

EMPLOYMENT LAW

ALERT

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IN THIS ISSUE

Unpaid income differentials: A benefits dispute

On 7 June 2019, the employee referred an unfair labour practice dispute relating to benefits to the Commission for Conciliation, Mediation and Arbitration (CCMA) in terms of section 186(2)(a) of the Labour Relations Act 66 of 1995, as amended (LRA), against Eskom. The relief she sought was a salary adjustment and back pay. The basis of the employees' dispute was that Eskom had failed to pay her in terms of its income differentials exercise prepared pursuant to the Employment Equity Act 55 of 1998 (EEA) while it had paid other employees in terms of the same exercise.



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Unpaid income differentials: A benefits dispute

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Eskom implemented its income differentials decision in compliance with the provisions of the income differentials of the EEA. The employee was eligible to have her salary adjusted in terms of the income differentials exercise. Eskom's system failed to identify her as an eligible employee and her salary was consequently not adjusted. Eskom promised to consider her salary adjustment in the second run scheduled for December 2018, the following financial year, but it failed again.

The dispute the employee referred was in response to Eskom's continued failure to adjust her salary and pay her money due to her in terms of the income differentials exercise.

The CCMA found that Eskom had committed an unfair labour practice against the employee and directed Eskom to pay the employee in terms of the income differentials exercise retrospectively from 17 December 2017. Aggrieved, Eskom sought to review the jurisdictional ruling and the final award.

The Labour Court found that the employee could seek the salary adjustment. The adjustment was granted to the employee in terms of a decision taken by Eskom in its attempt to comply with the income differentials section of the EEA. The court stated that the employee was entitled to seek the adjustment by law and in terms of Eskom's decision to comply with its statutory obligations. The court further found that the employee had proven her entitlement to the salary adjustment in terms of implementing the income differentials decision.

The court accepted that Eskom's argument that the dispute was a remuneration dispute may be valid. Its validity, however, did not render the Commissioner's decision wrong. The court reasoned that the same conduct could fall within the ambit of an unfair labour practice, unfair discrimination and a remuneration dispute.

The court concluded that the dispute that the employee's referral fell within the definition of a benefit as enunciated in *Apollo Tyres South Africa (Pty) Ltd v CCMA*. The court therefore held that the Commissioner's decision was correct, and the review application was dismissed.

The Labour Court has clarified the position on unpaid income differentials: when an employer conducts income differentials, and they are not paid to eligible employees, the dispute may be referred as a benefits dispute.

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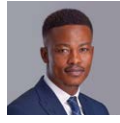
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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