

EMPLOYMENT ALERT

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WRITING AN ARBITRATION AWARD: IS IT AN IRREGULARITY IF A COMMISSIONER OUTSOURCES THE RESPONSIBILITY OF WRITING AN ARBITRATION AWARD TO A QUALITY CONTROLLER?

Without a doubt, one would expect that arbitration awards are written and finalised by commissioners. Arbitration awards are edited and formatted by quality controllers who are appointed to ensure that they are competent and enforceable. Once the quality control process is done, arbitration awards are signed off by commissioners and remain the work of commissioners. An interesting question arises when quality controllers interfere with the substantive findings by commissioners.

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The aforementioned question was dealt with by the Labour Court in *Department of Justice & Constitutional Development & others v GPSSBC & others* (2018) 39 ILJ 2001 (LC). The facts of this case are that the employee referred a dispute to the bargaining council alleging unilateral change of terms and conditions of employment, failure by the employer to provide a contract of employment and failure to assess and promote him. After unsuccessful conciliation, the matter was set down for arbitration where the parties agreed that the dispute could be determined on the documentation and by a way of written submissions.

After the conclusion of the arbitration proceedings, the parties received two arbitration awards from the bargaining council. Both the awards were dated 27 November 2015, but the first one was issued on 12 January 2016 and the second one on 15 January 2016. In terms

of the first award, the commissioner ordered that the employer pay the employee a severance package in the amount of R8,449,829.59. The second award ordered the employer to pay the employee compensation in the amount of R1,648,766.70.

The explanation from the bargaining council as to which award should prevail was that the first award was not quality controlled. The trail of emails between the quality controller and the commissioner revealed that the quality controller added an entire paragraph dealing with the appropriate remedy in the second arbitration award. Further, the commissioner merely signed off the amended arbitration award without applying her mind to the changes.

In dealing with this issue, the Labour Court held that although the quality control process is not limited to editing and formatting, it should not be seen to usurp



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the statutory powers and duties of the commissioner as the arbitrator of facts and evidence. The final product must remain that of the commissioner and this was not the case in this matter.

An interesting finding by the Labour Court was that since the commissioner had signed off the amended arbitration award without applying her mind, this had the effect of rendering the arbitration award capable on the grounds of irregularity. The Labour Court emphasised that the role of quality controllers is not to rewrite arbitration awards where errors are detected.

In such a case, the quality controller must inform the commissioner who will decide whether he or she wishes to rewrite the award or portions thereof.

The principles in this case are lessons to commissioners and not so much applicable to practitioners. However, those who are fortunate enough to obtain the exchange of emails in the quality control process may be able to discover additional grounds of review.

Fiona Leppan and Bheki Nhlapho



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OUR TEAM

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Thabang Rapuleng
Director
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Anelisa Mkeme
Senior Associate
T +27 (0)11 562 1039
E anelisa.mkeme@cdhlegal.com



Gillian Lumb
Regional Practice Head
Director
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Samiksha Singh
Director
T +27 (0)21 481 6314
E samiksha.singh@cdhlegal.com



Sean Jamieson
Associate
T +27 (0)11 562 1296
E sean.jamieson@cdhlegal.com



Kirsten Caddy
Director
T +27 (0)11 562 1412
E kirsten.caddy@cdhlegal.com



Gavin Stansfield
Director
T +27 (0)21 481 6313
E gavin.stansfield@cdhlegal.com



Zola Mcaciso
Associate
T +27 (0)21 481 6316
E zola.mcaciso@cdhlegal.com



Jose Jorge
Director
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Tamsanqa Mila
Associate
T +27 (0)11 562 1108
E tamsanqa.mila@cdhlegal.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Ndumiso Zwane
Director
T +27 (0)11 562 1231
E ndumiso.zwane@cdhlegal.com



Bheki Nhlapo
Associate
T +27 (0)11 562 1568
E bheki.nhlapho@cdhlegal.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Steven Adams
Senior Associate
T +27 (0)21 481 6341
E steven.adams@cdhlegal.com



Siyabonga Tembe
Associate
T +27 (0)21 481 6323
E siyabonga.tembe@cdhlegal.com



Nicholas Preston
Director
T +27 (0)11 562 1788
E nicholas.preston@cdhlegal.com



Anli Bezuidenhout
Senior Associate
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

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