IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JA6/16

SBV SERVICES (PTY) LTD	**Appellant**
and	
NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT AND LOGISTICS INDUSTRY	**First Respondent**
THE COMMISSIONER FOR CONCILIATION, MEDIATION AND ARBITRATION	**Second Respondent**
FLOORS BRAND NO	**Third Respondent**
SASBO- THE FINANCE UNION	**Fourth Respondent**
PROTEA COIN GROUP (ASSETS IN TRANSIT AND ARMED REACTION) (PTY) LTD	**Fifth Respondent**

Heard: 01 November 2016

Delivered: 01 March 2018

Summary: Demarcation-- of the National Bargaining Council for the Road Freight and Logistic Industry (Council) – At the heart of this appeal is the question whether the cash-in- transit component of SBV should be construed as goods falling within the scope and operation of the Council. Whether the cash in-transit falls within the scope and operation of the Council is a matter of interpretation and the correct test in assessing a commissioner's interpretation is either correctness or reasonableness – the court holding the view that in interpreting the words goods in the council's certificate of registration – court should favour an approach that takes into account the historical development of the context which ensures that proper meanings are ascribed to words, a meaning that is neither wide or narrow but appropriate within the confines of its context and application. Court finding that transporting cash in boxes, containers and sealed bags does not convert cash into goods because cash remains cash regardless of its mode of transportation. Held that the cash-in-transit is a recognised component within the Council's scope of registration as it forms part of the Council's constitution which was adopted prior to the certificate of registration being issued. Appeal dismissed.

Coram: Waglay JP, Tlaletsi DJP and Phatshoane AJA

JUDGMENT

WAGLAY JP

[1] The first respondent, the National Bargaining Council for the Road Freight and Logistic Industry (hereafter the "Council"), in terms of its certificate of registration operates in an industry which is involved in "the transportation of goods for hire or reward by means of road transport in the Republic of South Africa…"

[2] The Council thus sets employment standards that must be complied with by those who operate within the scope of its operational sector. The Council holds the view that the appellant falls within its scope of operation and is bound by the terms of its main agreement. SBV Services (Pty) Ltd, the appellant, disputes that either it or its employees are engaged in the industry for which the Council is registered.

[3] This dispute has been ongoing for a considerable period. The present appeal deals with the point *in limine* raised by the appellant. The appellant contends that having regard to the Council's certificate of registration its activities fall outside the definition of the industry for which the Council is registered, in that the Council's scope of registration is limited to the "transportation of goods by means of motor transport" and that the appellant's activities do not involve the transportation of "goods".

[4] The appellant argues that its main activity is related to the provision of banking and financial services rather than the transportation of cash – the transportation of cash it says is merely an "ancillary activity" to its banking services. Its alternative argument is that in transporting cash, it was not transporting "goods" as cash does not constitute goods. This matter, however, revolves only around whether the meaning of goods in the Council's certificate of registration includes cash.

[5] The Council's certificate of registration defines "transportation of goods" as follows:

> 'The undertaking in which employers and their employees are associated for the carrying out of one or more of the following activities for hire or reward:
>
> (i) The transportation of goods by means of motor transport;
>
> (ii) The storage of goods, including the receiving, opening, unpacking, packing, despatching and carrying of, or accounting for goods where these activities are ancillary or incidental to paragraph (i) above; and

(iii) The hiring out by labour brokers of employees for activities or operations which ordinarily or naturally fall within the transportation of goods irrespective of the class of undertaking, industry, trade or occupation in which the client is engaged as an employer.'

[6] The appellant has referred to a host of authorities which state that while words can have more than one meaning, each meaning must be considered with reference to the context of the document being interpreted to decide which meaning is to be attributed to that specific word. The appellant then goes on to provide various dictionary meanings to the word "good" and its plural form "goods":

> 'Black's Law Dictionary defines "goods" as being "tangible or movable personal property other than money; especially articles of trade or items of merchandise.
>
> The Cassell Paperback Dictionary defines "goods" as meaning, in the plural, "movable property, chattels, effects, wares, merchandise".
>
> The American Heritage Dictionary, under the heading of "goods", refers at item 4, to "goods", which are defined as meaning "a. commodities; wares' b. portable personal property…fabric; material."
>
> The Collins English Dictionary refers to "goods" as being "1. possessions and personal property" and 3. Articles of commerce; merchandise."
>
> Webster's Third New International Dictionary refers to "goods" as meaning "tangible movable personal property having intrinsic value usu. excluding money and other choses in action but sometimes including all personal property …chattels, wares, merchandise…"
>
> The Oxford English Dictionary refers to "goods" as including "3. property or possessions esp, movable property …saleable commodities; merchandise, wares.'

