudence, it is apparent that:

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[3] See (*R v Zackey* 1945 AD 505; *Madnitsky v Rosenberg* 1949 (2) SA 392 (A) at 398-9, *Joshua v Joshua* 1961 (1) SA 455 (SW) or 457 (A).

[4] 1999 (3) SA 304 (LAC) at para 54.

[5] See also *Lekolwane & another v Minister of Justice and Constitutional Development* 2007 (3) BCLR 280 (CC) where it was held that:

> "The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted, unless this court is satisfied that it is in the interests of justice to do so. In this respect the application must ordinarily show that there is good cause for the postponement, whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, this Court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed and the broader public interest."

[6] *Carephone* above n 4 at para 55.

a) postponements at arbitration hearings are not to be readily granted[7].

b) postponements in arbitrations should be granted on "less generous basis." This approach is informed by the recognition that the LRA requires that labour disputes need to be resolved expeditiously and thus arbitrators have a wide discretion in granting or refusing to grant a postponement;[8]

c) where fundamental fairness and justice justifies a postponement, the arbitrator may in appropriate cases, allow such an application even if it was not timeously made;

d) the Labour Court sitting in review will adopt a stringent and restricted approach to interfering with the refusal to grant postponements by arbitrators;

e) it is only when a compelling case has been made for interfering with the exercise of the discretion of the arbitrator, will the court interfere with the refusal to grant a postponement. This can be in instances where the arbitrator was influenced by wrong principles or misdirection on the facts, or where the decision reached could not reasonably have been made by an arbitrator properly directing him/herself to all the relevant facts and principles.

[7] See *National Police Service Union & others v Minister of Safety and Security & others* 2000 (4) SA 1110 (CC) at 1112F, where it was held that:

> "The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion this Court will take into account a number of factors, including (but not limited to): whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice"

[8] *Real Estate Services (Pty) Ltd v Smith* 1999) 20 ILJ 196 (LC) at para 12. See also See *Northern Province Development Corporation v CCMA and Others* (2001) 22 ILJ 2697 (LC) at para 20 and *Fraser International Removals v CCMA and Others* 1999 (7) BLLR 689 (LC).

[17] The reasonable decision maker test which is applied in determining whether an arbitration award is susceptible to a review involves a consideration of not only the reasons given by the Commissioner but also all the material that properly served before him or her. Equally so a refusal to grant a postponement involves a consideration of whether a Commissioner acted reasonably, with regard to the principles and jurisprudence alluded to elsewhere in this judgment.

[18] The reasonableness of the decision to refuse a postponement must be judged on the basis of the information which was placed before the Commissioner Motake at the time that a postponement was sought. Based on the record of proceedings and the award itself, there is no basis upon which it can be concluded that Commissioner had arrived at a decision which no other reasonable commissioner would have arrived at in the light of what was before him at the time, which was that:

a) the main reason for seeking a postponement was that Ms Gasela, the applicant's sole witness was not available as she was allegedly ill;

b) the matter was initially postponed on 21 August 2014 on the basis that Ms Gasela was not available as she was attending a meeting in Cape Town. On securing a postponement on that date, Mr Motaung on behalf of the applicant undertook that Gasela would commit herself to the next set-down date[9]. *Prima facie*, this undertaking appears to have been made in vain.

c) when the arbitration proceedings reconvened on 2 October 2014, Mr Motaung again sought a postponement on behalf of the applicant, on the grounds that the same witness, Ms Gasela was indisposed. Mr Motaung was afforded until 14h00[10] to contact Ms Gasela with a view of obtaining a copy of a medical certificate from her to prove her illness;

[9] Line 17 page 245 of the Record of Arbitration Proceedings

[10] Line 9 page 279 of the Record

d) upon resumption at 14h07, Mr Motaung reported back that Ms Gasela could not be located despite two attempts. Commissioner Motake issued a ruling, stating that the matter stood was down for one and a half hour for Mr Motaung to secure the required copy of the medical certificate; that the matter was previously postponed as the same witness was not available. He took into account that disputes had to be resolved speedily, and that the applicant had been afforded an indulgence. His conclusions were that a postponement should be refused in the absence of any proof that Ms Gasale was incapacitated;

e) immediately upon the issuing of the ruling, Mr Motaung informed the Commissioner that his instructions were to take the decision on review, and requested further reasons for that ruling.

