

SOUTH AFRICA / JUDGMENT

General Public Service Sectoral Bargaining Council v Ngcaba NO (C380/2020) [2021]

ZALCCT 73 (5 October 2021)

[2021] ZALCCT 73

COURT
Labour Court Cape Town

BEFORE
Lagrange

CASE / FILE NUMBER
C380/2020

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THE
LABOUR COURT OF SOUTH AFRICA,
HELD
AT CAPE TOWN
Of
interest to other judges
Case
: C 380/2020
In

the matter between: GENERAL PUBLIC SERVICE
SECTORAL BARGAINING
COUNCIL Applicant
and
FRANKLIN NGCABA
N.O Respondent
Date
of Hearing: 05 October 2021
Date
of Judgment: This
judgment was handed down
electronically by circulation to the parties' legal
representatives by email, publication on the Labour Court
website and
release to SAFLII. The date and time for handing down judgment is
deemed to be 14h00 on 5 October 2021
Summary: (Application
to compel the issuing of an award – Relief competent within the
court's review powers under s 158(1)(g)

of the Labour Relations
Act, read with s 6(3) and 8(2) of the Administrative Justice Act –
Arbitrator legally obliged to
issue award within 14 days under s
138(7)(a))

JUDGMENT

LAGRANGE J

Introduction

- [1] This is an unopposed application to compel the respondent to issue and deliver two outstanding arbitration awards in respect of matters in which he presided as an arbitrator. The applicant requested that the matter be decided on the papers. No opposition or representation has been received by the respondent.
- [2] The arbitration case numbers are GPBC 71/2019 and GPBC 116/2019, in which awards should have been issued by 10 July 2019 and 17 July 2019 respectively.
- [3] Since August 2019, the applicant has made several requests and efforts to compel the respondent to issue arbitration awards in both matters, including requesting the intervention of the CCMA. None of these attempts bore any fruit and the respondent has not responded to any of the approaches since 8 August 2019 when he attributed the delay to his laptop having to be repaired.
- [4] As a last resort, the applicant has approached the court to order the respondent to issue and deliver awards in both matters. It is well established that this court exercises a supervisory function over statutory arbitration proceedings which are a form of administrative action.
- [5] An arbitrator is legally obliged to issue an award within 14 days of the end of a hearing under s 138(7)(a) of the Labour Relations Act, 66 of 1995 ('the LRA'). Section 158(1)(g) of the LRA, provides that: "... subject to section 145, review the performance or purported performance of any function provided for in this Act on any grounds that are permissible in law."
- [6] Section 6 [3] of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA') specifically provides that where an administrator is required to take a decision within a particular time, the failure to do so can be remedied by the court in the exercise of its review powers relating to an unreasonable delay in taking the decision. Section 8 [2] of the same Act provides that in such review proceedings a court may grant an order that is just and equitable including orders directing the taking of a decision.
- [7] In the circumstances, I am satisfied that the issuing of an award by an arbitrator under s 138(7)(a) concerns the performance of a function under the LRA and the failure to perform that function may be reviewed and remedied under s 6(3) read with s8(2) of PAJA.

- [8] On the question of costs, as the respondent has not opposed the matter, but has left the applicant no choice but to bring this application, he should pay the applicant's costs on the unopposed scale.

Order

- [1] The Respondent is in breach of his obligation under s 138(7)(a) of the Labour Relations Act, 66 of 1995 to issue awards in respect of arbitration cases numbers GPBC 71/2019 and GPBC 116/2019.
- [2] Accordingly, the Respondent's failure to do so is reviewed and he must issue and deliver his awards in respect of arbitration cases numbers GPBC 71/2019 and GPBC 116/2019 within 30 days of receipt of this order.
- [3] The Respondent must pay the Applicant's costs, on the unopposed scale.

Lagrange J

Judge of the Labour Court of South Africa

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Prepared on 11 October 2026 · Esheria