



ARBITRATION AWARD

Case Number: HQ 092503
Senior Commissioner: Eleanor Hambidge
Date of Award: 8 February 2026

In the **MATTER** between

NEWCASTLE LOCAL MUNICIPALITY

(Referring Party)

And

SAMWU and IMATU

(Respondents)

DETAILS HEARING and REPRESENTATION:

NEWCASTLE LOCAL MUNICIPALITY (Referring Party) referred a dispute in terms of section 24 (interpretation or application of a Collective Agreement) involving **IMATU and SAMWU** (Respondents) to the South African Local Government Bargaining Council (SALGBC). The matter was set down for arbitration on 12 January 2026 and was heard online and the proceedings were also recorded. On 12 January 2026, the parties were represented. Whereas Mr. Dimane represented the Referring Party, Mr. Mdletshe represented IMATU and Mr. Mpanza represented SAMWU. Since the Union officials, who shared the same views, had challenged the Council's jurisdiction to arbitrate and Mr. Mpanza relied on case law to substantiate such contention, I had decided to

afford Mr. Dimane an opportunity to respond, in writing, by 19 January 2026 and any reply from the Unions was to be submitted by 26 January 2026.

BACKGROUND to the DISPUTE:

As previously stated, the Referring Party is one of the Municipalities, covered by the Main Collective Agreement (MCA) and had referred to the SALGBC a section 24-dispute for interpretation of Clause 8.2.2 of such MCA.

ISSUES in DISPUTE:

The issue in dispute is whether the Council has jurisdiction to interpret clause 8.2.2 of the MCA.

BRIEF OVERVIEW of SUBMISSIONS:

The Referring party advanced that a purposive approach in interpretation should be adopted in interpreting Clause 8.2.2 of the MCA and therefore submitted that should an employee be absent (i.e. sick) and failed to report his/her absence and only submitted a medical certificate at the time of reporting for work again, any sick leave should be unpaid.

Whereas the Union officials, who were united in their approach, advanced that such an interpretation as adopted by the Referring Party was not the intention of the parties to the MCA and that the failure to report one's absence from work due to ill-health cannot invalidate the medical certificate subsequently submitted. Also, it was submitted that such an interpretation from the Referring Party is not in line with a common sense-approach and the MCA can only be amended once the parties to the MCA (SALGA; IMATU; and SAMWU) have decided to amend the MCA at centralized level. As the Union officials also believed that the Referring party failed to demonstrate a different interpretation to theirs, there was simply nothing to interpret and accordingly the Council lacked jurisdiction in this matter. Mr. Mpanza from SAMWU specifically referred to the following judgments and provided their citations, as well:

HOSPERSA obo Tshambi v Department of Health, Kwa-Zulu Natal (LAC);

Johannesburg City Parks v Mhahlani (LAC); Minister of Safety & Security v Sectoral Bargaining Council and others (LAC);

PSA obo Liebenberg v Department of Defense (LC);

Department of the Premier, Western Cape v Plaatjies N.O. (LC); as well as PSA obo Strauss v Minister of Public Works (LC).

As previously stated, I afforded the Referring Party and opportunity to supplement its argument. The Referring Party submitted written argument, as well as a notice of motion, dated 3 November 2025 and a founding affidavit

deposed to on 29 September 2025. Although some of the written submission pre-date the hearing date for this matter, I have nevertheless perused all.

In its subsequent written submissions, the Referring Party *inter alia* submitted that the Council does have jurisdiction to arbitrate the dispute with reference to relevant case law and as to the merits, it was submitted that in relation to Clause 8.2.2, an inference can be drawn that the mention of “where the employee **TAKES sick leave**, invariably places an obligation on the employee to report to their employer that he/she is unwell and will take sick leave, further, should the employee’s illness persist beyond 2 (two) consecutive days, it places a further obligation on the employee to produce a medical certificate upon request by the employer, where there is abuse of sick leave. Thus, so the argument went, an employee cannot “take” sick leave if he/she has not reported that he/she is sick and is taking sick leave. It could never have been the purpose of the MCA, that an employee can take sick leave and not report same. Since the relevant Clause, according to the Referring Party mentions that: “where an employee takes sick leave”, it must be interpreted to mean that it places an obligation on such an employee to report to his/her their employer whenever they take sick leave. It therefore required an interpretation that an employee shall be required to submit a medical certificate from a registered medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act or Parliament, if more than 2(two) consecutive days are taken as sick leave, provided that the employer may request a sick leave certificate for every day of sick leave where there is evidence of abuse of sick leave. The Referring Party also gave the necessary background of a certain employee, Ms. Mbhele, whose issue, it seemed, was the catalyst for this referral.