[19] The applicant attacked the ruling on the basis that it was issued in circumstances where Commissioner had accepted that he would be denying it an opportunity to be heard. This cannot by all accounts be a sustainable basis for reviewing the ruling. An acknowledgment by a commissioner that proceeding with a matter in circumstances where a postponement was declined would result in the other party not being heard was merely a statement of fact in the light of the request for a postponement. Furthermore, informing a party of its rights to rescind a ruling if so desired can only be unsolicited legal advice to the other party (which might be wrong advice in any event), and can hardly be misconstrued as an irregularity on the part of a Commissioner.

[20] Central to the reasoning of the Commissioner was that as required of him, he had considered the fact that the matter was previously postponed because the same witness was not available, and further that arbitration proceedings had to be speedily finalised as that is what the LRA required. He had granted Mr Motaung more than an indulgence to find out where this witness was. If indeed the application was *bona fide*, and the witness knew of the proceedings and was committed to the set-down date as undertaken on 21 August 2014, there was nothing placed before the Commissioner at the time

as shall further be shown, to indicate that the witness had made any attempt to timeously inform Mr Motaung earlier on the day about her alleged ailment or her whereabouts.

[21] More concerning with Mr Motaung's approach to this matter are his averments in the application for rescission before the CCMA, which had raised some pertinent information, was not placed before Commissioner Motake at the time that a postponement. This included that Ms Gasela had allegedly assured him on 1 October 2014 that she would attend the proceedings the following day. Incredibly, this assurance came about notwithstanding the fact that Ms Gasela was allegedly still to undergo a stomach operation on the same date.[11] The contention that Ms Gasale made these assurances whilst knowing that she was supposed to undergo a stomach operation on the day before the proceedings is disingenuous in the extreme. If indeed Ms Gasale knew that she would be undergoing an operation on 1 October 2014, it is improbable that she would not have informed Mr Motaung of that fact, let alone make any undertaking to attend an arbitration hearing.

[22] The *bona fides* of the application ought further to be looked at within the context of a copy of the medical certificate that was subsequently submitted for the purposes of the rescission application. The copy, for what it is worth, was issued by a medical practitioner at Medicross, Edenvale Medical Centre (Gauteng). It is dated 3 October 2014, and records that Ms Gasela was examined on 1 October 2014. She was declared unfit for duty between 1 and 7 October 2014. A concern raised in the rescission ruling by Commissioner Terblanche, which concern I share is that the certificate was issued a day after the arbitration proceedings had taken place and did not specify anything about Ms Gasela having undergone an operation on 1 October 2014. To the extent that Mr Motaung alleged that he had seen Ms Gasela in the morning of 1 October 2014 at the workplace in Bloemfontein, it is not clear as to when she could have left the workplace and travelled all the way to Edenvale for the operation on the same date. In any event, any expectation that she would

[11] Page 156 of the Record.

have attended the arbitration proceedings in Bloemfontein a day after her alleged stomach operation in Edenvale, is far-fetched and disingenuous. The invariable conclusion to be reached in this regard is that the more Mr Motaung sought to disentangle himself out of his own self-made quagmire, the deeper he sank in it. He clearly had no substantive reasons to seek a postponement.

[23] It is further apparent that Mr Motaung had merely presented himself at the arbitration proceedings with an expectation that a postponement would be readily granted, without making any effort to place substantive reasons as to the absence of Ms Gasela. It was not sufficient for Motaung, after being granted an indulgence to find out where this witness was, to simply report back that she could not be found after two mere telephonic attempts. The Commissioner and Ms Rani were entitled to a full and satisfactory explanation (if any existed) which was not forthcoming. Furthermore, there is no merit in the contention that the Commissioner ought to have postponed the proceedings in any event simply because they had started late. The proceedings started late as amongst other things, Mr Motaung was granted just under two hours to locate Ms Gasela, when he knew that this was a pointless exercise.

[24] Other than the above difficulties, Mr Motaung further averred in his founding affidavit in support of the rescission application that on 2 October 2014 at about 08h00, he had received a telephone call from Ms Gasela who informed him that she could not travel to Bloemfontein as there were problems regarding her operation. She *inter alia* undertook to furnish Mr Motaung with a copy of the medical certificate.

