THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 1092/2023

In the matter between:

KAREN GREYBE AND 4 OTHERS **Applicant**

and

PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL (PSBC) **First Respondent**

JOHN CHEERE ROBERTSON *N.O* **Second Respondent**

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT **Third Respondent**

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION **Fourth Respondent**

Heard: **7 November 2024**
Delivered: **18 December 2024**

This judgment was handed down electronically by consent of the parties' legal representatives by circulation to them via email. The date for hand-down is deemed to be 18 December 2024.

JUDGMENT

PRINSLOO, J

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Background

[1] The Applicants are all employed by the Third Respondent (Department) as senior legal secretaries in the office of the State Attorney, Johannesburg. They were appointed on different dates but during 2006, their posts were upgraded to level 7 as a result of the outcome of a job evaluation process conducted in 2005. They are still employed at salary level 7.

[2] During 2009, a collective agreement, referred to as Resolution 3 of 2009 (Resolution) was concluded between the trade unions within the public service sector and the state as employer. The objective of the Resolution was to "*give effect to clause 5 of Resolution 1 of 2007 by introducing a revised salary structure for all occupational categories graded on salary levels 1 – 12 not covered by any Occupations Specific Dispensation (OSD) and to introduce a career pathing model and grade progression for identified salary levels*".

[3] The Resolution provides for a grade progression model based on the principles that posts are graded based on the outcome of job evaluation, recognition of performance and completed continuous years of service on a salary level irrespective of the notch. Clause 3.6.2.2 specifically provides that:

> 'With effect from 1 April 2020 (salary adjusted with effect from 1 July annually) an employee on salary level 4, 5, 6 or 7, who has completed 15 years of continuous service on a salary level, irrespective of the notch, and has obtained at least satisfactory rating in his/her performance assessments (the average assessment over the last 2 year period will determine the performance rating) shall grade (salary level) progress to salary level 5, 6, 7 or 8 respectively. This is not subject to the availability of posts.'

[4] As the Applicants were appointed at salary level 7 in 2006, after a job evaluation process, they had completed 15 years of continuous service on salary level 7 and according to them, they met all the requirements to be upgraded in terms of the Resolution. They were however not upgraded and upon inquiry, they were informed that their posts were indeed downgraded to salary level 5 in 2006.

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[5] The Applicants expected that upon completion of the 15 year period and having met all the other requirements, they would be upgraded to salary level 8 and when that did not happen, they declared a dispute regarding the interpretation and application of Resolution 3 of 2009 and referred it to the First Respondent (PSCBC).

The arbitration

[6] The Second Respondent (arbitrator) recorded that the issue he had to decide was whether the Department correctly applied the Resolution by not grade-progressing the Applicants from salary level 7 to 8 with effect from the dates they had completed 15 years of continuous service at salary level 7.

[7] The parties did not lead evidence but instead agreed on a stated case, wherein they set out the background to the dispute. It is evident from the stated case that the Applicants' case is that their positions were subject to a job evaluation process and as a result, they were placed at salary level 7 with effect from 1 February 2006 and to date they are remunerated at salary level 7.

[8] The Department's case on the other hand was that the grading of jobs for secretary and personal assistant was done by the Fourth Respondent (DPSA) as per the 'Benchmark of Job Descriptions, Grading Levels and Implementation Guidelines for Jobs of Secretary and Personal Assistant' dated 13 December 2006. In terms of the aforesaid benchmark, the post of secretary was graded at 4+, allowing the relevant authority the discretion to allocate either salary level 4 or 5. The DPSA benchmark was implemented with effect from 1 July 2006 and the Applicants' posts were graded at level 5. Their job titles and salary ranges were translated from that of Senior Secretary grade IV at salary level 7 to Secretary at salary level 5 and the Applicants were translated accordingly in their respective posts with retention of their salary at salary level 7. The Department's case is that the Applicants could only grade progress from salary level 5 to 6 in terms of the Resolution and that they could not progress from salary level 7 to 8, 15 years after 1 February 2006.

[9] It is common cause that the Applicants completed 15 years of continuous service on salary level 7 on 1 February 2021 and that they have obtained the

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necessary satisfactory performance ratings in their performance assessments over the last two-year period.

[10] The arbitrator considered the matter on paper, without hearing any evidence.

