



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

Case no: P 163/12

In the matter between:

KALA AND 18 OTHERS

Applicant

And

GENERAL PUBLIC SERVICE SECTORAL

BARGAINING COUNCIL (GPSSSBC)

First Respondent

KELVIN KAYSTER N.O

Second Respondent

MEMBER OF EXECUTIVE COUNCIL

DEPARTMENT OF ROADS & TRANSPORT

Third Respondent

Heard: 8 October 2013

Delivered: 27 November 2014

Summary: A change in the applicants' job title only, does not constitute demotion.

JUDGMENT

LALLIE J

Introduction

- [1] In this application the applicants seek an order reviewing an arbitration award of the second respondent ('the arbitrator') in which he found that the change in the applicant's job title did not constitute an unfair labour practice.
- [2] This application was filed 47 days late. The reason for the lateness is that it involves a substantial number of applicants. The terms of the insurance policy for the payment of their legal team's fees contributed to the delay. The explanation proffered by the applicants is reasonable. Their papers reflect their intention and effort to pursue this matter. They have reasonable prospects of success and their application for condonation should succeed.

Factual background

- [3] The applicants are employees of the third respondent. In May 2007, they were promoted from the rank of Principal Provincial Inspector (PPI) with effect from 1 October 2002 to the rank of Chief Provincial Traffic Officer (CPTO). In July 2009, the applicants' rank was changed to Principal Provincial Inspector (PPI) as a result of a directive issued by the Department of Public Service and Administration ('DPSA'). The applicants challenged the decision which effected a change to their ranks as an unfair labour practice related to demotion at the first respondent. The arbitrator found that the purpose of the change of the applicants' rank was common cause, it was to re-align and standardize the different levels of traffic officers nationally. He recorded as common cause the fact that the applicants' titles were changed but their duties, basic remuneration, benefits and allowances were not affected by the re-alignment exercise. He found that the applicants did not dispute that their trade unions were involved in the re-alignment process and concluded that they failed to prove that they were demoted.
- [4] The arbitrator found it common cause that only the applicants' job titles had changed. Part of the authority he relied on provides that a demotion occurs if the employee's remuneration, responsibilities or status is materially reduces. A change in title and placing an employee in a post involving slightly different work was considered not to constitute demotion, especially if that work falls within the scope of the employee's duties. He found that the applicants had

failed to prove that their status, duties or remuneration were affected by the change in their title. A further factor which led the arbitrator to find that the third respondent did not commit an unfair labour practice was the applicants' failure to dispute their trade union's involvement in the re-alignment process.

Grounds for review

- [5] The applicants submitted that the award is susceptible to review because in rejecting their version that they had been demoted, the arbitrator stated that they failed to prove that their status, duties or remuneration were affected. He, however, accepted that demotion means that at least something to which an employee is entitled to is taken away or withdrawn and that which is taken away can include status as well as a condition of employment. Having found that the rank of CPTO is in status more senior than that of PPI and that the latter is subject to supervision by the former, his decision was not supported by evidence, thus committing a gross irregularity. The applicants based their application therefore on the arbitrator's unreasonable disregard for relevant and material evidence and his disregard for the authorities which consider as demotion, the lowering of an employee's status or rank, responsibility of conditions of service.
- [6] The test for review is trite. It is whether the decision reached by the arbitrator is one that a reasonable decision-maker could not reach on the evidence before the arbitrator.¹ It was argued on behalf of the applicants that the arbitrator's decision that the change in their rank did not constitute demotion was unreasonable. The third respondent argued that the arbitrator's decision was correct as the change had no effect, *inter alia*, in the applicants' job level and remuneration. In *Nxele v Chief Deputy Commissioner, Corporate Services, Department of Correctional Services and Others*², the court confirmed that the status, prestige and responsibilities of the position are relevant in determining whether or not transfer in a particular case constitutes a demotion. It was further submitted on behalf of the applicants that the arbitrator emphasised that the applicants did not lose any remuneration or

¹ *Sidumo and Another v Runstenburg Platinum Mines Ltd and Others* 2008 (2) SA (CC).

