



REPUBLIC OF SOUTH AFRICA
IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

Reportable

Case number: J 333/2012

In the matter between:

COMMUNICATION WORKERS UNION

Applicant

And

SOUTH AFRICAN POST OFFICE

Respondent

Heard: 1 November 2012

Delivered: 06 December 2012

Summary: Application to make an arbitration award an order of court. Arbitration award requiring the respondent to provide information regarding resignation of members. Reading clause 5.4 of the collective agreement into the award and reading that with section 13 of the LRA.

JUDGMENT

Molahlehi J

Introduction

- [1] This is an application to have the arbitration award made an order of the court in terms of section 158(1) (c) of the Labour Relations Act of 1995 (the LRA)¹. The application is opposed by the respondent.
- [2] The dispute which the applicant referred for conciliation concerned the reduction in the subscription fees of members of the applicant by the respondent. The reduction in the subscription according to the respondent was as a result of members of the respondent resignation as members of the applicant. A settlement agreement was concluded between the parties, in terms of which the respondent had undertaken to furnish the applicant with information regarding those of its members who were alleged to have resigned and instructed the respondent to cancel their stop order facilities regarding the contribution to the applicant. The agreement with the parties concluded reads as follows:
- "The SA Post Office will provide CWU with all information in respect of the cancellation of CWU subscriptions from 01 September 2011 and on an ongoing basis, in compliance with clause 5.4 of the Procedural and Recognition Agreement amendment no 1 of 2011.
- [3] Clause 5.4 of Procedural and Recognition Agreement, which the parties are incorporated into the agreement read as follows:
- "5.4 A Union member may instruct the company to cease the reduction of unanimous subscription subject to one (1) month's written notice by submitting a written request to this effect to the Company."
- [4] The respondent opposed the application to have the award made an order of the court on the basis that it had complied in full with the provisions of the agreement, which was subsequently made an arbitration award in terms of

¹ Section 158 (1) (c) reads as follows: The Labour Court may make any arbitration award or any settlement agreement an order of the court.

section 142 of the LRA². The respondent contended that they have complied with the arbitration award in that:

²Section 142 of the LRA reads as follows: 142. Powers of commissioner when attempting to resolve disputes

- (1) A commissioner who has been appointed to attempt to resolve a dispute may-
 - (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
 - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the commissioner to be questioned or to produce that book, document or object;
 - (c) call, and if necessary subpoena, any expert to appear before the commissioner to give evidence relevant to the resolution of the dispute;
 - (d) call any person present at the conciliation or arbitration proceedings or who was or could have been subpoenaed for any purpose set out in this section, to be questioned about any matter relevant to the dispute;
 - (e) administer an oath or accept an affirmation from any person called to give evidence or be questioned;
 - (f) at any reasonable time, but only after obtaining the necessary written authorisation-
 - (i) enter and inspect any premises on or in which any book, document or object, relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found there; and
 - (ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and
 - (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement; and

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- (g) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the Commission.
- (2) A subpoena issued for any purpose in terms of subsection (1) must be signed by the director and must-
- (a) specifically require the person named in it to appear before the commissioner;
 - (b) sufficiently identify the book, document or object to be produced; and
 - (c) state the date, time and place at which the person is to appear.
- (3) The written authorisation referred to in subsection (1)(f)-
- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 13 of the Constitution, and then only on the application of the commissioner setting out under oath or affirmation the following information-
 - (i) the nature of the dispute;
 - (ii) the relevance of any book, document or object to the resolution of the dispute;
 - (iii) the presence of any book, document or object on the premises;
 - (iv) the need to enter, inspect or seize the book, document or object; and
 - (b) in all other cases, may be given by the director.
- (4) The owner or occupier of any premises that a commissioner is authorised to enter and inspect, and every person employed by that owner or occupier, must provide any facilities that a commissioner requires to enter those premises and to carry out the inspection or seizure.
- (5) The commissioner must issue a receipt for any book, document or object seized in terms of subsection (4).

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- (6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this section.
- (7) (a) The Commission must pay the prescribed witness fee to each person who appears before a commissioner in response to a subpoena issued by the commissioner.
- (b) Any person who requests the Commission to issue a subpoena must pay the prescribed witness fee too each person who appears before a commissioner in response to the subpoena and who remains in attendance until excused by the commissioner.
- (c) The Commission may on good cause shown waive the requirement in paragraph (b) and pay to the witness the prescribed witness fee.
- (8) A person commits contempt of the Commission-
- (a) if, after having been subpoenaed to appear before the commissioner, the person without good cause does not attend at the time and place stated in the subpoena;
- (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the commissioner;
- (a) by refusing to take the oath or to make an affirmation as a witness when a commissioner so requires;
- (b) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subsection (6);
- (c) if the person, without good cause, fails to produce any book, document or object specified in a subpoena to a commissioner;
- (d) if the person willfully hinders a commissioner in performing any function conferred by or in terms of this Act;

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- (e) if the person insults, disparages or belittles a commissioner, or prejudices or improperly influences the proceedings or improperly anticipates the commissioner's award;
 - (f) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
 - (g) by doing anything in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.
- (2) (a) The commissioner may make a finding that a party is in contempt of the Commission for any of the reasons set out in subsection (8).
- (b) The commissioner may refer the finding, together with the record of proceedings, to the Labour Court for its decision in terms of subsection (11).
- (3) Before making a decision in terms of subsection (11), the Labour Court –
- (a) must subpoena any person found in contempt to appear before it on a date determined by the Court;
 - (b) may subpoena any other person to appear before it on a date determined by the Court; and
 - (c) may make any order that it deems appropriate, including an order in the case of a person who is not a legal practitioner that the person's right to represent a party in the Commission and the Labour Court be suspended.
- (4) The Labour Court may confirm, vary or set aside the finding of a commissioner.
- (5) If any person fails to appear before the Labour Court pursuant to a subpoena issued in terms of subsection (10(a), the Court may make any order that it deems appropriate in the absence of that person.

