



REPUBLIC OF SOUTH AFRICA

Of interest to other judges

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

CASE NO: J 1072-14

In the matter between:

CCD COURIERS (PTY) LTD

Applicant

and

**MATONA, LENA DIMAKATSO & 11
OTHERS**

First Respondent

**NATIONAL BARGAINING COUNCIL
FOR THE ROAD FREIGHT INDUSTRY**

Second Respondent

Heard: 20 May 2014

Delivered: 20 May 2014

Summary: (Urgent – application to postpone arbitration hearing – pending review of ruling on representation of applicant's by co-applicants in arbitration proceedings – application dismissed)

JUDGMENT

LAGRANGE, J

- [1] In this matter, a judgment was handed down in terms of paragraph [8] below. My brief reasons are set out herein.
- [2] The applicant in this matter sought to prevent arbitration proceedings in an unfair dismissal dispute from continuing until such time as its review application on a jurisdictional ruling dated 3 July 2013 has been finalised.
- [3] The essence of the jurisdictional point taken by the applicant was that the 13 employees whose dispute concerns their simultaneous dismissal for the same, or similar reasons on 1 February 2013, could not be heard jointly with one of them representing all of them in the proceedings. The arbitrator dismissed the *in limine* objection noting that the employees all referred the matter jointly to arbitration and that meant the provisions of Rule 27.2 for the conduct of proceedings before the Bargaining Council (the second respondent), which is the same as Rules 25 (1) (b) (ii) and (iii) of the CCMA rules and which deals with who may represent parties in the arbitration proceedings, was not applicable. I note in passing that the matter might have been dismissed on the basis of non-joinder of the arbitrator as well.
- [4] Whether the arbitrator's reasoning was correct in all respects, the issue of another employee acting as a representative of a colleague in arbitration proceedings has already been expressly considered by the Labour Appeal Court, in **BIFAWU & another v Mutual and Federal Insurance Company Ltd**.¹ In that matter, the LAC was considering section 138 (5) of the LRA, which previously governed representation in arbitration proceedings before the CCMA. The court found that:

“[S]ection 138(5) of the LRA expressly refers to a person being ‘represented at the arbitration proceedings’ in the context of this being a self-evident right. In the context of labour law, the most basic right of representation must be that by a fellow employee or a ‘friend’. The right

¹ [2006] 2 BLLR 118 (LAC)

of an employee at a disciplinary enquiry (which must include an arbitration under the auspices of the CCMA) to be represented by a fellow employee is meaningless unless a fellow employee has the right, without fear of recrimination or reprisal, to represent an employee at such an enquiry. The respective rights, inverse and complementary to one another, are inextricably linked: the one follows from the other. Even if the right to represent a fellow employee at a disciplinary enquiry has not been expressly conferred by the LRA, it necessarily arises from it, read together with section 23(1) of the Constitution.”²

- [5] Apart from the fact that in the light of this authority there seems little prospect of the review application succeeding, this court is loath to interfere with the informal dispute resolution mechanisms of conciliation and arbitration on a piecemeal basis, except in exceptional circumstances. This not a case where there has clearly been an unlawful act on the part of the arbitrator in the sense that he manifestly acted outside his powers. The applicant has not advanced any other exceptional basis on which the relief should be granted. In this regard, I see no reason why the principles governing intervention in incomplete arbitration proceedings should be different to the principles governing intervention in incomplete disciplinary proceedings. The governing principle laid down by the Labour Appeal Court in **Booyesen v Minister of Safety & Security & others**³ is equally applicable to incomplete arbitration proceedings in my view.

- [6] In any event, I concur with the view expressed by Van Niekerk, in **Trustees for The Time Being of the National Bioinformatics Network Trust v Jacobson and Others**⁴ :

“There are at least two reasons why the limited basis for intervention in criminal and civil proceedings ought to extend to uncompleted arbitration proceedings conducted under the auspices of the CCMA, and why this court ought to be slow to intervene in those proceedings. The first is a policy related reason – for this court routinely to intervene in uncompleted arbitration proceedings would undermine the informal nature of the

² At 126, para [26]

³ (2011) 32 ILJ 112 (LAC) at para [54]

⁴ (2009) 30 ILJ 2513 (LC)

system of dispute resolution established by the Act. The second (related) reason is that to permit applications for review on a piecemeal basis would frustrate expeditious resolution of labour disputes. In other words, in general terms, justice would be advanced rather than frustrated by permitting CCMA arbitration proceedings to run the course without intervention by this court.”

[7] In the circumstances, I am satisfied that the applicant has not made out a case for staying the pending arbitration proceedings.

[8] The application is dismissed and no order is made as to costs.

R LAGRANGE, J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: M. Verwey for Martin Verwey Inc.

FIRST RESPONDENT: In Person