² (2008) 29 ILJ 2708 (LAC) at 2739 G.

benefits as a result of the change in their rank. The approach is attacked on the grounds that it failed to take into consideration that the applicants' responsibilities were affected and their level of authority, dignity and importance was diminished in the process.

- [7] The respondent did not deny that the applicants were promoted from the rank of PPI to CPTO. In the answering affidavit the respondent denied that the applicants were never consulted about or consented to the alteration of their ranks. It pleaded that the applicants' trade unions were consulted and were involved in the process, a fact which was supported by the record and recorded correctly by the arbitrator. The respondent's version was not refuted in the replying affidavit. As the allegation is not refuted and is not far-fetched I have accepted that the arbitrator's finding that the applicants were consulted and participated through their trade unions in the process which culminated in the alteration of their ranks, cannot be faulted.
- [8] The applicants submitted that the arbitrator's decision that they failed to prove their demotion is grossly irregular as it is discordant with the evidence which served at the arbitration. The applicant's witness conceded under cross-examination that his salary level, authority, responsibilities and duties did not change when his rank changed. It is only the name of his title that changed. The applicant further testified that the rank of PCTO is senior to that of PPI in terms of remuneration and authority. They submitted that the change reduced their status. The record reflects that the evidence of the respondent's witness was not refuted.
- [9] The arbitrator accepted the respondent's version that the purpose of the directive from the DPSA was to realign and standardize ranks/levels nationally as discrepancies existed among provinces. Unlike other provinces which had five levels of officers the Eastern Cape had six. Even duties performed by officers differed from province to province. The realignment directive was issued after the DPSA had conducted a job evaluation exercise and matched jobs to salary levels. Its intention was neither to promote nor demote officers but to standardize the rank structure.

- [10] The applicants sought to rely on *Solidarity obo Kerns v Mudau NO and Others*³ and argued that they were not required to prove financial loss or loss of benefits. Loss of status, job content, responsibility and prejudice to promotion prospects constitute demotion. It was argued that loss of status was sufficient to prove demotion. In their efforts to prove their demotion the applicants submitted that Messrs Kele and Grobler who were promoted with them from the rank of PPI to PCTO were not affected by the alteration of their ranks even though they held the same status. They were instead moved to level 10 after the demotion. This argument is a double edged sword in that it also demonstrates that in order to be a PCTO an officer's level had to be elevated from that of PPI. It is also common cause that when the applicants were promoted to the rank of PCTO their responsibilities and conditions of employment did not change. It therefore, confirms the respondent's argument that by national standards the rank the applicants are in is that of PPI. It is also common cause that when the applicants were promoted to the rank of PCTO their responsibilities and conditions of employment did not change. By national standards, the applicants were not entitled to be PCTO they therefore did not lose status they were entitled to when they reverted to the rank of PPI. The applicants did not refute the respondent's evidence that the Eastern Cape had six ranks while the other province had five. It is also common cause that the change in the applicants' rank effected a change to the name of their rank only. The change was reached with the participation of their trade unions.
- [11] The totality of the evidence before the arbitrator shows that he considered the principal issue before him, evaluated the facts presented at the arbitration and came to a reasonable conclusion. See *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v CCMA*⁴. As the arbitrator's decision falls within bounds of reasonableness no grounds exist for this Court to interfere with it.
- [12] The applicants did not act unreasonably in bringing this application. It will therefore not be fair to grant a costs order against them.

³ (2007) 28 ILJ 1146 (LC)

⁴ [2014] 1 BLLR 20 (LAC) at page 25 E.

[13] In the premises, the following order is made.

13.1 The late filing of the review application is condoned.

13.2 The application for review is dismissed.

Lallie J

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Simoyi

Instructed by: Vapi Inc

For the Third Respondent: Advocate Gqamana

Instructed by: State Attorney

LABOUR COURT