- a. they provided the remittance of stop orders on a monthly basis, even before 12th December;
- b. the applicant was provided with remittance for the months of September, October and November 2011.

- [5] The respondent further contended that the above remittance contains information relating to, employees number, employees name under which the employee falls, the job number and list of employees for that month who would have resigned and who for that reason were no longer members of the applicant.
- [6] The respondent further contended that the applicants were not entitled to approach the court to have the arbitration award made an order of court in terms of section 158 (1) (C) of the LRA. As the appropriate approach to have adopted was that of making the arbitration award an order as if it is an order of the court in terms of section 143 of the LRA.
- [7] The applicant contended that the information provided by the respondent fall short of compliance with the arbitration award essentially because according to them, the respondent, ought to have provided them with the resignation letters of each of the employees.
- [8] In response to this argument, the respondent submitted that they are not able to provide the resignation letters of each of the employees as they are not in possession thereof. The respondent says that the resignation letters were submitted by SAPWU, another union which is present at the respondent's workplace which has also been recruiting members of the applicant. The respondent says that after processing the submissions for membership by SAPWU, 2010 all the documentation including the resignation letters of employees from the applicant, the documentation was sent back to SAPWU.

'I do not agree with Mr Pretorius when he says that applicant is not entitled to approach the court on the basis of section 158 (1) (C) when seeking to make an arbitration award an order of the court. There is nothing in both section 143 and 158 that says the right of an employee to have keys or her award made an order of the court can only be done through the provisions of section 143 of the

LRA. In the *City of Tshwane V Campella & others*³, the court at paragraph 13 held that:

“ Sec 158 of the Act bears the heading: **“Powers of the Labour Court”**. Sec 158 (1) (c) provides that the Labour Court may **“make any arbitration award or any settlement agreement an order of the Court”**. On the face of it this provision is very wide. It refers to **“any”** arbitration award without in any way qualifying or limiting that term to specific arbitration awards or excluding certain arbitration awards. The question that arises is, in my view, whether it can be said that this provision – wide as it is – does not include an arbitration award such as the one involved in this case. Counsel for the appellant conceded that s. 158 (1) (c) is the provision that, read with s 157 (1), confers jurisdiction on the Labour Court to make an arbitration award issued under the auspices of the Commission for Conciliation Mediation and Arbitration (**“CCMA”**) an order of the Labour Court even though s 158 (1) (c) makes no specific reference to CCMA awards. He was unable to make any submission on what the statutory basis was for not reading s 158 (1) (c) so as to include an award such as the one in this case but reading it as including a CCMA award. However, he submitted - very vigorously – that no matter what s 158 (1) (c) says, it cannot be read as conferring jurisdiction on the Labour Court to make an arbitration award such as this one in this case an order of that Court.

- [9] I am also of the view that the respondent had indeed complied with the provisions of the arbitration award in that it had indeed provided, the applicant with the information as required by the arbitration award. There is nothing in the arbitration award that says that the respondent has to provide the applicant with the resignation letters of its former members. Clause 5.4 and section 13 of the LRA did not support the contention of the applicant. Section 13 has a similar provisions as clause 5.4 and reads as follows:

13. Deduction of trade union subscriptions or levies

- (1) Any *employee* who is a member of a representative *trade union* may authorise the employer in writing to deduct subscriptions or levies payable to that *trade union* from the *employee's* wages.

³ (2004) 1 BLLR 1 (LAC)

- (2) An employer who receives an authorisation in terms of subsection (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the representative *trade union* by not later than the 15th day of the month first following the date each deduction was made.
- (3) An *employee* may revoke an authorisation given in terms of subsection (1) by giving the employer and the representative *trade union* one month's written notice or, if the *employee* works in the *public service*, three months' written notice.
- (4) An employer who receives a notice in terms of subsection (3) must continue to make the authorised deduction until the notice period has expired and then must stop making the deduction.
- (5) With each monthly remittance, the employer must give the representative *trade union* -
 - (a) a list of the names of every member from whose wages the employer has made the deductions that are included in the remittance;
 - (b) details of the amounts deducted and remitted and the period to which the deductions relate; and
 - (c) a copy of every notice of revocation in terms of subsection (3).

[10] It is clear from the reading of the above section that an employee has the right to revoke the authorisation given to the employer to deduct subscriptions or levies payable to the trade union. There is nothing in the section that says the employer is obliged to forward to the trade union the notice received from the employee.

[11] The applicant has accordingly failed to make out a case to have the arbitration award made an order of the court. In the circumstances of this case I am of the view that it would not be proper to allow costs to follow the results.

Order

[12] In the premises, the applicant's application is dismissed with no order as to costs.

Molahlehi J

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Mr T Faku

For the Third Respondent: Mr P Pretorius SC, instructed by H Pienaar