



COMPLAINTS AND COMPLIANCE COMMITTEE

**DATE OF HEARING: 18 JULY 2025
25 SEPTEMBER 2025**

CASE NO: 491/2025

**REGIONS AND CONSUMER AFFAIRS
OF ICASA AND MR ANVIL D NEL**

COMPLAINANT

V

SOUTH AFRICAN POST OFFICE (SAPO)

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Ntombiza PN Sithole - Member
Mr Monde Mbanga - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member
Ms Ngwako Molewa - Member

FROM THE OFFICE OF THE CCC:

Meera Lalla – Acting CCC Coordinator
Thamsanqa Mtolo - CCC Assessor
Amukelani Vukeya – CCC Administrator

LEGAL REPRESENTATION FOR PARTIES

For the Complainant: Mr Gumani Malebusha and
Ms Ongkarabile Mofokeng from the RCA
The Complainant, Mr Nel, was also in attendance

For the Respondent: Ms Cheryl Jute
Mr Sekano Kgalanyane
Ms Natasha Lubbe from SAPO

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

- [1] This is a complaint against the South African Postal Service (SAPO). It was referred to the Complaints and Compliance Committee for adjudication in terms of section 17B(a) of the ICASA Act.

THE PARTIES

- [2] The Complainant is Mr Anvil D Nel (Mr Nel). He was assisted in these proceedings by the Regional Consumer Affairs of ICASA (RCA).
- [3] The Respondent is the South African Post Office (SAPO). SAPO is currently under Business Rescue proceedings and is appearing before the CCC with the knowledge of the Business Rescue Practitioner (BRP).

THE COMPLAINT

- [4] The Complainant alleged that SAPO failed to deliver his parcel containing a Hydraulic Pump for Mercedes Benz SL500, timeously, to the intended recipient in Netherlands.

THE CHARGE SHEET

- [5] The allegations of contravention by the Complainants are set out hereunder.
- [6] It was alleged that the conduct by SAPO amounted to the **contravention of Regulation 5 (5.1, 5.2, and 5.3) of the Conveyance of Mail Regulations, as published in Government Gazette No. 32644 of 2009.**

6.1 Regulation 5.1 states that:

"The conveyor is deemed to possess the mail from the moment that mail is handed to the conveyor or his agent."

6.2 Regulation 5.2 states that:

"Possession of mail passes to the addressee, upon delivery of mail."

6.3 Regulation 5.3 states that:

"The conveyor is liable for damages, loss and theft of mail from the point of receipt of goods until delivery of the goods is completed".

RELIEF SOUGHT

[7] The Complainant sought relief that the CCC make a finding of noncompliance and recommend an appropriate penalty.

THE RESPONDENT'S RESPONSE

[8] The Respondent's response is captured in its letter, dated 4 April 2025, signed by Cheryl Jute, SA Post Office, Compliance, and addressed to the CCC. The letter is on the letterhead of SAPO Joint Business Rescue Practitioners, Messrs. Anoosh Rooplal; Juanito Damons.

[9] The letter sets out the background of the case, including the fact that Mr Nel seeks to be compensated for the parcel in the value of R40 938.60 plus postage of 689.60, the total amount being R41 628.20.

[10] The letter then set out SAPO's findings following its own investigation regarding the matter. The findings are as follows:

- The item was posted on the 13/11/2023.

- It was a surface mail parcel. For that reason, it was forwarded to Cape Town.
- In Cape Town the parcel was kept there, waiting for the container to be full.
- Item was sent to the Netherlands and it reached its destination (NL) on 24/05/2025.
- The first enquiry was handled by an employee who was retrenched and another employee took over the enquiry on 08/08/2024.
- The item was then returned to South Africa as it could not be delivered due to the fact that the consignee failed to provide the requested information for customs clearance.
- Reddit scan shows that the item was received in South Africa on the 24/6/2024. Upon inquiry, Qatar Airlines could not provide SAPO with a receiving dispatch bill. They also could not provide the item in question.
- Unfortunately, SA Post Office does not have any bilateral agreements with airlines regarding compensation. As a result, SAPO could not hold the airline accountable for the lost item and then reimburse the client.
- Subsequently a motivation was submitted to the BRP to compensate the client.

