

IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN JOHANNESBURG

NOT REPORTABLE

CASE NO: J578/08

In the matter between:

JONATHAN HOWELL

APPLICANT

AND

AUTOHAUS GOBEL NORTHCLIFF

(PTY) PLT t/a PEUGET NORTHCLIFF

RESPONDENT

JUDGMENT

Molahlehi J

Introduction

- [1] The applicant in this matter seeks an order to have the arbitration award issued under the auspices of Dispute Resolution Centre for the Motor Industry Bargaining Council on the 12th March 2008, case number MINT9067S made an order of the Court in terms of section 158(1) (c) of the Labour Relations Act 66 1995.
- [2] The brief background of this matter is that the applicant was employed as the after sales manager was dismissed by the respondent on the 5th February 2007. Subsequent to his dismissal the applicant referred an unfair dismissal dispute to the Motor Industry Bargaining Council which subsequent to failure of conciliation arbitrated the dispute between the parties.

- [3] The outcome of the arbitration proceedings was that the arbitrator issued an award in favour of the applicant, finding that the dismissal was substantively unfair. It was for this reason that the arbitrator ordered the respondent to pay the applicant compensation in the amount R252 000, 00. The arbitration award was faxed by the bargaining council to the respondent on 14th March 2009. A copy of the arbitration was again faxed to the respondent's attorneys of record on 17th March 2009.
- [4] The respondent having not complied with the terms of the arbitration award the applicant filed this application on the 4th April 2008. The respondent then filed an application to have the arbitration award reviewed on 22nd April 2008 under case number JR610/0.
- [5] The applicant filed his application to have the arbitration award made an order of Court in terms of section 158(1)(c) of the Labour Relations Act on 10 April 2008. In that application the applicant called on the respondent, if it intended to oppose the application to file an answering affidavit within 10 Court days.
- [6] On 6th June the respondent having failed to file its answering affidavit within 10 days, the applicant's attorneys wrote a letter to the respondent's attorneys indicating that they would seek to have the matter enrolled on the unopposed roll.
- [7] The respondent filed its answer to the applicant's application to have the award made an order of Court on 12th June 2008. Ten days thereafter the respondent filed an application to have the award reviewed and set aside under case number JR610/08.

[8] The respondent's defence as set out in its answering affidavit is that until such time as the said review application has been finally determined, it would be incompetent for the Honourable Court to consider the applicant's application in terms of Section 158(1)(c) of the Act. In terms of the Labour Relations Act, once an award has been issued the successful employee party may enforce it either in terms of Section 143 of the same Act, by having it certified by the Director of the CCMA as if it is an order of the Court or made an order of Court in terms of Section 158(1)(c). It is trite that a review application does not automatically stay the enforcement of an arbitration award. In *Professional Security Enforcement v Namusi* (1999) 20 ILJ 1279 (LC) at paragraph 10, the Court had this to say:

“Neither the Act nor (sic) the common law lays down a hard-and-fast rule that an application to have an award (or any judicial order) made an order of court must be dismissed or conditionally postponed if the person against whom it is to be made has applied for its rescission or review. This court has, however, adopted the practice of postponing applications brought under s 158(1)(c) if the respondent has filed an application for review.”

[9] In considering whether or not to make an arbitration award an order of Court, the Court has a discretion which it has to exercise judicially. Some of the factors which the Court will take into account in exercising its discretion are the interests of both the employer and the employee in ensuring finality of the matter. This is an imperative of the Labour Relations Act which requires the parties to exercise

their rights enriched in the law as speedily as possible. In this regard the underlying objective of the Labour Relations Act is to advance economic development, social justice and labour peace. Related to the issue of securing finality of the matter is the issue of securing justice for both parties.

Evaluation

- [10] In terms of Section 145 of the Labour Relations Act, a party seeking to have an arbitration award reviewed and set aside has to do so within six weeks of the date of issuance of the award.
- [11] In this matter whilst the application to review the arbitration award was filed after the section 158(1)(c) application such application has been filed within the prescribed six weeks period. The respondent can therefore not be accused of delay in instituting the review application.
- [12] The respondent may be criticized for not filing its response to the application in terms of section 158(1)(c) of the Labour Relations Act. However, I do not agree that the respondent had lost interest in the prosecution of such review. There seem to have been some confusion about the availability of the record. In this regard the respondent had to file an application to compel the bargaining council to file the record of the arbitration hearing. There is no evidence that this was done as part of the delaying tactic on the part of the respondent. Regard also being had to the review application papers, it cannot be said that there is no basis for the complaint raised by the respondent regarding the arbitration award.

[13] It is for the above reasons that I am of the view that the enforcement of the arbitration award should be stayed pending the finalisation of the review application.

[14] In the premises the following order is made:

(i) The applicant's application in terms of Section 158(1)(c) of the Labour Relations Act is stayed pending the outcome of the review application.

(ii) There is no order as to costs.

Molahlehi J

Date of Hearing : 11th June 2009

Date of Judgment : 6th November 2009

Appearances

For the Applicant : Dr G Ebersohn of Ebersohn Attorneys

For the Respondent: Ms M Ntsoane of Snyman Attorneys