The arbitration award

[11] The arbitrator considered the objective of the Resolution and recorded that it was to give effect to clause 5 of Resolution 1 of 2007 by introducing a revised salary structure for all occupational categories graded on salary levels 1 – 12 not covered by any OSD and to introduce a career pathing model and grade progression for identified salary levels. According to the arbitrator, the Resolution did not deal only with a revised salary structure, but also a career pathing model and grade progression for identified salary levels.

[12] The arbitrator recorded what was stated in clauses 3.5 and 3.6.2, which set out the principles on which the grade progression model is based and the model for salary levels 4-5, 5-6, 6-7 and 7-8. The grade progression model is based on job evaluation, recognition of performance and completed continuous years of service on a salary level.

[13] He recorded what 'job evaluation' entails and held that 'salary progression' in terms of the Resolution is not based on the number of years at a particular salary level only, but that the requirements for grade progression in terms of the Resolution is job evaluation, recognition of performance and the necessary number of completed years of continuous service. The arbitrator found that the Applicants' posts were graded at post level 5 with effect from 1 July 2006 and the fact that they were retained in their level 5 posts at salary level 7 does not entitle them to progress to salary level 8, as it falls outside of the salary level applicable to a post graded on level 5.

[14] The arbitrator found that grade progression in terms of the Resolution may occur, in the case of an employee whose post was graded at level 5, from salary level 5 to 6 when the employee has completed 15 years in the post from the date of job evaluation and obtained a satisfactory performance rating. The

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Department did not fail to adhere to or properly apply the provisions of the Resolution and the Applicants' claim was dismissed.

The applicable legal principles:

[15] The courts have considered the issue of interpretation on several occasions and the applicable principles are by now set as trite. In my view, a brief overview of the principles will be useful *in casu.*

[16] The Supreme Court of Appeal (SCA) in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[1] affirmed the principles applicable to the interpretation of legislation and contracts. What the judgment underscores is that the exercise of interpretation does not require a court to discern the intention of the legislature or the parties to a contract only by reference to the plain meaning of words with a deferential nod, if necessary, in the direction of the *Oxford English Dictionary*. The following was said:

> 'The present state of the law can be expressed as follows: interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document…. The "inevitable point of departure is the language of the provision itself" read in context and having regard to the purpose of the provision and the background to the preparation and production of the document…'

[17] And at paragraph 26 it was held that:

[1] [2012] ZASCA 13; 2012 (4) SA 593 (SCA) at para 18.

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> 'In between these two extremes, in most cases the court is faced with two or more possible meanings that are to a greater or lesser degree available on the language used. Here it is usually said that the language is ambiguous, although the only ambiguity lies in selecting the proper meaning (on which views may legitimately differ). In resolving the problem, the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation. An interpretation will not be given that leads to impractical, unbusinesslike or oppressive consequences or that will stultify the broader operation of the legislation or contract under consideration.'

[18] In *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk*[2], the SCA also considered the principles applicable to the interpretation of legislation and contracts and held that:

> 'Whilst the starting point remains the words of the document, which are the only relevant medium through which the parties have expressed their contractual intentions, the process of interpretation does not stop at a perceived literal meaning of those words, but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding circumstances, never very clear, has fallen away. Interpretation is no longer a process that occurs in stages but is "essentially one unitary exercise".'

[19] In *Coopers & Lybrand and Others v Bryant*[3], it was held that:

> 'The matter is essentially one of interpretation. I proceed to ascertain the common intention of the parties from the language used in the instrument. Various canons of construction are available to ascertain their common intention at the time of concluding the cession. According to the 'golden rule' of interpretation the language in the document is to be given its grammatical and ordinary meaning, unless this would result in some absurdity, or some repugnancy or inconsistency with the rest of the instrument…'

[2] [2013] ZASCA 176; [2014] 1 AII SA 517 (SCA) at para 12.
[3] [1995] ZASCA 64; 1995 (3) SA 761 (A) (*Coopers*) at 767D-E.

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[20] In *Food and Allied Workers Union v Commission for Conciliation, Mediation and Arbitration and Others*[4], the interpretation of a collective agreement was considered and it was held that:

> 'What is accordingly very clear is that, where a court, or a commissioner of the CCMA for that matter, is tasked to interpret a written contract, or as in the present case, a collective agreement, it must give to the words used by the parties their plain, ordinary and popular meaning and if there is no ambiguity in the words of the contract, they must be given their plain, ordinary and popular meaning.'

