

**THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO: J1527/2023

Not Reportable

In the matter between:

SAUO obo LINDA C MOLLER

Applicant

and

**MEC FOR DEPARTMENT OF EDUCATION:
NORTH-WEST PROVINCE – V MOTSUMI**

First Respondent

**HEAD OF EDUCATION DEPARTMENT:
NORTH-WEST PROVINCE – DR S MVULA**

Second Respondent

Date heard: 29 February 2024

Date delivered: 5 March 2024

Summary: Application to hold respondents in contempt for refusing to give effect to certified arbitration award. Respondents found to be in contempt and ordered to give effect to the CCMA arbitration award.

JUDGMENT

DANIELS J

Introduction

[1] This is an application brought by the applicant to hold the respondents in contempt of court. The applicant was represented in this matter by the Afrikaans Onderwys Unie (hereafter “the Union”).

Material facts

[2] The applicant, Ms Linda Moller (hereafter “Moller” or “the applicant”) was engaged by the Department of Education as an educator and graded at post level 164. She challenged this at the Education Labour Relations Council (the “ELRC”). After conciliation, the dispute was arbitrated. An arbitrator appointed by the ELRC issued an arbitration award dated 27 November 2022 (the “award”). In the award, the arbitrator found that Ms Moller was incorrectly graded, and he then ordered:

2.1 The respondents to place Moller on post level 178 with effect from 15 December 2022; (own emphasis)

2.2 The respondents to pay backpay in the amount of R36 743, 50 by 15 December 2022, with interest at the prescribed rate if these monies were not paid on 15 December 2022. (own emphasis)

[3] The award was certified, in terms of section 143 of the Labour Relations Act No. 66 of 1995 as amended (hereafter “the LRA”) on 14 July 2023.

[4] On behalf of the respondents, the second respondent delivered an answering affidavit in which he stated Moller was placed on post level 178 with effect from 14 September 2023. He conveniently ignored the fact that the Department was required to move Moller on 15 December 2022, and it took the Department almost one year to comply.

[5] The applicant contends that the move from post level 164 to post level 178 would have meant an increase in her annual salary from R284 238, 00 to R304 746, 00; a difference of R20 508, 00 per annum or an amount of R1709, 00 per month. The respondents do not dispute this.

[6] In its answering affidavit, the respondents admit that:

6.1 They have received the award,

6.2 They implemented the award with effect from 14 September 2023, instead of 15 December 2022. Accordingly, respondents admit that they have not fully complied.

6.3 They paid Moller the backpay referred to in the award, but this was on 14 September 2023. Accordingly, respondents admit that they have not paid interest on the backpay from 15 December 2022 until 14 September 2023.

[7] This matter came before Tlhotlhamale J on 23 November 2023, who ordered inter alia that: (1) the second respondent must attend court on 29 February 2024, and (2) the second respondent must correct the salary and benefits of Moller from 15 December 2022 and pay any outstanding amount because of this correction within 14 days.

[8] On 28 February 2024, the second respondent filed an answering affidavit.

[9] On 29 February 2024, when the matter came before me, the second respondent was not in attendance. The court order issued on 23 November 2023 made it clear that the second respondent was not excused from attending court even if he filed an affidavit. From the bar, the respondents' legal representative stated that the second respondent is no longer employed by the Department. It goes without saying that evidence cannot be accepted from the bar.

[10] It is plain from the abovementioned narrative that:

10.1 The order issued by this court on 23 November 2023 came to the attention of the respondents,

10.2 The respondents did not place the applicant on post level 178 *with effect from 15 December 2022*,

10.3 The respondents did not pay the applicant interest (on the backpay) at the prescribed rate *with effect from 15 December 2022 to 14 September 2023*.

[11] The respondents allege that their partial fulfilment of the award is adequate. In my view, this demonstrates that the non-compliance with the award is deliberate and wilful. The respondents raised no difficulties they had experienced with *fully* implementing the award.

Legal analysis

[12] Section 143(1) read with section 143(3) of the Labour Relations Act No. 66 of 1995 (hereafter “the LRA”) provides that a certified arbitration award may be enforced as if it is an order of the Labour Court. Where a certified award orders something other than the payment of money, the award may be enforced by way of contempt proceedings in the Labour Court. Inasmuch as the certified award is deemed to be an order of the Labour Court, the LRA requires that it be accorded due respect.

[13] As Cameron JA (as he then was) so stated in *Fakie NO v CCII Systems (Pty) Ltd (Fakie)*:¹

“[6] *It is a crime unlawfully and intentionally to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence has in general terms received a constitutional ‘stamp of approval’, since the rule of law – a founding value of the Constitution – ‘requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained’.* (Own emphasis)

[14] As Cameron JA eloquently put it, in *Fakie*, when court orders are disregarded, this “*sullies the authority of the courts and detracts from the rule of law*”.

[15] The Constitutional Court recorded in *Pheko v Ekurhuleni Metropolitan Municipality*² that the willful disobedience of an order made in civil proceedings

¹ 2006 (4) SA 326 (SCA) (31 March 2006)

is contemptuous and a criminal offence. Contempt in the context of civil proceedings is coercive, and not punitive, in character.

[16] In this matter, it was common cause that the award was certified, that it was served on the respondents, and there had not been full compliance with the award.

[17] Once an applicant has proven the existence of the order; service of the order; non-compliance (beyond reasonable doubt) the respondent bears an evidential burden in relation to wilfulness and mala fides.³ If the respondent fails to establish reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.

[18] Here, the respondents advanced no evidence that the non-compliance was neither wilful nor male fides. They simply took the approach that partial compliance was adequate. In the circumstances, I find that the respondents deliberately chose not to comply.

[19] In all the circumstances, the evidence establishes, beyond reasonable doubt, that respondents are in contempt of court. They have not fully complied with the award:

19.1 They failed to pay interest on the backpay at the prescribed rate, calculated from 15 December 2022 until 14 September 2023,

19.2 They failed to place the applicant on post level 178 with effect from 15 December 2022. This would have required them to adjust her remuneration from 15 December 2022. Instead, the respondents did this with effect from 14 September 2023.

Costs

² 2015 JDR 0841 (CC) at para 28

³ Fn. 1

[20] The application was made necessary by the respondents' deliberate non-compliance with an arbitration award. There is no reason in law and fairness why the applicant should be denied costs.

Conclusion

[21] The application is successful. The respondents are indeed in contempt of court. In the circumstances, I make the following order:

21.1 The first and second respondents are jointly and severally fined a total amount of R100 000, 00 (one hundred thousand rands), which fine is suspended for 60 (sixty) days, subject to *full compliance* with the arbitration award issued by the ELRC under case reference ELRC306-22/23NW by:

21.1.1 Complying with paragraph 16 of the arbitration award by placing the applicant on post level 178 *with effect from 15 December 2022* including the necessary adjustments to her salary and benefits, and

21.1.2 Complying with paragraphs 17 and 18 of the arbitration award by calculating and paying to the applicant the interest contemplated in those paragraphs.

21.2 The respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved.

R Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms AH Du Plessis, Smit Sewgoolam Inc

For the Respondents: State Attorney