
Labour Appeal Court upholds validity of Director-General's security bond to suspend arbitration award enforcement

Security bond – arbitration award – ministerial approval – future commitment

On 13 February 2025, the Labour Appeal Court handed down judgment in *Director-General: Department of Forestry, Fisheries and the Environment v The Sheriff, Pretoria North-East*. The judgment concerned whether a security bond furnished by the Department of Forestry, Fisheries and the Environment complied with section 145(7) of the Labour Relations Act. Section 145(7) permits a review applicant to furnish security to suspend the operation of an arbitration award pending the outcome of the application.

Mr Manda was dismissed by the Department of Forestry, Fisheries and the Environment (the Department) for misconduct. Aggrieved, he referred an unfair dismissal dispute to the General Public Service Sector Bargaining Council (GPSSBC). The GPSSBC issued an arbitration award in Mr Manda's favour, ordering his retrospective reinstatement. The Department instituted an application in the Labour Court to review and set aside the arbitration award. In terms of section 145(7) of the Labour Relations Act (LRA), the Department furnished a security bond to suspend the operation of the arbitration award pending the outcome of the review application, which was issued by the Director-General.

Mr Manda challenged the validity of the security bond on the basis that it was not authorised by the Minister of the Department. Therefore, he argued, the security bond contravened section 66 of the Public Finance Management Act (PFMA) for lack of authorisation. Mr Manda accordingly took the view that the arbitration award was still in operation and proceeded to enforce the award.

The Labour Court found in favour of Mr Manda. It held that non-compliance with section 66 of the PFMA rendered the security bond an "*unauthorised transaction*", with the result that the security bond could not bind the Department.

On appeal, the Labour Appeal Court (LAC) held that the Labour Court erred in its decision. The Department's obligation to comply with the award became operative once the award was granted. Furnishing security for purposes of section 145(7) of the LRA is not subject to section 66(1) of the PFMA. Section 66 of the PFMA regulates a Department's future financial commitments, whereas furnishing security arose from the Department's immediate obligations. Section 66(1) of the PFMA applies to transactions that implicate future financial commitments, and the security bond does not relate to a future financial commitment on the Department. Therefore, the Department's security bond did not require ministerial authorisation under section 66 of the PFMA.

The LAC accordingly upheld the appeal and held that the security bond, as signed by the Department's Director-General, was valid in terms of section 145(7) of the LRA. The LAC substituted the Labour Court's decision on that aspect, and the enforcement of the award was suspended. A security bond signed by a Department's Director-General's constitutes valid security as contemplated in section 145(7) of the LRA, regardless of ministerial authorisation.

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