[21] In *Herbert v Head Education: Western Cape Education Department and Others*[5] *(Herbert),* the Labour Appeal Court (LAC) dealt with a matter that concerned the interpretation and application of a collective agreement. It was held that:

> '[13] In *University of Johannesburg v Auckland Park Theological Seminary and Another*, the Constitutional Court stated that the approach to interpretation adopted in *Endumeni* had "updated" the previous position, which was that context could be resorted to if there was ambiguity or lack of clarity in the text. In cases subsequent to *Endumeni*, the Constitutional Court noted that the Supreme Court of Appeal "has explicitly pointed out that context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous."
>
> [14] In *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others,* the Supreme Court of Appeal stated that:
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> > "…*Endumeni* has become a ritualised incantation in many submissions before the courts. It is often used as an open-ended permission to pursue undisciplined and self-serving interpretations. Neither *Endumeni,* nor its reception in the Constitutional Court, most recently in *University of Johannesburg*, evince skepticism that the words and terms used in a contract have meaning."
>
> [15] The Court noted that what *Endumeni* does is that it –

[4] [2006] ZALC 30; (2007) 28 ILJ 382 (LC) at para 35.
[5] [2022] ZALAC 9; (2022) 43 ILJ 1618 (LAC) at paras 13 – 16.

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> "… simply gives expression to the view that the words and concepts used in a contract and their relationship to the external world are not self-defining. The case and its progeny emphasise that the meaning of a contested term of a contract (or provision in a statute) is properly understood not simply by selecting standard definitions of particular words, often taken from dictionaries, but by understanding the words and sentences that comprise the contested term as they fit into the larger structure of the agreement, its context and purpose. Meaning is ultimately the most compelling and coherent account the interpreter can provide, making use of these sources of interpretation. It is not a partial selection of interpretational materials directed at a predetermined result."

[16] In interpreting the collective agreement in this matter, the arbitrator was required to have regard to the aim and purpose of the collective agreement, the words and language used in it, having regard to ordinary rules of grammar and syntax, and the context in which the disputed terms appear in the agreement….'

[22] In short: the correct approach to the application of the 'golden rule' of interpretation after having ascertained the literal meaning of the word or phrase in question, is to have regard to the context in which the word or phrase is used with its interrelation to the contract as a whole, including the nature and purpose of the contract and the background circumstances which explains the purpose of the contract.[6] The point of departure is that words and terms used in a contract have meaning.

The test on review

[23] In *SA Municipal Workers Union v SA Local Government Bargaining Council and Others*[7], the LAC dealt with a review application concerning the interpretation or application of a collective agreement and noted that the question to be answered was not whether the award in issue was correct but whether the arbitrator had acted fairly, and considered and applied his mind to the issues

[6] *Coopers supra.*
[7] [2011] ZALAC 22; (2012) 33 ILJ 353 (LAC).

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before him. It is accepted that the reasonableness test is applicable in a review concerning the interpretation or application of a collective agreement.

[24] However, in *Herbert*[8], the LAC considered the test to be applied and held that:

> '[24] In *MacDonald's Transport*[9] it was found that the LRA did not contemplate that a CCMA or bargaining council arbitrator, both statutory roles, would have the last word on the proper interpretation of an instrument as this would mean that a patently wrong interpretation would be left intact, which "would be absurd". The wrong interpretation of an instrument by an arbitrator could therefore constitute a reviewable irregularity as envisaged by s 145 of the LRA, in the sense that a reasonable arbitrator does not get a legal point wrong. The Court concluded that either "the reasonableness test is appropriate to both value judgments and legal interpretations. If not, 'correctness' as a distinct test is necessary to address such matters". This view was echoed in *NUMSA*[10], in which it was stated that an incorrect interpretation of the law by a commissioner constitutes a material error of law which "will result in both an incorrect and unreasonable award", which "can either be attacked on the basis of its correctness or for being unreasonable".
>
> [25] The arbitrator in this matter incorrectly interpreted the relevant appointment provisions contained in annexure C3 to the OSD agreement insofar as they related to the appellant. This error was of such a material nature that it resulted in a decision which, on a proper interpretation of the OSD agreement, was one that a reasonable arbitrator on the material before them could not reach.'

