



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

Not Reportable

CASE NO. J265/06

In the matter between:-

**NATIONAL EDUCATION HEALTH AND ALLIED
WORKERS UNION**

Applicant

and

**DEPARTMENT OF SOCIAL SERVICES AND
POPULATION DEVELOPMENT**

Respondent

and

Date of hearing : 13 December 2011

Date of Judgment : 15 March 2012

Summary: Application: Section 158(1) (c)

JUDGMENT

SESELE AJ

Introduction

- [1] This is the application to make the arbitration award the Order of Court in terms of section 158(1)(c) of the Labour Relations Act (the "Act")

Background

- [2] The applicant had referred to the Public Service Co-ordinating Bargaining Council (the “Council”) the dispute concerning the interpretation of a collective agreement (Resolution 8 of 1996 and Resolution 3 of 1999. The commissioner subsequently issued the award under case number PSCB 148-04/05 on 30 June 2005.
- [3] The material paragraphs of the award are the following:-
1. Resolutions 8 of 1996 and 3 of 1999 pertaining to the payment of Danger Allowances to employees employed at places of safety, is to be interpreted in the manner set out in paragraph 23 above.
 2. ...

Paragraph 23 is formulated as follows:-

Resolution 8 of 1996 (Annexure “G” Bundle “A” page 13) indicates that an allowance of R200,00 per month is payable to personnel who inter alia are physically involved with the safe custody, detention, training and rehabilitation of persons in prisons / places of safe custody and / or physically perform correctional / parole supervision whose lives are in real danger in the execution of these tasks. If the parties intended that only certain categories of employees who work with or guard people held in places of safety are to qualify for a danger allowance, one would have expected the parties to mention same in their agreement. Obviously, the gardener who does not work with or guard juveniles held in places of safety as well as a receptionist or typist who does not work with or guard people held in places of safety, will not qualify for a danger allowance in terms of the two collective agreements. Employees who, however, work with or guard people held in places of safety, shall be entitled to receive a Standard Danger Allowance.

- [4] It appears from the pleadings filed of record that non-resolution of the dispute subsequent to the issuing of the award triggered the present application.

The issue

- [5] The issue turns on whether the award issued following the dispute pertaining to the interpretation of the collective agreements in question is capable of being made the order of court in terms of section 158(1)(c).

Submissions

- [6] The respondent raised points in limine pertaining to the section 143 application lodged with the PSBC and the pending application for review of, appearing for the arbitration award under case number JR 339/06. Ms. Galitshona for the respondent abandoned the aforesaid points in limine during

the hearing. The said points in limine will accordingly not be dealt with in this judgement.

- [7] The applicant contends that the CCMA directed that the award be sent to this court as it could not certify awards which are not quantified. Clause ix(5) of the collective agreement lists duties which qualify for the Standard Danger Allowance as those “ working with or guarding convicts, people held in places of safety, or people on parole”. The arbitrating Commissioner in his award did not say all employees in terms of the Child Care Act should be paid a Danger Allowance.
- [8] The respondent has to date failed to comply with the award despite having initially agreed to do so.
- [9] The respondent contends that the matter which was referred to the council was the interpretation of the collective agreement. The Court does not have the power to make the collective agreement the Order of Court in terms of section 158(1)(c). The award further does not direct the respondent to comply with it.

Analysis

- [10] The relevant powers of this Court are set out in Section 158 which provides as follows:-
 - [1] The Labour Court may:-
 - (c) make any arbitration award or any settlement agreement, an order of the Court
- [11] The commissioner identifies two categories of employees, namely, those who are physically involved with the safe custody, detention, training and rehabilitation of persons in prisons or places of safe custody and/or physically performs correctional or parole supervision whose lives are in real danger in the execution of their tasks.
- [12] This category of employees is so wide as to include all types of employees who are directly or indirectly involved in the described duties. Receptionist, gardeners and typist could also be included in the category of employees who are entitled to payment of the danger allowance. The commissioner seems to have recognized this difficulty hence he states *inter alia* in paragraph 23 of the award:-

“if the parties intended that only certain categories of employees who work with or guard people held in places of safety are to qualify for a danger allowance, one would have expected parties to mention same in the agreement.”

[13] It seems to me the parties to the collective agreements must express their intention in clear terms on which category of employees are indeed entitled to payment of the danger allowance. As the award stands it is my view that it is not specific on the type of employees who are indeed entitled to payment of the danger allowance. The issue involved in this matter is such that no order of costs is justifiable.

Order

I therefore make the following order:-

1. The award is not capable of being made the Order of Court in terms of Section 158(1)(c) of the Labour Relations Act; and
2. There is no cost order.

SESELE AJ

Appearances:

For the applicant: Mr N Thaanyane, Thaanyane Attorneys;

For the respondent: Ms K Gcilitshana, State Attorney