

Does furnishing a security bond stay the enforcement of an arbitration award in an archived review application?

Review application – security – archives

On 11 August 2025, the Labour Appeal Court (LAC) in *CEPPWAWU obo Tabata v Aspen Pharmacare Ltd* (PA17/2024) [2025] ZALAC 43 (24 July 2025) determined, among other things, whether security furnished in terms of sections 145(7) and (8) of the Labour Relations Act (LRA) continues to have the effect of staying the enforcement of an arbitration award in circumstances where a review application has been archived under the (now repealed) Practice Manual.

In the Labour Court, the company applied to review and set aside an arbitration award which found that the employee's dismissal was substantively unfair and ordered his reinstatement. At the time when the review was brought, the company furnished security, albeit short of the requisite amount in terms of sections 145(7) and (8) of the LRA. The review application was archived and/or deemed to have been withdrawn due to the company's failure to comply with relevant time periods for prosecuting a review application in terms of the Practice Manual. The union accordingly filed an application to make the award an order of court. Shortly thereafter, the company applied to reinstate its review application. At the time of the LAC's judgment, both applications were pending.

Thereafter, during December 2023, the union took further steps to enforce the award, which culminated in the company filing a "*fresh bond of security in an amount equivalent to 24 months' remuneration*" and approaching the Labour Court on an urgent basis to stay the enforcement of the award.

Importantly, the Labour Court found that:

"the archiving of the review application did not invalidate any security bond filed in terms of the section 145(7), and that the operation of the underlying award remained suspended until the review was finally determined, either on the merits or dismissed through an application to dismiss in terms of Rule 11...".

Dissatisfied with this finding, the union took the Labour Court's judgment on appeal to the LAC. The LAC dismissed the appeal and upheld the Labour Court's finding.

In upholding the Labour Court's judgment, the LAC relied on its decision in *City of Johannesburg v SAMWU obo Monareng*. In that case, the LAC held that a litigant need not bring an application to stay the enforcement of an arbitration award once it has furnished the requisite security, given that the operation of the arbitration award is automatically suspended pending its decision in the review application. Interestingly, the LAC in *City of Johannesburg* was not asked to decide whether a security bond stays the enforcement of an award if the review application has been archived in terms of the Practice Manual.

The *CEPPWAWU obo Tabata* judgment is significant. It clarifies that security furnished (in terms of section 145(7) and (8) of the LRA) remains valid in respect of an archived review application, and the operation of an arbitration award remains suspended until the review is finally determined, either on the merits or dismissed in terms of the Labour Court rules. The Labour Court may grant an application to dismiss a review application if the party diligently fails to prosecute its review application.

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