

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO:  
J194/09

In the matter between:

EPHRAIM MAEMU

Applicant

and

CARGO WORKS

Respondent

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JUDGMENT

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FRANCIS J

1. This is an application to make an arbitration award issued by commissioner Babalo Metu of the National Bargaining Council for the Road Freight Industry (the bargaining council) on 18 September 2008 under case number GPRFBC2623 an order of Court in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995 (the Act).
2. The application was opposed by the respondent on the basis that there is an application to review the arbitration award pending before this Court.
3. The review application was filed under case number JR403/09 on 2 March 2009. Since the filing of the review application on 2 March 2009, the respondent in this application has taken no steps to prosecute the review application. Mr Ray-Howett who appeared for the respondent informed the Court that the bargaining council had filed the record of the proceedings in March 2009 and the respondent brought an application to compel in October 2010.

4. The Court file does not reflect that the bargaining council had filed the record in March 2009. An application to compel the bargaining council was only filed with this Court on 21 October 2010 which was on the same day when this application was heard in Court. No explanation is tendered about what had happened between the period March 2009 and October 2010.
5. This case shows that the respondent has not been vigilant in prosecuting the review application. The notice to compel the bargaining council was only filed after the Court had asked the respondent's representative about the steps that he had taken to prosecute the review application.
6. This Court may in terms of section 158(1)(c) of the Act make an award an order of Court. The court has a discretion in making an award an order of court. The discretion must be exercised judicially. It is trite that labour disputes must be dealt with expeditiously. It is also trite that parties must be vigilant in prosecuting their matters before this Court. This case shows the opposite.
7. The respondent has been the author of its own misfortune. It has not been vigilant in prosecuting the review application. The review application was filed as a delaying tactic to prevent the applicant from enjoying the fruits of the award.
8. There is no reason why this Court should not make the award an order of Court.
9. There is no reason why costs should not follow the result.

10. In the circumstances I make the following order:

10.1 The arbitration award made by commissioner Babalo Metu of the National Bargaining Council for the Road Freight Industry on 18 September 2008 under case number GPRFBC2623 is made an order of court in terms of section 158(1)(c) of the Act.

10.2 The respondent is to pay the costs of the application,

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FRANCIS J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR APPLICANT : D MKWANAZI INSTRUCTED BY NETSHITUNGULU  
ATTORNEYS

FOR RESPONDENT : ATTORNEY GRANT RAY-HOWETT

DATE OF HEARING: 21 OCTOBER 2010

DATE OF JUDGMENT : 17 DECEMBER 2010