

# EMPLOYMENT ALERT

18 November 2013

## CASE LAW UPDATE: CIRCUIT BREAKERS INDUSTRIES LTD V NUMSA OBO HADEBE & OTHERS (CASE NUMBER JR1958/08)

The Labour Court previously found, on more than one occasion, that an arbitration award that orders the payment of money prescribes after a period of three years in terms of the Prescription Act, No 68 of 1969 (Act).

In the recent Labour Court decision in *Circuit Breakers Industries Ltd v NUMSA obo Hadebe & Others* (case number JR1958/08), the court found that an arbitration award which included the right of reinstatement did not constitute a debt for the purposes of prescription.

In this case, an arbitration award granted an employee retrospective reinstatement without loss of earnings. This award was made in August 2008. In September 2008 the company launched a review application and four years later launched an interlocutory application to have the arbitration award declared prescribed.

The employee had not certified the award nor made it an order of court. Chetty, AJ considered the case law on the matter and determined that an arbitration award for compensation constituted a debt and could prescribe within the statutory three year prescription period.

Reference was made to the injustice that an employee could face where an employer has delayed a review and then alleges that the award has prescribed.

On a simple matter of law, the Act allows for an arbitration award to prescribe in respect of a compensation award, even when the applicant's review application has delayed compliance with same.

One of the amendments contained in the Labour Relations Amendment Bill (LRAB) introduces a new section 145(9) which provides that the launching of a review application aimed at setting aside an arbitration award interrupts the running of prescription. The provisions of s145(9) will only apply to arbitration awards issued after the commencement date of the LRAB.

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