
Reporting for Duty: Whether the Reinstatement Order Imposes Conditions on an Employee's Entitlement to Backpay

On 13 August 2026, the Labour Court delivered judgment in *4PL.COM Logistical Solutions Provider v Oscar Mazwi Khoza*.¹ The decision turned on whether an employee who was awarded retrospective reinstatement is only entitled to backpay in accordance with a reinstatement order upon an actual tender of services in accordance with that order.

At the Commission for Conciliation, Mediation and Arbitration (CCMA), the commissioner found that the employee was unfairly dismissed and ordered the employer to reinstate him and to pay backpay in the amount of R104 589.01. The employee obtained certification of the arbitration award and attempted execution thereof in the form of a writ of execution for his backpay. Crucially, however, the employee did not report for duty. The employer, in turn, instituted an urgent application to set aside the writ and attachment on the basis that the employee had not tendered his services or been officially reinstated.

The employer argued that the backpay component of the award only becomes due and payable once the employee tenders his services. Relying primarily on the Labour Appeal Court judgment of *Potgieter v Samancor Chrome Ltd t/a Tubatse Ferrochrome*, the employer claimed that an employee who fails to tender services in accordance with a reinstatement award is not entitled to retrospective backpay. The employee, in response, argued that the award comprised of two separate orders, and that payment of backpay was not conditional on factual reinstatement.

With reference to Zondo J's judgment in *NUMSA o.b.o. Fohlisa v Hendor Mining Supplies (a division of Marschalk Beleggings (Pty) Ltd)*, the Labour Court (per Makhura J) distinguished between backpay relating to the pre-judgment period, and a contractual claim for wages relating to the post-judgment period. The pre-judgment period, contemplated in the judgment or award itself, constitutes a judgment debt, arising entirely from the award. Consequently, a claim for backpay for this period is available to an employee even if they have not been factually reinstated. Makhura J explained the position as follows:

"Simply put, because an arbitration award constitutes a judgment debt, an employee's entitlement to backpay for the period between dismissal and the reinstatement award is derived directly from the award and is not dependent on the employment contract having been revived. The question of whether the employment contract has been restored becomes relevant only when determining a claim for remuneration accruing from the date of the reinstatement award until its actual implementation."

The Court proceeded to distinguish *Potgieter* which only concerned the employee's entitlement to post-judgment wages for which a tender of services is necessary as it revives the employment contract between the parties. A claim for wages for this period is also subject to any contractual defences which the employee may raise, as it constitutes a contractual claim.

¹ (2026/178338) [2026] ZALCJHB 251 (13 August 2026) [28].

Makhura J concluded that it would be “*both illogical and untenable*” for the pre-judgment backpay order of a reinstatement award to be dependent on the employee first tendering their services as that period would have already elapsed. An employee thus cannot tender services for the pre-judgment period. Rather, the employee’s tender of services is only relevant in respect of the contractual claim for post-judgment wages.

The Court accordingly declined to set aside the writ of execution. Makhura J held that the backpay component of the reinstatement award was sufficiently quantified and certain and thus could be pursued through a writ. The Court thus held that the employer had no clear right against execution and dismissed the employer’s urgent application.

Key takeaway:

The backpay component of an employee’s reinstatement award for the period between their dismissal and the award, is not conditional on the employee physically reporting for duty. Their factual reinstatement would only affect any retrospective remuneration for the period post-judgement; thus, the employer cannot withhold backpay on the basis that the employee has not yet tendered their services.

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