[11] Apart from the letterhead, there was no indication, in the papers, that SAPO was under business rescue nor was there any indication that the parties would make any submissions in that regard.

THE FIRST SITTING

[12] The matter was heard for the first time on Friday, 18 July 2025. Pursuant to the hearing, the CCC requested the parties namely— RCA and SAPO to file written submissions in regard to section 133 of the Companies Act 71 of 2008 as amended (the Act) as to what effect the business rescue proceedings have on the hearing before the CCC.

[13] The relevant provision, section 133 of the Act, reads as follows:

"Section 133: General Moratorium on Legal Proceedings Against Company

(1) During business rescue proceedings, no legal proceedings, including

enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except—

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) proceedings by a regulatory authority in the execution of its duties after written notification to the business rescue practitioner.”

[14] In due course, the parties made submissions as requested.

[15] Based on the written submissions from the parties, the Chairperson, on behalf the CCC, issued a directive that the parties should be ready to argue the merits of the case as it was clear that proceedings, before the CCC, were expressly excluded from the term “*legal proceedings*”, as contemplated in the Act. This comes out clearly in the wording of section 133(f) of the Companies Act. Exclusions include “*(f) proceedings by a regulatory authority in the execution of its duties after written notification to the business rescue practitioner.*”

[16] In due course, the matter was re-enrolled and proceeded before the CCC on 25 September 2025.

THE SECOND SITTING

[17] At the outset it is appropriate to note that in its response to the allegations against it, the Respondent denied any wrongdoing on its part.

[18] On the papers before the CCC, it was clear that SAPO’s position was that it did all that was required of it. On its own version, it had, however, failed the customer as the parcel had not been delivered to the intended recipient, two years after the date the package had been received by SAPO for delivery.

THE BACKGROUND

[19] Circumstances leading to the present proceedings have been summarised hereunder:

[20] The Respondent was placed under provisional liquidation followed by the current business rescue proceedings. At the time Mr Nel handed over the parcel to SAPO, to be conveyed abroad, SAPO was going through a difficult financial period.

[21] The financial challenges that SAPO faced had a ripple effect. Amongst others, SAPO had to retrench a number of employees. This exacerbated the problem as it adversely affected its operations. An example was cited of an employee who had been handling the matter of Mr Nel's parcel, when he was retrenched and replaced by someone new in the matter.

[22] As to be expected, progress in dealing with the matter was stalled, as the new person had to familiarise himself with the new assignment before he could proceed. As a result, SAPO experienced more and serious delays in resolving the issue of Mr Nel's parcel.

THE COMPLAINT

[23] The complaint against the South African Post Office Services (SAPO) was failure to convey and deliver a parcel to the intended recipient.

[24] As stated earlier, the Respondent's position was that it complied with its obligations as the conveyor but was prepared to accept responsibility and pay compensation. As previously mentioned, the Respondent maintained that it had fulfilled its obligations in its capacity as the conveyor of the parcel. Despite this assertion, the Respondent indicated its willingness to accept responsibility for the situation and proceeded to offer compensation for the failure to deliver the parcel to its intended recipient. In fact, the CCC was informed that payment had, eventually, been made to Mr Nel.

[25] A question arose whether such payment had any effect on the proceedings before

the CCC? The answer was “No”. This was because the CCC lacked jurisdiction to adjudicate matters of compensation. It followed, therefore, that compensation that SAPO paid to Nel, had no effect whatsoever on the proceedings before the CCC.