[25] I have again trawled through the record of arbitration proceedings (despite it not being the function of this Court to do so) to find any evidence that suggests that Motaung's above averments in the rescission application were brought to the attention of Commissioner Motake, and could find no such evidence. He never brought it to the attention of the Commissioner that he got a call from Ms Gasale earlier in the morning, and that he was informed that she had problems with her operation. This was crucial information that could

have persuaded the Commissioner. However, if indeed Ms Gasale had indeed called Mr Motaung in the morning of 2 October 2014 to inform him that she was incapacitated, why did he have to travel all the way back to the workplace after the Commissioner had granted him an indulgence, to establish her whereabouts, instead of simply disclosing to the Commissioner that Ms Gasela had an operation and complications thereafter?

[26] Even after Mr Motaung was granted an indulge, he informed the Commissioner that he went to the applicant's offices and tried to call Ms Gasela but could not get hold of her. Most striking with averments made by Mr Motaung in the rescission application is that in none of the applications, viz, the rescission before the CCMA or in respect of this application, was an attempt made to secure Ms Gasela's confirmatory/supporting affidavit. Such an affidavit was crucial in the light of the little weight that was to be attached to the copy of the medical certificate where it was not accompanied by a substantial affidavit by the medical practitioner to explain the nature of the ailment. It is trite that a mere copy of a certificate is not on its own sufficient, as it constitutes hearsay evidence [12]. Further in the light of the hearsay nature of the averments pertaining to alleged conversations with Ms Gasela a day before the hearing and on the morning of the hearing, the failure to file a confirmatory affidavit in this regard was fatal to the applicant's case.

[27] Mr Motaung had two opportunities to disclose to the Commissioner that Ms Gasela had informed him in the morning of 2 October 2014 that she had medical problems. He failed to do so at the appropriate time, and instead chose to take Commissioner Motake, Ms Rani and her representative on a joy ride to nowhere. He not only wasted the precious time of the Commissioner, the CCMA and the other party, but also attempted to wood-wink them into believing that Ms Gasela would be available, when it was apparent that she was not going to be available for the proceedings. He failed to take the Commission into his confidence, and by implication, this Court. The Court takes serious umbrage when litigants deliberately seek to mislead it, or any

[12] *Mgobhozi v Naidoo NO & Others* [2006] 3 BLLR 242 (LAC).

other dispute resolution forum. On the facts, therefore, I am satisfied that with his application for a postponement, Mr Motaung was buying time to avoid the inevitable. He had in the process, attempted to abuse the CCMA proceedings, and Commissioner Motake was correct in taking a firm stand against such abuse and disrespect of proceedings.

[28] The fact that immediately upon the issuing of the ruling, Mr Motaung had informed the Commissioner that his instructions were to take the decision on review, and requested further reasons for that ruling, is further indicative of his attitude towards arbitration proceedings. It appears not to be uncommon upon a reading of various records of arbitration proceedings before this Court, to come across instances where Commissioners are always informed (almost in a threatening manner) of parties' rights and intentions to launched review proceedings. This happens in some instances, even before proceedings had commenced let alone finalised. I am uncertain as to whether the purpose of this approach is to intimidate Commissioners into making certain decisions or not. Be that as it may, it is uncalled for, as parties are entitled to exercise their rights under the LRA without Commissioners being constantly reminded of that fact. The sentiments expressed by *Carephone*[13] in respect of this Court's role towards the Commission and other statutory dispute resolution bodies are worth repeating, as they are equally apposite in this case. Mlambo J (as he then was) stated that:

> "The role of this court towards the commission is a crucial one. While it has review powers over any function performed by the commission, as a matter of policy, it should also protect the commission from practices that could gain it disrespect. This court will not countenance conduct that is designed to interfere with the work of the commission or even hinder it in its functions. The commission is an institution that was created with the specific objective of not repeating the mistakes of the past. The commission plays a crucial role in the dispute resolution dispensation under the Act. For this dispensation to be effective the commission must not be hindered in its work.

[13] *Carephone* above n 4 at paras 19–21.