[7] Following upon the dictionary meaning, the appellant contends correctly, that the common thread which runs through the dictionary meanings is that the word good(s) refers to merchandise or commodities which can be traded and ordinarily

excludes money, as money is a means of exchange and not a commodity to be traded.

[8] Relying on the above, the appellant's argument is that there is nothing in the Council's certificate of registration to indicate that the word "goods' should be given a meaning beyond the accepted ordinary meaning which is supported by the dictionary definitions, particularly since it does no violence to the effect of the document being interpreted.

[9] The Council disagrees. Relying on *Commander v Collector of Customs,*[1] it states that the meaning attributed to the word "goods" in the certificate must be tested against the context that it is used. In the present context of the certificate of registration, it says that it is obvious that the word "goods" must be given the widest possible meaning to include "cash".

[10] There are judgments which support the interpretation that each of the parties seeks to ascribe to the word "goods"[2] however, the crucial aspect here relates to the context in which the word good(s) is interpreted.

[11] Importantly, in ascertaining the context within which meaning should be ascribed to particular words, it may, in my view, not be improper to consider the historical development of the context to ensure that proper meanings are ascribed to words, a meaning that is neither wide or narrow but appropriate within the confines of its context and application.

[12] As a general rule, a bargaining council regulates the industry for which it is registered and polices that industry. All its members are bound to the

[1] 1920 AD 510 at 511.
[2] *Padyachi v Rex* 1919 NPD; *S v Ganyu* 1977 (4) SA 810 (RA); and *R v Behm* (1970) 12 DLR (3rd) 260.

agreements it has negotiated and which set the minimum standards that are binding within its scope of operation. These agreements are extended by legislative fiat to non-parties who operate within the Council's registered scope. The purpose of a Council and the binding character of the agreements is to set a minimum standard, within its scope of registration, thus protecting employees from exploitation and protecting employers from an unstable environment as wages and conditions of services are largely standardised.

[13] The dispute before this Court is limited to the cash-in-transit component of the appellant's business. This business was developed and funded largely by commercial banks to improve the security of its cash-in-transit operation in the wake of severe losses it incurred as a result of theft and robberies. Unlike transportation of goods, the vehicle used for the transport of cash is modified, it is armoured, the personnel involved in the transport are specially trained, armed and uniformed. Transportation of cash takes on vastly different form than the transportation of goods other than cash.

[14] In a demarcation dispute application brought in 1998 by Fidelity Guards, a company providing similar services to that of the appellant, the employer argued that its operation fell outside the scope of the Council. The Commission[3] issued a demarcation award under section 62 of the Labour Relations Act 66 of 1995 (LRA) in terms of which it determined that cash-in-transit activities engaged by Fidelity Guards were within the scope of the Council (*Fidelity Guards Holding (Pty) Ltd Springbok Patrols (Pty) Ltd* case no: GA369)

[15] A further demarcation dispute in 2002 between TGWU and Coin Security similarly resulted in the Commission issuing a demarcation award to the effect that the

[3] Commission for Conciliation, Mediation and Arbitration.

cash-in-transit activities engaged by these companies fell within the scope of the Council (*TGWU v Coin Security Group and Others* [2002] 8 BALR 896 (CCMA).

[16] The appellant has also by its past actions recognised that its cash-in-transit activities fell within the Council's scope as it has repeatedly applied for and, prior to 2004 was granted exemption from the collective agreement applying to some of its cash-in-transit operations. Over 50% of the appellant's staff are involved in its cash-in-transit operation. Its fleet which transports cash travels over 32 million kilometres per annum. The cash, money deposits cheques and other monetary instruments transported by the appellant are placed in containers or sealed bags.

[17] The meaning ascribed to "goods" when considered against all the above factors raises the issue of whether in transporting cash should the appellant not fall within the security industry as opposed to the road freight industry under the Council.

