

# Employment Law

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### SOUTH AFRICA

Labour Appeal Court recognises material error of law as a standalone ground for review



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**EMPLOYMENT LAW  
ALERT**

## Labour Appeal Court recognises material error of law as a standalone ground for review

In a significant judgment, the Labour Appeal Court (LAC) in *NBCRFLI v Intermodal Cargo Solutions (Pty) Ltd* [2025] 46 ILJ 1679 (LAC) confirmed that a material error of law by an arbitrator can constitute an independent ground for review under section 145 of the Labour Relations Act 66 of 1995 (LRA).

The court clarified that the scope of the traditional reasonableness test established in *Sidumo and Another v Rustenburg Platinum Mines and Others* [2007] 28 ILJ 2405 (CC) may be expanded to include unlawfulness.

This represents a major shift from the previous approach. Now, if an arbitrator misinterprets the law on key issues affecting the business – such as whether a company falls within a bargaining council's jurisdiction or how employment legislation applies to operations – there are stronger grounds to seek a review.



### Facts

The National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) challenged an arbitration award concerning its registered scope. The central issue was whether an employer involved only in storage (and not in motor transport) could fall within the council's jurisdiction.

The council's scope includes the "storage of goods where ancillary or incidental to the transportation of goods by motor transport". The arbitrator interpreted this restrictively, holding that storage must be undertaken by an employer who also provides motor transport services. On that basis, the arbitrator found the employer fell outside the council's scope.

The Labour Court upheld the award, finding it reasonable, even though the NBCRFLI had not specifically argued unreasonableness as a ground for review.



## Labour Appeal Court recognises material error of law as a standalone ground for review



### Before the Labour Appeal Court

The NBCRFLI appealed the Labour Court's decision to the LAC, which was asked to decide two main issues:

- Whether the Labour Court was correct in holding that the arbitrator's interpretation was not reviewable.
- Whether the arbitrator was required to consult the National Economic Development and Labour Council before issuing the award.

Our focus is the review test. The LAC found that the arbitrator had not committed a material error of law in interpreting the council's registered scope. As such, the arbitration award was not reviewable, and the review application was correctly dismissed.



### The test for review: Moving beyond reasonableness

What stands out in this judgment is the LAC's discussion on the standard for reviewing arbitration awards, particularly those involving legal interpretation.

Traditionally, arbitration awards could only be set aside if they were so unreasonable that no reasonable decision-maker could have reached the same conclusion (the *Sidumo* test). The LAC, however, has now drawn a distinction between:

- factual findings or value judgments – where the reasonableness test still applies; and
- questions of law – where correctness is the appropriate standard.

The court noted that the rule of law does not permit multiple reasonable interpretations of a statute. There is only one legally correct interpretation. If an arbitrator errs in interpreting such instruments, their decision may be reviewed not because it was unreasonable, but because it was legally incorrect, provided the error is material.

## Labour Appeal Court recognises material error of law as a standalone ground for review



### Key takeaways

- An arbitrator's material error of law is not just a sub-category of unreasonableness, but a freestanding basis for review under section 145 of the LRA.
- Correctness is the standard for legal questions: When a Commission for Conciliation, Mediation and Arbitration or bargaining council award involves the interpretation of legal instruments (e.g. statutes, scope clauses or collective agreements), the reviewing court is entitled to determine the correct interpretation, not merely assess whether the arbitrator's view was reasonable.
- The traditional reasonableness test remains applicable where the arbitrator is making factual findings or value judgements.

The practical impact is immediate: parties to current and future arbitrations should carefully consider whether disputes involve questions of legal interpretation versus factual determinations, as this will determine both litigation strategy and prospects of success on review.

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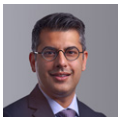
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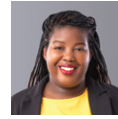
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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