



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 1253/2013

In the matter between:

FUELOGIC (PTY) LTD

Applicant

And

J SCHOEMAN & OTHERS

Respondent

Decided in Chambers

Delivered: 15 April 2015

Summary: Application for leave to appeal

LEAVE TO APPEAL JUDGMENT

EUIJEN, AJ

- [1] This is as an application for leave to appeal against my judgment dated 12 February 2015, in which I dismissed the applicant's review application which sought to set aside an award of a bargaining council commissioner, reinstating Mr Schoeman into the applicant's employ. As stated in my earlier judgment, the reasonableness or otherwise of the Commissioner's award

turns mainly on the refusal of the applicant's application to postpone those proceedings.

- [2] The grounds on which the application for leave to appeal are based are, in summary, that this Court and the Commissioner gave insufficient consideration to the balance of prejudice between the parties; failed to take account that the applicant's representative, as a layperson, did not receive sufficient guidance at the arbitration proceedings; and that the employee's evidence at the arbitration proceedings related to events after those with which he was charged.
- [3] As far as the prejudice to the applicant is concerned, the fact that the applicant consistently overlooks in its applications to this Court, is that it took a conscious decision to prioritise the attendance of its crucial witness at its own MANCOM meeting over the statutory arbitration proceedings. There is no suggestion that the MANCOM meeting could not have been re-scheduled for another day or was cast in concrete. In those circumstances, the situation being entirely of the applicant's own making, it ought to be more prepared to accept the consequences of that decision.
- [4] The prejudice to the respondent employee could not merely have been cured with a costs order. The dismissed employee had been unemployed for five months and was entitled to have his dispute heard on the allocated day on the bargaining council's roll. The fact remains that the applicant provided no good or reasonable explanation for its request for a postponement.
- [5] The appeal to a lack of guidance afforded by the Commissioner to the applicant's representative is similarly mis-placed. The applicant had taken a decision prior to the arbitration hearing what approach it was going to take at that hearing. There was no contingency plan in place in the event that the postponement application was refused. In those circumstances, it is difficult to conceive what guidance the Commissioner could or should have given.
- [6] Whether the applicant wished to call one or ten witnesses or whether Mr Church could or could not drive back from Johannesburg are all irrelevant issues. The fact remains that once its postponement application was refused,

the applicant had no witnesses to proceed with. The applicant knew, prior to the hearing, that the application for a postponement was opposed and in the event that it was refused, the hearing would proceed by default.

[7] Finally, as far as the merits are concerned, I do not recall that the employee had merely alleged that another had taken over his responsibilities. I recall his evidence as disputing whether he was responsible for charges which he faced at all. The applicant also now appears to be relying on evidence which was not before the Commissioner. Insofar as the applicant suggests that there is a duty on the Commissioner to attempt to ascertain what the applicant's case might have been had it presented evidence, I disagree. Our evidentiary system requires parties to place evidence before the Commissioner; not for the Commissioner to undertake investigations which the parties ought to have done themselves. Indeed the latter course would expose the Commissioner to allegations of bias.

[8] In conclusion, I am not persuaded that there is any reasonable prospect that the Labour Appeal Court will reach a different conclusion about this review application to that held by this Court.

[9] For the reasons given above:

- i. The application for leave to appeal is refused with costs.

Euijen, AJ

Acting Judge of the Labour Court of South Africa