Review application

Condonation application

[25] The Applicant filed an application seeking the review and setting aside of the arbitration award. The Applicant received the arbitration award on 5 May 2023 and the review application was filed on 15 June 2023. The record was served on the Respondent on 13 September 2023 and a Rule 7A(8)(b) notice was filed

[8] *Herbert supra* at paras 24 – 25.
[9] *MacDonald's Transport Upington (Pty) Ltd v Association of Mineworkers and Construction Union and Others* [2016] ZALAC 32; (2016) 37 ILJ 2593 (LAC).
[10] *National Union of Metalworkers of SA v Assign Services and Others* [2017] ZALAC 44; (2017) 38 ILJ 1978 (LAC) at para 32.

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on 14 September 2023. An answering affidavit, if any, was to be filed on 28 September 2023.

[26] On 13 October 2023, the Department filed a notice to oppose. The matter was set down for hearing on 28 August 2024 by way of a notice of set down from the Registrar on 22 July 2024. On 22 July 2024, the Department filed its answering affidavit and on 24 July 2024, the Applicant filed a notice of objection. The Department filed an application for condonation for the late filing of its answering affidavit on 21 August 2024 and this matter was set down again for hearing on 7 November 2024.

[27] The Applicant opposed the Department's application for condonation for the late filing of the answering affidavit in the review application.

[28] The Department's answering affidavit was filed almost 10 months out of time. This is a material period and the explanation tendered in the Department's application for condonation must cover every period of the delay and must be comprehensive and compelling. The explanation tendered is to the extent that *"it is common cause that things often move slowly within the state and within state departments",* an attorney had to be appointed and briefed in the matter, and the State Attorney had to go through the process of appointing a suitably qualified counsel to deal with the matter, after counsel was appointed, his rates had to be confirmed, documents had to be shared with him, officials who could give the required information were not readily available, counsel was involved in a prolonged trial and when the affidavit was ready to be signed, the client fell ill and was not able to sign the affidavit immediately. There is not a single date in the explanation to put the sequence of events in context and not an iota of detail to describe how every event contributed to the ultimate, significant delay.

[29] It may be so that things move slowly in the State, but this is a Court case, not just "*a thing moving slowly*" – the parties to litigation are subject to the applicable legislation and Rules of Court and the time frames set out therein. It is not for state departments or the office of the State Attorney to move at their 'common cause' slow pace and to ignore the timeframes set out in the Rules of Court.

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[30] Be that as it may, when time frames are not adhered to, the Rules of Court make provision for the defaulting party to seek condonation, but in doing so, such party seeks an indulgence and bears the onus to show good cause and convince the Court that condonation should be granted.

[31] *In casu,* the explanation tendered for a material delay of 10 months was bereft of detail and this Court was in no position to understand the reason for a lengthy delay. It was for this reason that I refused to grant condonation for the late filing of the Department's answering affidavit and the matter proceeded on an unopposed basis.

Grounds for review

[32] The Applicant's primary ground for review is that the arbitrator considered the determination by the Minister of Public Service and Administration and the job evaluation process of 2006 in respect of the issue of benchmarking. The Applicant's case is that the arbitrator was wrong in considering the said process in the interpretation of the Resolution. The arbitrator committed an error of law as the determination or the job evaluation results of 2006 did not have a retrospective effect and he failed to consider that the Applicants' positions were not affected by the downgrading, as they still occupied their positions, which are distinguishable from the level 5 positions. That is the Applicant's case.

[33] In my view, there is merit in the Applicant's ground for review.

[34] It is evident from the facts placed before this Court that the Applicant filed an affidavit in the arbitration proceedings, seeking to introduce evidence and therein they *inter alia* denied that their positions were downgraded and that the positions they hold are on salary level 5.

[35] The Applicants submitted a comprehensive affidavit to provide the arbitrator "*with a complete overview of the issues pertaining to the matter"*. The Department filed answering submissions in response to the Applicant's affidavit and objected to the conduct of the Applicant. The Department's objection was that as the matter was to proceed as a stated case, the parties were directed to file written submissions, but instead the Applicant filed an affidavit, which was

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tantamount to testifying on paper, as opposed to oral testimony, which amounted to a circumvention of the mechanism to lead evidence and for such to be tested through cross-examination. The Department further objected that having agreed on a stated case, is to agree that there was no dispute of fact, save for the application of the law on the facts that were agreed to and all that was left, was for the parties to file written submissions for the arbitrator's consideration. Instead, the Applicant raised a dispute of fact on the question of whether their positions were downgraded.

