

Can an Arbitration Award conferring Organisational Rights be suspended pending a Review Application?

This is what the Labour Court had to consider when an urgent application was brought by Harmony Gold mine to suspend the operation of an arbitration award conferring upon NUMSA Organisational Rights in terms of sections 12 and 13 of the Labour Relations Act 66 of 1995 (LRA) pending a review application.

In *Harmony Gold Mining Company v National Union of Metalworkers South Africa & Others*,¹ NUMSA had obtained Organizational Rights by way of arbitration in terms of the LRA. Displeased with the outcome of the award, Harmony then decided to take the arbitration award on review. At the time, Harmony was of the view that such review would suspend the operation of the arbitration award until a final determination is made by the review court. NUMSA was diametrically opposed to this line of thinking, considering the nature of the arbitration award, and proceeded to attempt to enforce its operation notwithstanding the review. This then prompted Harmony to approach the court on an urgent basis in attempt to stay the enforcement of the arbitration award. Given the nature of such award, the court had to consider whether such award could be suspended pending the outcome of the review application.

1. Harmony argued that the enforcement of the arbitration award would lead to the eruption of violence as the rival unions had been opposed to the recognition of NUMSA from the onset. It further argued that if the urgent relief is not granted, then this would defeat the purpose of the review application which in their opinion would succeed. Primarily, Harmony argued that it stands to suffer irreparable harm should the award be enforced pending the outcome of the review.
2. NUMSA argued that it is now trite that the filing of a review application to challenge such an award does not stay or suspend the operation of an arbitration award. The arbitration award remains executable, despite the pending review. Accordingly, the design of Section 145 of the LRA is specific as it provides that a stay or suspension of execution or enforcement can either be in effect purchased by way of security, subject to judicial scrutiny of course, or obtained by leave of the Court. No such requirement is available for an arbitration award of this nature and accordingly the default position must prevail.

¹ *Harmony Gold Mining Company v National Union of Metalworkers South Africa & Others* J2136/19 (13 November 2019) unreported case.

The court disagreed with Harmony's reasoning and found that the enforcement of the award does not in any way take away from Harmony's right to review the award in the ordinary course. The Judge specifically found that this type of arbitration award is not one that renders a review application academic. Harmony stood to suffer no financial harm as the subscription fees belonged to NUMSA members and the threat of violence initially relied upon was unsubstantiated. The urgent application was dismissed for a lack of urgency.

The lesson that can be drawn from this case is pertaining to the remarks the Judge made about the nature of the arbitration award. Given that its suspension cannot be purchased by way of security, unless there are compelling reasons to the contrary, such an award can be enforced despite a review application.