

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN**

CASE NO: CA 6/98

In the matter between:

**SOUTH AFRICAN COMMERCIAL CATERING
AND ALLIED WORKERS UNION**

First Applicant

and

XOLILE NUMOYI AND 32 OTHERS
Applicants

2ND TO 34TH

and

**THE REGISTRAR OF THE LABOUR COURT,
MR H THERON N.O IN HIS CAPACITY AS
TAXING MASTER OF THE ABOVE
HONOURABLE COURT**

First Respondent

IRVIN AND JOHNSON

Second Respondent

JUDGMENT

[1] The Applicants were Appellants in an appeal against a judgment of the Industrial Court. The Appeal was prosecuted before the new Labour Appeal Court as constituted in accordance with the Labour Relations Act 66 of 1995 (hereinafter the Act). Applicants were unsuccessful with their appeal and costs was awarded against them and in favour of the Second Respondent.

[2] The Second Respondent proceeded to draft its Bill of Costs in terms of the Tariff as

set out in Rule 13(1) of the rules of the Labour Appeal Court, which provides that, for the conduct of proceedings before the Labour Appeal Court the same schedule of Tariff for fees as the one which applies for proceedings before the Supreme Court of Appeal will apply.

[3] On the date of the scheduled taxation the First Respondent, in his capacity as Registrar and Taxing Master declined to tax the bill presented by the Second Respondent. The basis for his refusal was that the Bill presented by the Second Respondent should have been drafted in accordance with the Tariff of fees as applicable to the High Court. The reasons for arriving at the objections which he did appear to be the following:

3.1 The jurisdiction of the Labour Appeal Court to hear the appeal was pursuant to item 22(5) of Schedule 7 of the Act. This item required the Labour Appeal Court to apply the old Labour Relations Act consequently the Tariff of fees which had been applicable in matters heard by the old Labour Appeal Court was applicable. (The old Labour Appeal Court was constituted by the High Court and thus costs awarded were based on the Tariff of Fees as applicable to the High Court.)

and further that

3.2 in hearing the appeal the Labour Appeal Court sat as a court of first instance because the appeal was against the decision of the Industrial Court which was not constituted as a court of law. In matters when the Labour Appeal Court sat as a Court of first instance then and in such event Rule 13(3) of the Labour Appeal Court provided that when costs was granted to a party the applicable tariff of fees was the one which applied to the High Court.

[4] In due course the Second Respondent drew up a new bill on the High Court Tariff which bill was duly taxed.

[5] Applicants seek to review and set aside the decision of the First Respondent in refusing to tax the original Bill drawn in accordance with the Tariff of fees as applicable to the Supreme Court of Appeal as also the subsequent taxation of the subsequent Bill drawn in accordance with the tariff of fees as applicable to the High Court.

[6] To deal first with First Respondents second objection, Rule 13 of the Rules of the Labour Appeal Court provide the following:

“(1) Rule 9,10, and 11 (as amended from time to time) of the rules of the Supreme Court of Appeal of South Africa regarding taxation and attorneys’ fees apply with the changes required by the context.”

(2) ...

(3) When the Labour Appeal Court sits as a Court of first instance, the provisions of rule 24 of the Labour Court Rules apply”.

[7] While it is correct that the Industrial Court was not constituted as a Court of Law to argue that in hearing the appeal the Labour Appeal Court sat as a court of first instance may be of some merit. What is however required is to consider rule 13 (3) in the context of the Rules of the Labour Appeal Court as a whole. The Labour Appeal Court is unique in that it also has jurisdiction as a court of first instance however before it can entertain a matter as a Court of first instance certain procedural requirements as set out in Rule 10 of its Rules are required to be followed. It is only when there is compliance with Rule 10 can it be said that the Labour Appeal Court has sat as a Court of first instance - no more and no less. Sub Rule 13(3) is therefore only applicable where the Labour Appeal Court sits as a Court of first instance in compliance with Rule 10 of the Rules of the Labour Appeal Court.

[8] The procedure that was followed by the parties in prosecuting this appeal was not the procedure as set out in Rule 10 but the procedure set out for appeal ordinarily heard from the Labour Court. In these circumstances the Registrar was incorrect to insist that the applicable Tariff of fees was the one provided for in the sub-Rule 13(3).

[9] With regard to his first objection, the relevant part of item 22(5) of Schedule 7 of the Act provides that:

“Any appeal from a decision of the Industrial Court ...in terms of subsection (1) or (2) must be made to the Labour Appeal Court established by section 167 of the Act and the Labour Appeal Court must deal with the appeal as if the Labour Relations Laws had not been repealed.” (emphasis added).

[10] Item 22(5) of Schedule 7 of the Act does not enjoin the parties to deal with the appeal as if the Labour Relations Act had not been repealed. It enjoins the Labour Appeal Court to deal with the appeal as if the old Labour Relations Act had not been repealed. The prosecution of the appeal was therefor clearly proceeding before the new Labour Appeal Court.

[11] Furthermore the old Labour Relations Act does not deal with the question of Tariff of fees for costs of proceedings in the old Labour Appeal Court and the Industrial Court. The costs are therefore not set out in any "Labour Relations laws". The Tariff of fees then applicable where costs orders were made were regulated by Rules promulgated in terms of the laws which have now been repealed. These rules were specific to the functions of and proceedings before those institutions which institutions no longer exists.

[12] The proceedings, which form the subject of the current dispute about the costs were as a matter of fact not conducted before the old Labour Appeal Court. They are proceedings which commenced and continued before the new Labour Appeal Court and in terms of the rules of the Labour Appeal Court.

[13] For the above reasons the costs of the proceedings before the new Labour Appeal Court should be the cost as provided for in s 13(1) of the rules of the Labour Appeal Court.

[14] In the result I make the following order:

14.1. The taxation by the first Respondent on 25 November 1999 of the Second Respondents Bill of Costs in connection with proceedings before the Labour Appeal Court, which Bill was drawn on the High Court Tariff is hereby set aside.

14.2. The decisions of the First Respondent on 3 November 1999 with regard to Second Respondent's Bill of Costs which had been drawn on the tariff of the Supreme Court of Appeal Tariff is set aside.

14.3 The Bill of Costs presented on 3 November 1999 and which had been drawn in terms of Rule 13 (1) of the Rules of the Labour Appeal Court is referred for taxation at a date and time to be arranged with the Registrar.

Waglay J

Date of Judgment: 21 July 2000