SUBMISSIONS BY THE PARTIES

- [26] It was common cause that the item was posted on the 13 November 2023. Two years later, the item had still not arrived at its intended destination. However, it was not just the inordinate delay or tardy responses from SAPO that raised concerns, but the apparent casual manner in which SAPO dealt with the complaint by a customer.
- [27] The Complainant’s main submissions illustrated the casual nature of SAPO’s conduct and dismal performance in handling customer complaints.
- [28] According to the Complainant, SAPO took its time to respond to the complaint about the delay in delivering the parcel to its destination. It was only after the matter had been referred to the CCC, that SAPO showed an interest in wanting to resolve the issue.
- [29] During the proceedings, it was clear that SAPO did not see itself as having done anything wrong. This could be deduced from the language it used in response to the complaint. This fact was confirmed by SAPO’s representative during the proceedings.
- [30] It is proper at this stage to state that the CCC found SAPO’s lukewarm approach towards its customers’ complaints quite disturbing. More disturbing was the failure by SAPO to respond timeously to RCA when the latter tried to engage it on the matter. Neither the customer nor the RCA received any satisfactory response or explanation for the delay in dealing with the complaint.
- [31] The matter involved a customer who was unhappy with SAPO’s services. SAPO therefore, was obliged to promptly address the issues raised.

- [32] The problem, *inter alia*, seems to be that there was no agreement, either verbal or written with timeframes for the delivery of posted items. In addition, there are no guidelines in any form which set out when the customer could expect SAPO to provide a resolution once a complaint had been lodged.
- [33] This state of affairs is worrisome as it is an indication of extremely poor customer service. It is also an indication that there may be many other SAPO's customers who have experienced similar or worse problems with SAPO's services, and whose complaints were not addressed.
- [34] More worrisome is the fact that this important issue is not covered in the regulations or the licence terms and conditions of SAPO. These issues need to be addressed formally by way of amended regulations or guidelines.
- [35] Having said that, it is important and proper to focus our attention on what the Respondent has been charged with. This is to ensure that, as the CCC, we do not go beyond the Charge Sheet.

The Charge Sheet

- [36] It was alleged that the conduct of the Respondent amounted to the contravention of Regulation 5 (5.1, 5.2, and 5.3) of the Conveyance of Mail Regulations, as published in Government Gazette No. 32644 of 2009.
- [37] Accordingly, the Charge Sheet read thus:

37.1 Regulation 5.1 states that:

"The conveyor is deemed to possess the mail from the moment that mail is handed to the conveyor or his agent."

37.2 Regulation 5.2 states that:

"Possession of mail passes to the addressee, upon delivery of mail."

37.3 Regulation 5.3 states that:

"The conveyor is liable for damages, loss and theft of mail from the point of receipt of goods until delivery of the goods is completed".

[38] It is common cause that the regulations provide a framework for the general powers and duties of mail conveyors. They also clarify that mail remains the sender's property until it is successfully delivered to the recipient or returned to the sender.

[39] In short, the purpose of the regulations concerned is to regulate conveyance of mail, and general powers and duties of conveyors, regulate legal possession and ownership of mail, and eradicate exposure of mail to the risk of loss, theft, fraud, damage and tampering.

[40] In the present case, Mr Nel's package was placed in the care of SAPO for delivery to a recipient in Netherlands. That package was not successfully delivered to the intended recipient. In addition, it was not returned to the sender.

[41] The implication of the above is explained in the charge sheet.

[42] Regulation 5.1 cited in the Charge Sheet is a deeming provision. To properly understand it and its role, it is necessary to analyse it and examine its purpose.

[43] A proper reading of regulation 5.1, 5.2 and 5.3 shows that the overarching goal of the regulations is to ensure the safe and secure transport of mail aiming to prevent loss, theft, damage and fraud.

[44] This is to ensure that in the event mail is lost in transit, or is stolen, damaged or there is fraud, someone (in this case SAPO), is held liable.

[45] In the present case, there is no dispute that the Respondent is liable. That, probably, is precisely why SAPO paid compensation to Mr Nel, once it was established that the package eventually went missing.

