

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

**CASE NO. JR 1368/08**

In the matter between:

**NEHAWU obo J A JEFFERSON**

**Applicant**

and

**DEPARTMENT OF WATER AFFAIRS & OTHERS**

**Respondent**

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**JUDGMENT**

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**VAN NIEKERK J**

- [1] This is an application to review and set aside a decision made by the third respondent, who was the arbitrator in a dispute between the individual applicant Mr Jefferson and the first respondent, the Department of Water Affairs, Mr Jefferson's employer. The arbitrator ruled that a subsidised vehicle provided to an official in terms of the applicable policy was a working tool and not a benefit for the purposes of the definition of unfair labour practice contained in Section 186(2) of the Labour Relations Act. The arbitrator held that the Bargaining Council, to which the dispute had been referred, accordingly lacked jurisdiction to entertain a claim in which Jefferson claimed that the first respondent had committed an unfair labour practice by withdrawing its approval initially granted, that he would be allocated a subsidised vehicle.

- [2] The facts relevant to the application are broadly not in dispute. Jefferson was transferred from a provincial department in the Free State to the provincial Department of Agriculture, Conservation, Environmental and Land Affairs in Gauteng. On 17 October 2006, he was transferred to the first respondent. Jefferson had, in the course of his employment, been furnished with a subsidised motor vehicle in terms of the applicable policy. He drove that vehicle in circumstances in which a total amount of 37 000 kilometres had been travelled on it. Afterwards, Jefferson sold the vehicle in circumstances in which he had not travelled what is referred to as the 84 000 official kilometres that, in terms of the applicable policy, he was obliged to do travel in the subsidised vehicle.
- [3] After his employment by the respondent, Jefferson applied for the allocation of a subsidised vehicle. The allocation was initially approved. The approval was later withdrawn on the basis that Jefferson had not complied with the requirement that he travel at least 21 000 a year for a period of four years, and that having sold the vehicle prior to travelling the required official kilometres, he was not entitled to be allocated a further subsidised vehicle.
- [4] In these proceedings, which, as I have indicated, were initiated to review and set aside the ruling made by the third respondent, there is no record of any evidence that may have been led at the arbitration hearing. It is evident from the arbitrator's award that the first respondent raised a point *in limine* at the outset of the arbitration proceedings to the effect that the Bargaining Council had no jurisdiction to arbitrate the dispute, on the basis that a subsidised vehicle constituted a working tool and not a benefit. The parties then appeared to have submitted what seems to be heads of argument on the point. In his response, the applicant's representative contended that the applicant was engaged as an

official in a category that entitled him to the benefit of a subsidised vehicle. The heads filed on behalf of the applicant concluded:

"We request to pray to the commissioner to rule that the matter might be arbitrated after satisfying himself that the GPSSBC has absolute right to entertain the matter at arbitration level (sic)."

[5] The arbitrator appears to have made a ruling that the vehicle did not constitute a benefit on the basis only of the written submissions made by the parties. It is trite that the material properly before a commissioner or a Bargaining Council arbitrator, as is the case in this instance upon which he / she can base a decision is ordinarily limited to evidence under oath, whether this is introduced *viva voce* or by affidavit, or to evidence introduced by agreement between the parties. In this regard, see *DB Thermal v CCMA and others* 2000 (10) BLLR 1163 (LC). In the present matter, there was no proper evidentiary basis on which the third respondent could make a jurisdictional ruling. No evidence was led before him, and there is no evidence before me of any agreement that evidence might be introduced by the parties on affidavit or by any other means. On the contrary, the applicants, in their written submissions, clearly expected that evidence would be led in order to substantiate their claim that Jefferson qualified for a subsidised vehicle based only on his occupational level.

[6] The applicant's claim, i.e. that despite the wording of the official policy, subsidised vehicles were allocated to officials above a certain level as a matter of course, and that the allocation of a vehicle was therefore a right, should have been determined after hearing evidence. The heads of argument submitted to the arbitrator, and on which basis he made his ruling, clearly do not constitute evidence. It follows then that the arbitrator ought to have heard what was categorised as an objection to jurisdiction by conducting an arbitration hearing. This is especially so since the

jurisdictional ruling sought effectively raised the substance of the dispute i.e. was the applicant entitled, in terms of the applicable policy or in its application, to a subsidised vehicle. The policy, on which the third respondent relied in upholding the jurisdictional ruling, was but one component of a matrix of factors that ought to have been considered.

[7] The third respondent's failure to hear evidence constitutes, in my view, a reviewable irregularity, as did the making of a jurisdictional ruling in the absence of any evidence. In these circumstances, the jurisdictional ruling stands to be reviewed and set aside.

I therefore make the following order:

1. The ruling made by the third respondent on 28 May 2008 is reviewed and set aside.
2. The matter is remitted back to the GPSSBC for rehearing before another commissioner.
3. There is no order as to costs.

**ANDRE VAN NIEKERK**  
**JUDGE OF THE LABOUR COURT**

Date of Hearing: 17 June 2009

Date of judgment: 18 June 2009

Appearances:

For the applicant: Adv Dladla

Instructed by: Nehawu

For the 1<sup>st</sup> Respondent: Adv T Masevhe

Instructed by: The State Attorney