

Ruling on prescription of arrear wage claims

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Claims for payment of arrear wages may prescribe sooner rather than later following a Labour Appeal Court judgement on the payment of arrear wages from the date of a reinstatement order until the actual date of reinstatement.



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The recent Labour Appeal Court (LAC) judgment of *Hendor Mining Supplies v NUMSA* was an important judgment, especially as it relates to the prescription of these claims.

On 18 August 2003, Hendor Mining Supplies (Employer) dismissed employees for taking part in an unprotected strike. The Labour Court (LC) found the dismissals to be unfair and ordered a reinstatement of the employees from 1 January 2007 and that they report to duty on 23 April 2007. The employees were reinstated on 29 September 2009 by the Employer, but were not paid any arrear wages from 1 January 2007 until the date of reinstatement. On 19 September 2012, the Employees applied to the LC for an order quantifying the arrear wages.

One of the defences raised by the Employer against the application of the employees was that the employees' claim for payment of the arrear wages for the period 23 April 2007 until 28 September 2009 prescribed as it was a claim in contract and it thus fell within the definition of a 'debt due' under the Prescription Act, No 68 of 1969 (Act). The LC found that the employees' claims did not prescribe and thus ordered the Employer to pay back pay for the period 1 January 2007 until 28 September 2009.

On appeal, the LAC held that the Labour Relations Act, No 66 of 1996 (LRA) does not provide for prospective relief beyond the date of reinstatement and that a reinstatement order does not result in an order for payment of any future remuneration that arises from the date of the order until the date it is actually complied with. Once the employment contract is restored,

the employee then holds a contractual claim for the payment of arrear wages accruing under the contract.

In terms of the reinstatement order, the arrear wages that were payable from the period 1 January 2007 until 22 April 2007, as set out in the order, constituted a judgment debt which prescribes after 30 years. The employment contracts were thus restored retrospectively to 1 January 2007. While the employees were entitled to claim arrear wages until their reinstatement on 29 September 2009, the reinstatement order did not provide for the payment of wages prospective from the date of the order.

The wages that were thus due for the period 23 April 2007 until reinstatement on 29 September 2009 was based on a contractual claim that fell within the definition of a 'debt due' under s11(d) of the Act in terms of which such debts would prescribe within three years.

It is thus important to note that, while a reinstatement order creates a debt that is due, this will not constitute an order for the payment of prospective arrear wages from the date of the order.

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