REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case No: 1675/11

NOT REPORTABLE

In the matter between:

PETRUS LEY **APPLICANT**

And

GATEWAY TECHNOLOGY

(PROPRIETARY) LIMITED t/a ISERVE **RESPONDENT**

Heard: **18 OCTOBER 2012**

Delivered: **8 JULY 2013**

Summary: An employee may not refuse to refund his/her employer training costs he/she is required to refund in terms of his/her contract of employment without legal grounds for the refusal.

JUDGMENT

LALLIE, J

[1] The respondent is in the business of implementation and development of business solutions using SAP and related software. Its core business is to build business solutions that meet its customers' requirements. It is the duty of the respondent's employees to assist its clients with the implementation and costing of SAP. The respondent, therefore,

encourages its employees to obtain intensive and specified training on SAP modules at SAP Training Academy for those employees to obtain a SAP certificate in each module.

[2] The respondent employed the applicant as a consultant in August 2008. Paragraph 8 of the contract of employment entered into between the parties (the contract) reads as follows:

> **'TRAINING SKILLS AND COSTS:**
>
> Should the employee attend any training course and/or seminar at the cost of the company and thereafter leave the company's employ for any reason within 36 months (thirty six) months of such training and/or seminar, the cost shall be refunded to the company prior to the employee's departure from the company. The company reserves the right to recover any fees or part of the fees owing as a deduction from the employee final salary. The company does, however, have an option at its discretion to waive these costs or part thereof should they deem it equitable.'

The respondent's training policy is consistent with clause 8 of the contract.

[3] The applicant submitted that, in June 2009, he was enrolled at the SAP academy to be CO certified. It is common cause that the training cost R70572.00. The respondent gave unchallenged evidence of the actual modules the applicant attended. They are Management Accounting I and II. The training ran from 11 to 25 May 2009 and 25 May to 5 June 2009. Each Module costs R31 920.00. The certification examination was R 3306.00. He obtained the SAP certification in Management Accounting having re-written his certification examination on 21 August 2009.

[4] The applicant tendered his resignation on 1 July 2011 and the respondent deducted a portion of the training costs from the applicant's last salary, leaving a balance of R34 163.65. In this application, the applicant seeks an order against the respondent for the payment of his salary for the month of July 2011 in the amount of R26 296.34. The applicant submitted that the deduction of his full leave and notice pay is

unlawful and in contravention of section 34 of the Basic Condition Of Employment Act 75 of 1997(the BCEA). He further challenged the respondent's failure to give him reasons for paying back the full amount of a debt he signed no acknowledge of debt for. He finds the part of clause 8 of his contract which gives the respondent discretion to waive training costs or part thereof unfair and open to abuse. He claims that he attended the training at the respondent's election and he did not benefit from it.

[5] This application is opposed by the respondent on the basis that the deduction was based on clause 8 of the contract which the applicant was at all times aware of. He attended the training at his request and benefited from it. The respondent submitted that it did not breach section 34 of the BCEA when effecting the deduction.

[6] It is common cause that the applicant attended the training which costs the responded R70542.00. He signed the contract clause 8 of which required him to refund the respondent training costs prior to his departure, in the event of his leaving within 36 months of the training. He resigned before the expiry of 36 months after the training and he was liable to refund the respondent before his departure. He was aware of the provisions of clause 8 of the contract, firstly, because he signed it. Secondly, on 6 July 2011, after he tendered his resignation, he made enquiries about the repayment of the training costs as he had resigned within 36 months from the date of training.

[7] Section 34 of BCEA provides as follow:

> '(1) An employer may not make any deduction from an employee's remuneration unless-
>
> (a) Subject to the subjection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
>
> (b) The deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

(1) A deduction in terms of subsection (1) (a) may be made to reimburse an employer for loss or damage only if-

(a) The loss or damage occurred in the course of employment and was due to the fault of the employee;

(b) The employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deduction should not be made;

(c) The total amount of the debt does not exceed the actual amount of the loss or damage; and

(d) The total deduction from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.

(2) A deduction in terms of subsection (1) (a) in respect of any good purchased by the employee must specify the nature and quantity of the goods.

(3) An employer who deducts an amount from an employee's remuneration in terms of subsection (1) for payments to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, law, court order or arbitration award.

(4) An employer may not require or permit an employee to –

(a) Repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or

(b) Acknowledge receipt of an amount greater than the remuneration actually received.'

Section 34(1) (a) of the BCEA permits an employer to make a deduction from an employee's remuneration when the employee agrees in writing to the deduction in respect of a debt specified in an agreement. It is common cause that the applicant agreed in writing in the contract of employment to refund the respondent training costs before his departure when leaving within 36 months of the training. The deduction is in compliance with section 34 (1) (a) in that the applicant agreed in writing to the deduction and the debt including the time by when it was payable. This is clearly specified in the contract of employment. I do not agree with the applicant that Section 34 (2) of the BCEA is applicable in this matter as it does not deal with reimbursing the respondent for loss or damage.

[8] The applicant's allegation that he attended the training on the instructions of the respondent and that he did not benefit from it as he did not apply the knowledge he acquired from it is of no moment. The contract refers to attendance of training. The respondent submitted that the applicant attended the training which enhanced his knowledge and improved his chances of being employed at his request. The applicant did not file a replying affidavit. In *Plascon-Evans Paints v Riebeeck Paints (Pty) Ltd,*[1] it was held that in application proceedings, a court will generally accept the version given by a respondent unless the allegations of the respondent are so far-fetched and untenable that the Court is justified in rejecting them merely on the papers. I accept the respondent's version that the applicant attended training at his request and benefited from it because his version is far-fetched and untenable. The applicant attended the first training and saw it fit to request to attend the second one. His conduct is consistent with his version that there was value in attending the training.

[9] The applicant's submission that part of clause 8 of the contract which gives the respondent a discretion to waive training costs is unfair and open to abuse does not take the applicant's case any further. He did not disclose the reasons for the submission and how it is open to abuse. The applicant failed to disclose how the alleged unfairness and abuse affected him. The applicant proffered no valid or lawful reason for alleging that the deduction was unlawful. His application cannot succeed.

[1] [1984] (3) SA 623 (A) at 634E-635C.

[10] I found no reason for costs not to follow the result.

[11] In the premises, the following order is made:

11.1 The application is dismissed with costs.

Lallie, J

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr C Bailie of CA Bailie Attorneys

For the first Respondent: Advocate P Bosman

Instructed by: Edward Nathan Sonnenbergs Inc