[36] The Department submitted that the aforesaid dispute of fact would require the leading of evidence and it would be undesirable to deal with the dispute as a stated case. The matter should be set down for arbitration to lead evidence on the disputed facts, alternatively, the dispute of fact should be disregarded and only the stated and admitted facts should be dealt with.

[37] Notwithstanding the clear dispute of fact and the Department's objection, the arbitrator proceeded to consider the matter on paper, without hearing any evidence.

[38] In *Motor Industry Staff Association and Another v McCarthy Ltd and others*[11], the LAC considered a case where there was an agreement on the factual matrix and observed that the question the court *a quo* had to determine was whether what was put before the arbitrator by agreement between the parties, was sufficient and adequate for the arbitrator to properly and fairly determine the dispute. The LAC made it clear that:

> '[6] In *Arends & others v SA Local Government Bargaining Council & others* (*Arends*) the parties placed a matter before a commissioner for determination with 'the barest minimum of factual matter'. This court held that those parties were, to an extent, the authors of their own misfortune in doing so and that their approach was 'neither prudent nor correct'. This court further held there that if the parties had intended to have the matter decided without the aid of oral evidence they ought to

[11] (2021) 42 ILJ 117 (LAC) at paras 6 – 10.

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have agreed to a stated case in the form of a written statement of facts, but they had omitted to do so.

[7] This court then proceeded to lay down guidelines for parties intending to proceed on the basis of a stated case and (in particular, relevant to the facts of this present case) this court held that where an arbitrator is required to decide a dispute on the basis of a stated case, but the facts were not adequately stated therein, the arbitrator was not to accede to that request.

[8] In *Arends* the arbitrator had proceeded to decide the case on insufficient facts. This court had the following to say about that: 'The enquiry was undertaken in the wrong manner with the result that the appellants were denied their rights to have their case fully and fairly determined. The principal cause of their denial or failure was the inept manner in which the case was put before the arbitrator. Be that as it may, the undertaking of the enquiry in the wrong or in an unfair manner by an arbitrator is an irregularity in the conduct of the proceedings reviewable in terms of s 145 of the LRA as suffused by the constitutional right to administrative action that is lawful and procedurally fair.'

[9] In *Public Servants Association & others v Minister of Correctional Services & others* (*PSA*) this court held that the factual matrix (ie in that matter) was important where the arbitrator was required to interpret a collective agreement. Since the arbitrator there had decided the matter without such a factual foundation this court held that the arbitrator's conclusion was unreasonable because he could not apply his mind properly to the issue before him without such a basis; and that the arbitrator ought to have refused to deal with the matter in circumstances where there was not even an agreed set of facts before him.

[10] In this matter, the appellants' argument in the court a quo and in this court is premised on the decisions of this court in *Arends* and *PSA*. They argue that even if the parties in this matter were to blame for the inept manner in which the matter had been placed before the arbitrator, he had a duty to ensure that the matter was properly and fairly determined; that he ought to have refused the request to determine it

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without hearing oral evidence and without an agreement on the relevant facts.'

[39] In my view, the facts placed before the arbitrator by way of a stated case, were insufficient and not adequate enough to decide the dispute as a stated case. It was evident that there was a serious dispute of fact as well as an objection from the Department about the dispute of fact, which would require the leading of evidence. It was undesirable to deal with the dispute as a stated case and the arbitrator should have refused the request to determine the matter without hearing oral evidence on the disputed facts. The Applicant's denial of the fact that their positions were graded on level 5 was material to the determination of the matter and was clearly disputed.

[40] The interpretation and application dispute could not have been decided without hearing oral evidence. The enquiry was undertaken in the wrong manner with the result that the parties were denied their rights to have their case fully and fairly determined.

[41] In interpreting the collective agreement, the arbitrator was required to have regard to the aim and purpose of the collective agreement, the words and language used in it, having regard to ordinary rules of grammar and syntax, and the context in which the disputed terms appear in the Resolution. He could not have done this without oral evidence and as such, the arbitration award is reviewable.

Relief

[42] This leaves the issue of relief.