And,

> "The commission goes through elaborate preparation in enrolling arbitrations and appointing commissioners to arbitrate disputes. It is a statement of the obvious that the date allocation by the commission should be respected and complied with. It is only in those exceptional circumstances when unforeseen circumstances beyond a party's control prevent it from attending an arbitration that an indulgence may be considered. The application must however be made timeously. The commission is not obliged to succumb to unnecessary postponement requests which result in serious disruptions to its work. It is high time that parties recognise the important role performed by the commission and give it the respect it deserves. This court will ensure this".

And

> "It is clear that the applicant in this matter took it for granted that it was entitled to legal representation and could also obtain a postponement of the proceedings as it wished. These are issues on which the commission must exercise a discretion and a party who takes this for granted does so at its own peril."

[29] To summarise then, the Commissioner's decision to refuse a postponement is unassailable. The application before him was not *bona fide* and was merely used as a delaying tactic by Mr Motaung, who had failed to take the Commissioner into his confidence, and had approached the Commission ill-prepared, and with a false sense of entitlement to a further postponement. He had not proffered a full and satisfactory as to the reason a postponement was necessary. Ms Rani had been prejudiced as a result of the previous postponement and she stood to be further prejudiced if the proceedings were to be postponed yet again. I am satisfied that the Commissioner in arriving at his decision had elicited evidence from Mr Motaung as to why he should be granted an indulgence, and none was forthcoming. The Commissioner had analysed whatever evidence was placed before him by

both parties, correctly applied the legal principles and came to a reasoned conclusion. In the circumstances, the public interest and the quest for expeditious resolution of disputes as mandated by the LRA persuaded the Commissioner to come that decision. There is therefore no basis for any conclusion to be reached that the Commissioner exercised his discretion capriciously or on any wrong principle or consideration. Accordingly, the court finds no reason to interfere with his ruling.

The rescission ruling

[30] In view of the conclusions reached above, it would not be necessary to deal with the issue of the rescission ruling. The applicant in its heads of argument conceded that bringing an application for rescission in respect of Commissioner Motake's ruling was not proper. The fact that Commissioner Motake had suggested and endorsed that route cannot not imply that the applicant ought to have followed it. The fact of the matter is that this was not any ordinary matter where a default was granted in circumstances where the applicant had failed to make an appearance at all. The applicant was represented at the arbitration proceedings and upon the postponement having been declined, had not participated further in the proceedings. Commissioner Terblanche had declined to determine the rescission application on account of lack of jurisdiction. This approach was correct in that rulings and awards can only be rescinded within the confines of the provisions of section 144 of the LRA.[14] Given the circumstances under which the default award was issued, none of the grounds listed under these provisions would have been applicable. This approach cannot be faulted in that a decision by this Court

[14] Section 144 is entitled *"Variation and rescission of arbitration awards and rulings"* and provides:

> "Any commissioner who has issued an arbitration award or ruling, or any other commissioner appointed by the director for that purpose, may on that commissioner's own accord or, on the application of any affected party, vary or rescind an arbitration award or ruling—
>
> a) erroneously sought or erroneously made in the absence of any party affected by that award;
>
> b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;
>
> c) granted as a result of a mistake common to the parties to the proceedings; or
>
> d) made in the absence of any party, on good cause shown."

that the postponement ruling was reviewable would invariably have implied that the default award ought to be set aside. To the extent that the review in that regard failed, the default award therefore stands.

[31] It was further common cause that the notice of motion in respect of the section 158(1)(c) of the LRA was filed on 23 January 2015. That application in accordance with the order of Van Niekerk J was to be considered together with the review application. Having considered the application, I can find no factors that militate against making the award issued on 6 October 2014 an order of court, particularly in the light of the review application being unsuccessful. In regards to costs, the fourth respondent was represented by a Union official and is accordingly not entitled to any legal costs.

Order

[32] In the circumstances, the following order is deemed appropriate:

1. The application to review and set aside the postponement ruling issued by the first respondent on 02 October 2014 under case number FSBF3091-14 is dismissed.
2. The application to review and set aside the rescission ruling issued by the second respondent on 20 November 2014 under case number FSBF3091-14 is dismissed.
3. The award issued by the first respondent under case number FSBF3091-14 dated 06 October 2014 is herein made an order of court in terms of the provisions of Section 158 (1) (c) of the Labour Relations Act.
4. There is no order as to costs.

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E Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant:	Adv. T Govender
Instructed by:	Sunil Narian Incorporated Attorneys
For the Fourth Respondent:	Mr. Malase Phoko of NEHAWU