JURISDICTION to ARBITRATE:

As a point of departure there is a difference between jurisdiction and merits. I have decided to deal with the jurisdictional challenge raised by the Unions - that the dispute before me is not a “true” section 24-dispute.

In ***HOSPERSA obo Tshambi v Department of Health, Kwa-Zulu Natal [2016] 7 BLLR 649 (LAC)***, handed down on 26 March 2016, it was held by the Labour Appeal Court and I quote: “In my view, the invocation of section 24 by the appellant and the bland acceptance of that characterisation by the arbitrator were plainly wrong. The Labour Court criticised the attempt to invoke section 24 as a contrivance to circumvent the obviously late referral of an unfair labour practice dispute. I agree that such an inference can be properly made”.

In the ***Hospersa-judgment***, dealing with a matter referred as a section 24 instead of an alleged unfair labour practice, the Court also said: “An arbitrator is required to determine the true dispute between the parties. To that end, it is necessary to establish the relevant facts and construe the category of dispute correctly. An arbitrator must make an objective finding about what is the dispute to be determined”. The Court also went on to say that

what constitutes a “dispute” *per se*, and how one is to recognise it, demands scrutiny... “Logically, a *dispute* requires, at minimum, a difference of opinion about a question. A dispute about the interpretation of a collective agreement requires, at minimum, a difference of opinion about what a provision of the agreement means. A dispute about the application of a collective agreement requires, at minimum, a difference of opinion about whether it can be invoked”.

Having applied my mind to the submissions made by both parties, I find that the true dispute is one of interpretation of a Collective Agreement. The parties were not *ad idem* as to the correct interpretation of the relevant clause of the MCA.

Based on the above, I therefore reject the jurisdictional challenge raised and I find that the Council has jurisdiction to hear the dispute and will deal with the merits of the dispute.

MERITS:

ANALYSIS of ARGUMENTS:

1. PROPER APPROACH TO INTERPRETATION:

The interpretation of the provisions of a Collective Agreement is an objective exercise, by applying the Rules of Interpretation. As a point of departure, the Rules of Interpretation, also applicable to Collective Agreements, were articulated by the Supreme Court of Appeal in ***Natal Joint Municipal Pension Fund v Endumeni Municipality*** [2012] 4 SA 593 (SCA), wherein Judge of Appeal Wallis held:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The ‘inevitable point of departure

is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.

In ***Democratic Nursing Organisation of SA on behalf of Du Toit and Another v Western Cape Department of Health and Others***¹ the Labour Appeal Court made the following observations, after considering the dictum in *Endumeni Municipality*:

“... Of course, context is not a secondary consideration but is part of the very process required to resolve any linguistic difficulty. The words employed and the purpose of the speaker are inextricably linked. This follows inherently from the very concept of the language. In the same manner, the content of an ordinary conversation cannot, in general, be divined from the meaning of the sentences employed or even with the conversationalist's goals in saying what they did, so the content of a legal text cannot, in general, simply be determined by the ordinary or technical meanings of the sentences in the text or indeed with the policy goals motivating the drafting thereof. As Scott Soames has noted:

'The content of a legal text is determined in essentially the same way that the contents of other texts or linguistic performances are, save for complications resulting from the fact that the agent of a legislative speech act is often not a single language user but a group, the purpose of the speech is not usually to contribute to the cooperative exchange of information but to generate behaviour modifying stipulations, and the resulting stipulating contents are required to fit smoothly into a complex set of existing stipulations generated by other actors at other times.'

In a judgment of the Labour Court in ***BIFAWU obo members v CCMA and Others*** (JR 306/13) [2018] ZALCJHB 303 (handed down on 27 September 2018) the Court in dealing with a review of an arbitration award on the interpretation of a Collective Agreement held and I quote: “The principles applicable to the resolution of such disputes are trite as restated in *Western Cape Department of Health v Van Wyk and Others*². These are that:

- i. When interpreting a collective agreement, the arbitrator is enjoined to bear in mind that a collective agreement is not like an ordinary contract, and he/she is therefore required to consider the aim, purpose and all the terms of the collective agreement.

