



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Of interest to other judges

Case no: JR 2181/13

In the matter between:

DEPARTMENT OF PUBLIC WORKS LIMPOPO

Applicant

and

PSCBC

First respondent

A S MUVHANGO

Second Respondent

M J SELEMELA

Third Respondent

PUBLIC SERVANTS ASSOCIATION

Fourth Respondent

Heard: 20 MAY 2015

Delivered: 26 MAY 2015

Summary: (Review – ambit of relief not justified but intrinsic merit of award not unreasonable – award set aside only in respect of extent of relief)

JUDGMENT

R LAGRANGE, J

[1] In this matter, the applicant wishes to review and set aside an interpretation of a clause in a collective agreement known as Resolution 3 of 1999 in terms of which a bargaining Council arbitrator decided that:

"I find that employees, including the applicant here in, who attained improvements in the qualifications between 01 January 1999 and the date of operation of any subsequent and current resolution dealing with the matter, qualify for rewards as provided for in Resolution 3 of 1999."

[2] The clause in question reads:

"XXXIII cash payments for additional qualifications:

If, as of January 1, 1999

1. An employee had entered into studies for an additional or higher qualification, and

2. Item 14.0 of the Personnel Administrative Standard that applied to him or her on that date provided a cash award for completion of those studies, the employer shall pay the employee the cash award when the employee complies with the requirements laid down in the relevant Personnel Administration Standard."

[3] A further resolution, Resolution 1 of 2012 also provided for the payment of once off cash bonuses to employees who obtain improved qualifications related to their scope of work, which enhanced the employee's performance.

[4] The third respondent claimed the cash award on the basis that he obtained a certificate in management in December 2007 and a further qualification in 2010. The central substantive issue in dispute was not about the qualifications obtained by the third respondent but whether the cash benefit was payable in the case of someone like the third respondent who had not registered for the relevant studies on or before 1 January 1999. The applicant believed that only such persons qualified for the cash benefit, whereas the third respondent contended that on a proper interpretation of the provision it applied to a qualifying employee who registered on or after the date.

[5] The arbitrator adopted the view that on a contextual and purposive interpretation of Resolution 3 of 1999, the third respondent's interpretation was the correct one. Essentially, the thrust of the arbitrator's reasoning was that if the applicant's

interpretation was correct it would mean that persons registering and achieving qualifications after 1 January 1999 until Resolution 1 of 2012 came into effect would be prejudiced relative to those who registered and qualified before or after that time period. He reasoned that it could never have been the intention to create such a “vacuum” in the absence of an express intention to do so.

- [6] The applicant raises a host of issues on review and I will confine myself to considering the ones that were ultimately pursued. Firstly, the applicant contended that the arbitrator had no jurisdiction to hear the matter because he had not made a ruling in respect of a condonation application made by the third respondent when the dispute was referred to the bargaining Council. In reply, the third respondent contends that since the dispute was a referral of a dispute over an interpretation and application of a collective agreement and in respect of which no time limit for referral is stipulated in the Labour Relations Act, 66 of 1995 (‘the LRA’), no condonation was required. I agree.
- [7] The applicant further contends that the claim had prescribed and should not have been entertained, but prescription was never pleaded by the applicant in the course of the arbitration proceedings. Consequently, the award could not be reviewed on that basis. Thirdly, the applicant claims that the third respondent ought to have joined the Department of Public Service and Administration and the award should be set aside for non-joinder. However, the applicant could not establish that the DPSA had a legal interest in the outcome of the dispute between the Department of Public Works (Limpopo) and the third respondent. At best, the award might be of some persuasive value but could not be binding on non-parties to the award.
- [8] A related and more serious criticism is that the arbitrator purported to make his award applicable to all employees in a similar position to the third respondent. It is patently obvious he was only called upon to decide the dispute between the third respondent and his employer and consequently any portion of the award purporting to bind non-parties or confer rights on them would be ultra vires the arbitrator’s powers.

[9] The applicant further contends that it was illogical of the arbitrator to reason that there ought not to have been a hiatus during which qualifications were not recognised. Essentially, this attack is on the reasonableness of the arbitrator's interpretation. Clearly, the arbitrator's interpretation of the provision is not the only plausible one, and indeed the applicant's own interpretation may be the better one. However, it cannot be said that the arbitrator's interpretation is one that no reasonable arbitrator could ever have arrived at on the argument presented before him. If the applicant had done more to enhance its position and presented a stronger argument on why its textual interpretation was correct, and if the arbitrator demonstrably failed to explain why he dismissed such reasoning, it might well be arguable that the arbitrator's interpretation would be more vulnerable to an attack based on unreasonableness. However, it is apparent that the applicant's argument in favour of its interpretation was as limited as the third respondent's and I cannot find fault with the arbitrator if he did not delve deeper in interpreting the provision than the parties themselves did.

[10] In the circumstances, while the ambit of the award clearly needs to be set aside and revised, the applicant has failed to persuade me that the arbitrator's findings in respect of the case before him, including his interpretation of the clause, were ones that no reasonable arbitrator could have reached.

Order

[11] In light of the above,

11.1 The second respondent's award in paragraph [E][1] of his arbitration award dated 29 July 2013 under case number GPBC 650-12/13 is reviewed and set aside and substituted with the following:

"The applicant, who obtained an improvement in his qualifications in 2007 and 2010, qualifies for cash awards for completing those qualifications in terms of clause XXXIII of PSCBC Resolution 3 of 1999."

11.2 No order is made as to costs.



R LAGRANGE, J

(Judge of the Labour Court)

Appearances:

For the Applicant: Mr J Matladi of the State Attorney

For the Third Respondent: M Desai

Instructed by: AM Carrim Attorneys