[18] The Council's argument is that when cash is being transported it is not being used as legal tender or as a mean of exchange. According to it while in transit it is no more than a commodity like any other to be delivered to its destination where it will serve the purpose it normally serves. This argument, in my view, is totally contrived. If it was so simplistic, why the need for armoured vehicles, armed personnel and such high security need? Transporting cash is not like transporting any other commodity very special and specific considerations apply.

[19] The Council's further argument which was upheld by the Commission was that in interpreting the word "goods" within the context and purpose of the Council regard must be had to the objective of promoting orderly collective bargaining at sectoral level. I do not share this view. While it may be correct that certain categories of employees within the cash-in-transit operation may not fall to be protected under any bargaining council, other than the Council, I do not share the

view that this can lend credence to demarcating the scope of a Council's operation. Likewise, the fact that cash-in-transit is more likely the largest user of transport for delivery cannot be reason to use its operation to define the meaning of the word "goods" in the Council's certificate of registration.

[20] Also while one may bemoan the fact that security personnel are doing far riskier tasks and often victims of abuse in terms of hours of work, benefits and levels of pay, in the absence of being included within the Council scope of interpretation, this cannot again serve as a tool of interpretation for present purposes.

[21] Finally, transporting cash in boxes, containers and sealed bags does not convert cash into goods. Cash remains cash no matter how transported or by who. The issue is whether the word goods incorporates cash in the Council's certificate of registration.

[22] While I accept all the facts that militate against cash being included in the definition of goods in the Council's certificate of registration when regards is had to the fact that the certificate of registration sought to deal with the transport of everything other than people and beast[4] then there is a clear indication that goods must, within the context, include cash.

[23] Additionally, when the Council changed its name in 2010 and registered a new constitution, its scope of registration remained principally the same. Its new

[4] 'Road Freight and Logistics Industry or "Industry" means the industry in which employers and employees are associated for carrying on one or more of the following activities for hire or reward:
(i) The transportation of goods by means of motor transport;
(ii) The storage of goods, including the receiving, opening, unpacking, packing, despatching and carrying of, or accounting for goods where these activities are ancillary or incidental to paragraph (i) above; and
(iii) The hiring out by labour brokers of employees for activities or operations which ordinarily or naturally fall within the transportation of goods irrespective of the class of undertaking, industry, trade or occupation in which the client is engaged as an employer.'

Constitution specifically provides for a cash-in-transit sectoral chamber within the Council and defines it as:

> '…the provision of transport by a registered security service provider who protects and/or safeguards in connection with the collection, transportation or delivery of cash and/or valuables; related to the supply of vehicles and security guards and/or security officers; or full spectrum of automated teller or dispensing machine services' or all aspects of cash or valuables handling or storage or processing; or pay or pension packing or pay-out services for, and/or on behalf of, and/or between any business, financial institution or parastatal.'

[24] For all intents and purposes, the cash-in-transit is a recognised component within the Council's scope of registration as it forms part of the Council's constitution which was adopted prior to the certificate of registration being issued.

[25] In the circumstances I am satisfied that the word good(s) in the Council's certificate of registration includes cash.

[26] The other issue raised by the parties is the test that should apply in reviewing a demarcation dispute particularly when the dispute is about the interpretation of words or phrases in a certificate of registration or similar instruments. This issue was finally resolved in the matter of *NUMSA v ASSIGN Services*,[5] where this Court held that:

> 'An incorrect interpretation of the law by a commissioner is, logically, a material error of law which will result in both an incorrect and unreasonable award. Such

[5] [2017] 10 BLLR 1008 (LAC).

an award can either be attacked on the basic of its correctness or for being unreasonable.'[6]

[27] In matters such as the present, the test that is of application is that of correctness or reasonableness. In the circumstances, this appeal must fail. With regard to costs, I believe that in terms of law and equity each party should bear its own costs.

[28] In the result, the appeal is dismissed.

Waglay JP

I agree

Tlaletsi DJP

I agree

Phatshoane AJA

[6] At para 32. See also the authorities cited therein.

APPEARANCES:

FOR THE APPELLANT:	Adv A Redding SC
	Instructed by Webber Wentzel Attorneys
FOR THE FIRST RESPONDENT:	Adv A Myburgh SC
	Instructed by Bowman Gilfillan Inc