[46] SAPO summarised its position thus:

"While we acknowledge the concerns raised, we believe that SA Post Office has complied with its obligations under Regulation 5.1 and 5.2 regarding the handling of the parcel. However, SA Post Office takes responsibility for the subsequent failure to meet the delivery commitment under Regulation 5.3 and is committed to its obligation under this Regulation to reimburse Mr Nel."

CONCLUSION

[47] Mr Nel's dissatisfaction with SAPO is understandable. SAPO failed to resolve his complaint fairly, timely, and efficiently. In addition, Mr Nel suffered financial loss.

[48] The CCC took note of the above but could not resolve the issues as its powers are limited in terms of the law. First, the CCC has no power to resolve issues of compensation and this was explained to the Complainant at the time of the lodging of the complaint. Second, customer care issues, though quite serious, were not part of the charge sheet. The CCC could, therefore, not entertain them as they were not before it for adjudication.

[49] What was before the CCC, was clearly set out as an alleged contravention of regulation 5. Since the CCC does not have power to go beyond the charge sheet, only regulation 5 is relevant for purposes of adjudicating the complaint. In other words the outcome of this matter hinges on whether regulation 5 has been contravened.

[50] There was a debate as to what was to be done with the information before the CCC, which points to SAPO's non-compliance with other regulations not set out in the charge sheet.

[51] It is indeed interesting that, on the facts of this matter, there are a number of provisions that SAPO could have been charged with. However, since those provisions were not part of the charge sheet, the CCC could not entertain them. Moreso because regulation 5 (specifically 5.1 to 5.3) does not prescribe timeframes or detailed steps that would, on their own, constitute a contravention if delayed.

Thus, while SAPO's conduct was deficient, the charge sheet framed under Regulation 5 was legally defective. To sustain a charge of non-compliance, it must be shown not only that loss occurred but that the licensee breached a positive duty imposed by the regulation or licence conditions. In this instance, the evidence demonstrates operational failure but not a breach of the specific duties imposed under Regulation 5.1 to 5.3.

[52] To go beyond the charge sheet, would be highly irregular as the CCC has no powers to amend a charge sheet. In any event, amending the charge sheet at this stage, without affording the Respondent an opportunity to respond, would cause prejudice to the Respondent.

[53] To the question whether SAPO has failed to comply with the regulations set out in the Charge Sheet, the answer is "No." The CCC emphasises that the dismissal of the charges herein should not be read as an exoneration of SAPO's performance. Rather, it reflects the CCC's obligation to act strictly within the four corners of the charge sheet and the regulations properly cited. The underlying facts demonstrate operational failings of a serious nature that nonetheless fall outside the scope of the pleaded contraventions.

[54] It is obvious that the charges against SAPO were defective and not properly formulated. For that reason, they should be dismissed.

FINDING

[55] Having regard to all the facts in this matter, the CCC makes the following finding

(a) Contravention of Regulation 5.1

The charge is dismissed.

(b) Contravention of Regulation 5.2

The charge is dismissed.

(c) Contravention of Regulation 5.3

The charge is dismissed.

RECOMMENDATIONS IN TERMS OF SECTION 17 E(2) OF THE ICASA ACT NO 13 OF 2000

[56] The complaint is dismissed. Accordingly no order is advised to Council.

[57] During deliberations, by the CCC, a question arose "*How long should SAPO retain an item in its possession before it is delivered to its intended destination?*"

[58] The above question was based on the fact that 2 years after Nel had placed his parcel with SAPO, for delivery to a recipient, that parcel had still not been delivered to its intended recipient. Worse still is that there seems to be no satisfactory redress.

[59] This is because the answer to the question could be found neither in the current Regulations nor in the Licence Terms and Conditions of SAPO.

[60] It has to be noted that in the present matter, the CCC was unable to make a finding against SAPO as the charges referred to the wrong regulations and were therefore defective.