¹ (2016) 37 ILJ 1819 (LAC) at para 33.

² (2014) 35 ILJ 3078 (LAC) at para 22. See also *North East Cape Forests v SAAPAWU and Others* [1997] 6 BLLR 711 (LAC); *Food and Allied Workers Union v Commission for Conciliation, Mediation and Arbitration and Others* (2007) 28 ILJ 382 (LC) at para 35.

- ii. The primary objects of the LRA are better served by an approach which is practical to the interpretation of such agreements, namely to promote the effective, fair and speedy resolution of labour disputes. In addition, it is expected of the arbitrator to adopt an interpretation and application that is fair to the parties.
- iii. A collective agreement is a written memorandum which is meant to reflect the terms and conditions to which the parties have agreed at the time that they concluded the agreement.
- iv. The courts and arbitrators must therefore strive to give effect to that intention, and when tasked with an interpretation of an agreement, must give to the words used by the parties their plain, ordinary and popular meaning if there is no ambiguity. This approach must take into account that it is not for the Courts or arbitrators to make a contract for the parties, other than the one they in fact made³.
- v. **The “parole evidence” rule when interpreting collective agreements is generally not permissible when the words of the memorandum are clear.** (*my emphasis*)
- vi. Collective agreements are generally concluded following upon protracted negotiations, and it is expected of the parties to those agreements to remain bound by their provisions. It therefore follows that such agreements cannot be amended unilaterally”.

In subsequent reported judgment of the Labour Court in ***Civil and Power Generation Projects (Pty) Ltd v CCMA and Others*** (JR 2473/16) [2019] ZALCJHB 58; (2019) 40 *ILJ* 2055 LC (handed down on 22 March 2019), the Court also referred with approval to the dicta in the ***Endumeni***-judgment discussed above when dealing with the review of an arbitration award. The Court concluded that the Arbitrator had misconstrued the objectives of the LRA and the Collective Agreement and since the Arbitrator had failed to properly apply principles relating to interpretation of Collective Agreements, a material error of law was committed and accordingly, the award was set aside and substituted on review.

In the matter before me, I appreciated the fact that I was called upon to interpret a Collective Agreement of a Bargaining Council, which means such was negotiated and entered into between the trade union and employers’ organizations, which are parties to the SALGBC.

³ See *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 All SA 262 (SCA)

In ***Minister of Trade and Industry v Murendi Properties and Building Supplies (Pty) Ltd***⁴ the Supreme Court of Appeal succinctly described what was said in *Endumeni Municipality* as: ... “a sensible approach which avoids anomalies ...”, which must be adopted. This approach would certainly apply to the interpretation of the MCA of the NBCRFLI. Furthermore, even when conducting an exercise of interpretation in line with the above *dictum* in *Endumeni Municipality (supra)*, it must be remembered that the actual wording of the contract cannot just be ignored, or words and / or meaning be read into the contract which is obviously contrary to or irreconcilable with the clear terms thereof. It is not for a Court, or an arbitrator or any other presiding officer to in effect redraft the Collective Agreement to provide for a situation, which is simply not provided for in the Collective Agreement itself.

In ***Khum MK Investments and Bie Joint Venture (Pty) Ltd v CCMA and Others***⁵ the Labour Appeal Court said:

“... tacit terms are unexpressed provisions of the contract derived from the common intention of the parties as inferred not only from the surrounding circumstances but also from the express terms of the written contract. Therefore, before a tacit term may be imported into the contract, it is necessary to examine the express terms of the contract; and a tacit term should not be readily imported when the express terms specifically address the matter in question. Where the parties have expressly agreed upon a term and given expression to that agreement in the written contract in unambiguous terms, reliance on the surrounding circumstances to alter the clear meaning or to broaden the ambit of the express term may not be justified. ...’

