



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: D1142/15

In the matter between:

DR CHATROOGHOON

Applicant

and

**COMMISSIONER OF THE SOUTH AFRICAN
REVENUE SERVICES**

Respondent

Heard: 11 May 2017

Delivered: 1 June 2017

JUDGMENT

Saloojee AJ

Introduction

- [1] This is an application for the payment of money constituting interest amounts on an award and for payment of an amount to be determined by the Government Employees Pension Fund as interest to reinstate the applicant's pensionable service.

- [2] At the commencement of the hearing, the parties agreed that the issue to be determined was, whether the respondent is obliged to pay interest on an award. It also follows that in the event of a positive finding, the relief sought would be granted.

Background

- [3] On 13 May 2007, the applicant obtained an award from the CCMA in which the commissioner found the applicant's dismissal to be unfair.
- [4] The respondent was ordered to reinstate the applicant on terms and conditions no less favourable than those prior to his dismissal on 2 August 2006 and the reinstatement would operate from 25 August 2006.
- [5] The respondent was also ordered to pay to the applicant a remuneration arising from the reinstatement less statutory deductions. This amount had to be paid within fourteen days of the award.
- [6] The respondent unsuccessfully applied to review and set aside the award. The respondent then unsuccessfully appealed to the Labour Court and thereafter exhausted its remedies by unsuccessfully applying for leave to appeal to the Constitutional Court.
- [7] The applicant was paid in terms of the award at the end of February 2014.

Analysis

- [8] The Constitutional Court in *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Ltd t/a Metrobus and Others*¹ stated:

“Lastly, a debt contemplated in the Prescription Act cannot be reviewed or appealed against, except if it is a judgment debt. Again,

¹ [2017] 3 BLLR 213 (CC) at para 55.

apart from a judgment debt, debts that prescribe under the Prescription Act do not earn interest unless it is by agreement between parties to a contract. But an arbitration award earns interest from the date it is made according to section 143(2) of the LRA. It can be reviewed in terms of section 145 and may be appealed against in terms of section 24(7) of the LRA.” (Emphasis added.)

- [9] The issue whether the respondent is obliged to pay interest on an award was considered in two recent cases. The first was *Public Servants Association of South Africa obo Malepe v Department of Justice and Constitutional Development and Another*² where the Court found that the amount awarded earns interest at the prescribed rate from the date the award is issued and section 33A(9) provides that interest accrues from the date from which it is “due and payable”.
- [10] The second was the case of *Themba v Mintroad Sawmills (Pty) Ltd*,³ where the Court confirmed the rule in *Top v Top Reizen CC*⁴ that a creditor is liable for interest once *in mora* for payment of a liquidated debt.
- [11] The reasoning in both cases is based on the interpretation of section 143(2) of the LRA, as expounded in *Top v Top Reizen CC*, that—
- “The effect of section 143(2) is that an award of any sum of money automatically attracts post-award interest at the rate set by the statutory instruments made under the Prescribed Rate of Interest Act, unless the arbitrator specifies that the award shall not carry interest. It is clear that section 143(2) does not depart from the common law position in that interest commences to run from the date upon which the debtor's claim was ascertained. The arbitrator however has a veto by the exercise of which he may direct that the award will not carry

² [2014] 3 BLLR 284 (LC).

³ [2015] 2 BLLR 174 (LC) at para 50.

⁴ (2006) 27 ILJ 1948 (LC); [2006] JOL 17810 (LC).

interest at all. Unless he so directs, the award will automatically carry interest at the same rate as a judgment debt. See *Timber Shipping Co SA v London and Overseas Freighters Ltd* [1971] 2 ALL ER 599, [1972] AC 1; *Rocco Guisepe and Figli v Tradax Export SA* [1983] 3 ALL ER 598 and *Walker and others v Rome and others* [1999] 2 ALL ER (Comm) 961, where the English Courts dealt with an equivalent section (section 20) in the 1965 Arbitration Act.”⁵

[12] In light of the above cases, the applicant succeeds on the issue that the respondent is obliged to pay interest on the award in so far as the respondent was in default of the award.

[13] The compensation amount was omitted from the award; this does not expunge the respondent’s liability to pay interest to the applicant. In the *Public Servants Association of South Africa* case above at para 11, the Court stated the following:

“Van Zyl J’s analysis of the legal position on the payment of interest may be summarised in point form as follows:

11.1 under the common law a debtor is only liable for interest on the principal debt if he is in *mora*;

11.2 a debtor is not in *mora* and, therefore, not liable for the payment of interest if the debtor could not know or determine the amount to be paid;

11.3 in the case of illiquid claims that cannot be readily ascertained or not fixed by agreement, interest accrues from the date of judgment if it was specifically claimed; and

11.4 the liability to pay *mora* interest automatically attaches to the principal obligation by operation of law so that once the liability of the debtor to pay *mora* interest has been established the creditor is entitled there to as a matter of right and not at the discretion of the court.”

(Footnotes omitted.)

⁵ Id at para 21.

- [14] The amount due to the applicant in terms of the award was determined and paid by the respondent, albeit late. Thus, the respondent is liable to make payment of the interest amount to the applicant.
- [15] Paragraph 2.3 of the award states that— *“[t]he amount payable to the applicant in terms of paragraph 2.2 above must be paid within 14 days of the date on which the respondent received this award.”*
- [16] The award was issued on 13 May 2007 and the applicant (the respondent at the CCMA) did not dispute the date of issue of the award. Thus, the fourteen-day period expired on 28 May 2007 and the applicant was in default from 29 May 2007, the date on which interest on the award commenced.
- [17] The respondent did not raise any argument on the suspension of the award pending the review application and subsequent appeals and this Court does not have to consider this issue.

Conclusion

- [18] The applicant succeeded in demonstrating that the respondent is obliged to pay interest on the award in so far as the respondent was in default of the award and the applicant is entitled to an order in terms of the notice of motion.
- [19] It is appropriate in the circumstances that the respondent pays the costs of the application.

Order

- [20] In the premise, I make the following order:
1. The respondent is ordered to make payment to the applicant the following amounts:
 - a) R221 974.00

- b) R1 466 178.00
 - c) R223 371.00
2. The respondent is ordered to pay an amount to be determined by the Government Employees Pension Fund as interest in order to reinstate the applicant's pensionable service.
 3. The respondent is ordered to pay the applicant's costs.

YF Saloojee AJ
Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: MS Khan SC

Instructed by: Derik Jaftha Attorneys

For the Respondent: K Tsatsawane

Instructed by: Hogan Lovells