[61] However, even if SAPO had been correctly charged under the Customer Care Standard Regulations, and it had been proved that SAPO failed to adhere to the regulations, the CCC would have had difficulty in enforcing the regulations because of the lack of timeframes.

[62] Needless to say, without standards against which we could test SAPO's performance, it would have been impossible to make an adverse finding.

[63] There is an urgent need, therefore, to address what the CCC regards as a serious "***lacuna***" in the law, in respect of customer care services by the Licensee, SAPO. Currently, the regulations as they stand are not consumer friendly. They are also not helpful to the enforcement process.

Lack of Timeframes

- [64] During deliberations, it was observed that there are no specific timeframes with regard to delivery of items from the date of placing the item in the custody of SAPO, to the date of delivery of the item to the intended destination. Neither the regulations, under which the charges were formulated, nor SAPO's licence terms and conditions, make provision for or refer to any timelines.
- [65] In the view of the CCC, this is a serious oversight, as timeliness is a critical component of delivering efficient service, to the customer.
- [66] Time is often at the heart of customer frustration and failure to observe time has the potential to hurt customer loyalty.
- [67] In the present matter, it was obvious that the complainant's frustration stemmed not only from the delay in having his parcel delivered to the intended recipient, but also from the casual manner (missed response deadlines, unanswered RCA letters, timeline gaps) in which SAPO handled his complaint. In our view, SAPO was able to drag its feet, in the manner that it did, precisely because timeframes or similar guidelines did not exist.
- [68] In its oral submissions, SAPO stated that it has appointed people to specifically address issues arising from customer service. This was to ensure that SAPO did not, in future, find itself in the position that it was currently in.
- [69] As commendable as this step is, it is hardly the answer to the crux of the problem, which is the inadequacy of the legislation and regulatory framework. Hence the need to address the issue directly by revisiting the applicable regulations and licence conditions.

The Importance of Accountability

- [70] Timeframes provide structure and deadlines necessary to achieve consistency and predictability in business operations. The CCC is nevertheless constrained to note, with grave concern, the lack of urgency in SAPO's handling of the consumer's

complaint. The Complainant's repeated correspondence was either ignored or responded to perfunctorily. Such conduct erodes public confidence and falls short of the level of responsiveness expected of a national postal operator.

[71] For that reason, timeframes tied to various obligations by SAPO are recommended as they would foster efficiency and ensure that SAPO is held accountable for its actions. At the same time, failure to deal with complaints from its customers promptly, would be minimised; customer requests would be prioritised and complaints responded to in a systematic and timely manner.

ADVICE TO COUNCIL AS TO ITS FUNCTIONS IN TERMS OF SECTION 17B OF THE ICASA ACT

[72] Section 17B of the ICASA Act provides as follows:


"17B. Functions of Complaints and Compliance Committee – (a) must investigate, and hear if appropriate, and make a finding on – (i) all matters referred to it by the Authority; (ii) complaints received by it; and (iii) allegations of noncompliance with this Act or underlying statutes received by it; and (b) may make any recommendation to the Authority necessary or incidental to – (i) the performance or the functions of the Authority in terms of this Act or the underlying statutes; or (ii) achieving the objects of this Act and the underlying statutes."

[73] For reasons stated hereunder, the CCC directs the following recommendations to the Authority.

73.1 That the Authority seriously considers reviewing Conveyancing of Mail Regulations and the Licence Conditions, where necessary, to improve the quality and efficiency of SAPO's services as well as the speed in which complaints are processed and finalised.

73.2 Among other things, revision and upgrading of the Conveyancing of Mail Regulations is crucial for improving customer satisfaction and customer retention in the industry. It would also assist in rebuilding customer trust and confidence as it improves the effective enforcement of the regulations.

73.3 In addition, addressing the defects and inadequacies in the regulatory framework and legislation, where necessary, would ensure stability in the industry.



Judge Thokozile Masipa
Chairperson of the CCC

Date: 26/11/2025