Perhaps the most appropriate summary of the proper principles to be applied in the interpretation of Constitution of a Union, which Constitution is also considered a Collective Agreement, can be found in ***NUMSA v Lufil Packaging (Isithebe) (A Division of Bidvest Paperplus (Pty) Ltd) and Others***⁶ where the Constitutional Court dealt with the NUMSA Constitution and held:

“NUMSA has adopted a constitution which is clear in its terms. It is a voluntary association with rules and annexures that collectively form the agreement entered into with its members. The constitution must be interpreted in accordance with the ordinary rules of construction applying to contracts in general. The classic interpretative principle is that effect must be given to the ordinary language of the document, objectively ascertained within its context. It must follow therefore that in the course of interpretation, preference should be given to a sensible meaning

⁴ 2021 JDR 0838 (SCA) at par 27

⁵ (2020) 41 ILJ 1129 (LAC) at par 22

⁶(2020) 41 ILJ 1846 (CC) at par 53

rather than ‘one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document’.”

Then, in a more recent judgment of the Supreme Court of Appeal, **Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others** (470/2020) [2021] ZASCA 99 (*a judgment handed down on 9 July 2021*), Unterhalter AJA reaffirmed the principles of *Endumeni*, but also sought to clarify how the principles thereof ought to be applied:

“*Endumeni* has become a ritualised incantation in many submissions before the courts. It is often used as an open-ended permission to pursue undisciplined and self-serving interpretations. Neither *Endumeni*, nor its reception in the Constitutional Court, most recently in *University of Johannesburg*, evince scepticism that the words and terms used in a contract have meaning.

Endumeni simply gives expression to the view that the words and concepts used in a contract and their relationship to the external world are not self-defining. Most contracts, and particularly commercial contracts, are constructed with a design in mind, and their architects choose words and concepts to give effect to that design. For this reason, interpretation begins with the text and its structure. They have a gravitational pull that is important. The proposition that context is everything is not a licence to contend for meanings unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text.” (my emphasis).

So in a nutshell, the exercise of interpretation, as held by the Constitutional Court in **University of Johannesburg is v Auckland Park Theological Seminary** [2021] ZACC 13; 2021 (6) SA 1 (CC); 2021 (8) BCLR 807 (CC) is a “unitary exercise” – a process of attributing meaning to the words used in the legislation by giving consideration to the “nature of the document, . . . the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears, the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermine the apparent purpose of the document. . . . The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.”

Based on the above case law, it is therefore required from an arbitrator to consider the context and language of a Collective Agreement together, with neither predominating over the other and furthermore:

- The context of the clause provided by reading the provisions in light of the document as a whole and how it came into existence
- The language used in the light of the ordinary rules of grammar
- The apparent purpose of the provision
- Where more than one possibility exists, the different possibilities must be considered in the light of the factors
- A sensible meaning must be preferred to an un-business-like result
- The process of interpretation is an objective one

An arbitrator should guard against redrafting a Collective Agreement for parties when interpreting relevant clauses thereof.

In the matter before me, to a large extent the Referring Party was adopting an approach in interpreting the relevant Clause, which it considered to be fair with reference, in particular, to the matter of Ms. Mbhele.

2. CONSTRUCTION of the CLAUSE under CONSIDERATION:

Clause 8.2.2 of the MCA reads as follows:

"8.2.2 The employee shall be required to submit a medical certificate from a registered medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act or Parliament, if more than 2(two) consecutive days are taken as sick leave, provided that the employer may request a sick leave certificate for every day of sick leave where there is evidence of abuse of sick leave".

3. THE ACTUAL PROCESS of INTERPRETATION:

I understood the argument from the Referring Party to be that flowing from Clause 8.2.2 that although the relevant Clause is silent on the procedure where an employee takes sick leave that an interpretation should nevertheless be adopted that should such employee *fail to report* to his/her employer that he/she is sick and if this employee then simply attend work and present a medical certificate, without having reported the period of absence in the first place, an inference can be drawn that the clause invariably places an obligation on the employee to report to their employer that he/she is unwell and will take sick leave. Further, should the employee's illness persist beyond 2 (two) consecutive days, it places a further obligation on the employee to produce a medical certificate upon request by the employer, where there is abuse of sick leave.

In passing, it is worth mentioning that the Referring Party also made mention of an internal leave policy which penalizes an employee who fails to report when absent from work. The relevant portion of such Policy reads as follows: “An employee that is off sick must notify the employer within 3 hours of normal workday/shift commencing and if this is not done, the employer can take disciplinary action against the employee. The Referring Party did not consider its Policy to be inconsistent with the MCA.