[43] The Applicant's notice of motion seeks for the arbitration award to be reviewed and/or corrected and set aside. In the Rule 7A(8)(b) notice that was filed on 14 September 2023, the Applicant confirmed that they stand by the notice of motion and founding affidavit.

[44] In the event that the arbitration award is set aside on review, this Court has a discretion whether or not to finally determine the matter. The matter could be

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finally determined where there is a full record of the proceedings before Court and where it would be in the interest of justice to do so.

[45] The principles had been set out by the LAC in *Palluci Home Depot (Pty) Ltd v Herskowitz and others*[12] as follows:

> 'Where all the facts required to make a determination on the disputed issues are before a reviewing court in an unfair dismissal or unfair labour practice dispute such that the court "is in as good a position" as the administrative tribunal to make the determination, I see no reason why a reviewing court should not decide the matter itself. Such an approach is consistent with the powers of the Labour Court under s 158 of the LRA, which are primarily directed at remedying a wrong, and providing the effective and speedy resolution of disputes. The need for bringing a speedy finality to a labour dispute is thus an important consideration in the determination by a court of review of whether to remit the matter to the CCMA for reconsideration, or substitute its own decision for that of the commissioner.'

[46] *In casu,* there are two reasons why this Court cannot decide and finally determine the matter. First, this Court does not have a sufficient record where the parties' cases were fully ventilated and the Court is not well-placed to make a decision on the merits based on the record, as it is before Court.

[47] This Court has made it clear on many occasions that this manner of conducting arbitration proceedings should not be agreed to or condoned where the question to be decided calls for evidence or where major disputes of fact exist. Written submissions do not constitute evidence and have no value as evidence, where evidence is indeed required. In its written submissions, it was made clear that the Department objected to the matter proceeding as a stated case where the Applicant raised a dispute of fact on the question of whether their positions were downgraded. The Department submitted that the aforesaid dispute of fact would require the leading of evidence and it would be undesirable to deal with the dispute as a stated case. These objections and submissions were clearly ignored.

[12] [2014] ZALAC 81; (2015) 36 ILJ 1511 (LAC) para 58.

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[48] The result of the process adopted was that the parties were deprived of a fair hearing and that the issues in dispute were not fully and fairly ventilated and determined. The parties agreed to a process that entailed a significant risk in that the arbitrator was tasked to decide issues he could hardly have done without hearing evidence and it is not surprising that the outcome of such a process ended up in court on review.

[49] All the parties ultimately achieved, by the process they adopted, was to sacrifice the speedy resolution of the dispute.

[50] Second, the Applicant did not seek relief in that the arbitration award be substituted with another order.

[51] In *Railway Safety Regulator v Kekana,*[13] the LAC considered an appeal where the Labour Court granted relief not sought and found that:

> 'In such an instance, the parties are to be kept strictly to their pleadings and it was not open to the court *a quo* in those circumstances to ignore the pleadings and to order reinstatement which was not sought in the pleadings. It was bound to order compensation as sought by Mr Kekana in his pleaded case.'

[52] I am of the view that it would be in the interest of the parties to have the matter properly ventilated and decided after oral evidence is adduced. The interest of justice will thus be best served by remitting the matter for an arbitration *de novo.*

Costs

[53] This Court has a wide discretion in respect of costs and in my view, this is a matter where the interest of justice will be best served by making no order as to cost. The Applicant was represented *pro bono* by counsel in argument of the matter, the parties have an ongoing employment relationship and ultimately it was the arbitrator's findings which caused this application and not the conduct of the Department.

[54] In the premises, I make the following order:

[13] [2023] ZALAC 28; (2024) 45 ILJ 284 (LAC) at para 58.

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Order

1. The late filing of the Third Respondent's answering affidavit is not condoned;

2. The arbitration award issued on 21 January 2023 under case no: PSCB430-21/22 is reviewed and set aside;

3. The dispute is remitted to the First Respondent for a hearing *de novo* before a commissioner other than the Second Respondent;

4. There is no order as to costs.

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Connie Prinsloo

Judge of the Labour Court of South Africa

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Appearances:

For the Applicant:	Advocate M Ramaepadi SC with Advocate Pooe
Instructed by:	*Pro bono*
For the Third Respondent:	Adv N Deeplal
Instructed by:	State Attorney

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