By virtue of section 24 of the LRA, as an arbitrator, I am only empowered to interpret Collective Agreements and not Policies of an employer and therefore would be exceeding my powers to comment on whether the Referring Party’s Policy is consistent with the provisions of the MCA.

By adopting the approach as enunciated in the ***Endumeni-judgment***, it follows that that clause 8.2.2 of the MCA should be interpreted by attributing meaning to the words used in such Collective Agreement, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.

In interpreting clause 8.2.2, I am not persuaded that it favours an interpretation which places an obligation to inform an employer of his/her whereabouts, which is already regulated in a separate policy according to the Referring Party. Nor does Clause 8.2.2 favour an interpretation to be adopted that when the employee takes sick leave, such invariably places an obligation on the employee to report to their employer that he/she is unwell and will take sick leave and therefore, in the event an employee *fails to report* to his/her employer that he/she is sick and if this employee then simply attend work and present a medical certificate, such could be met with dire consequences. Should I adopt the interpretation as advanced by the Referring Party, I would enter the arena of “making” or redrafting a Collective Agreement for parties.

As previously alluded to, a dispute over the interpretation of a Collective Agreement exists where the parties to the Collective Agreement disagree over the meaning of a particular provision, whereas a dispute over application of a Collective Agreement arises when the parties disagree over whether the Collective Agreement applies to a particular set of facts or circumstances. A section 24-dispute therefore deals with interpretation and/or application, not the *fairness* of the actions of parties.

A proper interpretation of **clause 8.2.2**, by simply considering the clear language in the clause, can in my view have one result only. This result is that the clause provides that an employee shall be required to submit a medical certificate from a registered medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act or Parliament if more than 2(two) consecutive days are taken as sick leave, provided that the employer may request a sick leave certificate for every day of sick leave where there is evidence of abuse of sick leave. The relevant clause is silent on any

procedure pertaining to reporting within specific timeframes and I am reluctant to draw any inference in this regard to read anything more into the relevant clause.

In **NUMSA v MISA and Others** (JA 15/2023); [2024] ZALAC 73; (2025) 46 *ILJ* 109 (LAC) (a judgment from the Labour Appeal Court handed down on 6 September 2024), also dealing with a section 24-dispute, the Court of Appeal was very critical of the arbitrator's approach, and the award was set aside. The Court held that when an imputed tacit term is sought to be imported, an arbitrator is not entitled to import the term into a Collective Agreement simply because it is convenient, fair, reasonable or even sensible to do so, as the Referring Party wanted me to do in this matter before me. What the test requires, whether in the form of the officious bystander test or the business efficacy test, is an objective assessment of what the parties, as reasonable people, would have agreed to. In that matter, there was no dispute that the MIBCO Constitution fails to address the unforeseen eventuality of a party admitted to membership subsequently failing to maintain the threshold required for admission. It was held that the express wording of the MIBCO Constitution, which Constitution also constitutes a Collective Agreement, when viewed as a whole and in context, show that should the parties have intended to provide for the automatic termination of membership consequent on a failure by a party to maintain the 5% admission threshold, they would have said so. The Court also remarked that absent the term sought to be incorporated, the MIBCO Constitution would be incoherent or ineffective, as is the case before me, pertaining to the MCA.

It is therefore clear from the authorities that an unexpressed term cannot be incorporated simply because it would be convenient, or that the term might have been incorporated in the Collective Agreement if the parties had thought about it at the time.

In rejecting the interpretation as advanced by the Referring party, I am also mindful of the autonomy that the LRA affords to bargaining councils and its parties to such bargaining councils to negotiate Collective Agreements at centralized level. As Murphy J pointed out in **Free Market Foundation v Minister of Labour and Others**⁷: "self-regulation on the basis of majoritarianism and voluntarism is a cornerstone of the policy of industrial pluralism". I am therefore reluctant to redraft a Collective Agreement for the parties to this bargaining council.

AWARD:

1. For the reasons set out above, the Council has jurisdiction to interpret Clause 8.2.2.
2. As to the interpretation as advanced by the Referring Party, such is rejected.

⁷ (2016) 37 *ILJ* 1638 (GP); [2016] 8 BLLR 805 (GP).

DATED AND SIGNED AT JOHANNESBURG ON THIS THE 8th of February 2026.

Signature: _____

Senior Commissioner: *Eleanor Hambidge* _____

Industry: *Local Government* _____