



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

CASE NO: JR 30/13

In the matter between

JS ADAMS

Applicant

and

PUBLIC SERVICE CO-ORDINATING

BARGAINING COUNCIL (PSCBC)

First Respondent

F VAN DER MERWE N.O

Second Respondent

MINISTER OF SAFETY AND SECURITY

Third Respondent

SAPS

Fourth Respondent

Heard: 14 August 2014

Delivered: 26 June 2015

Summary: The Labour Court does not interfere with arbitration awards which fall within bounds of reasonableness.

JUDGMENT

LALLIE J

- [1] This is an application to review and set aside an arbitration award of the second respondent (“the arbitrator”) in which he found that the applicant was entitled to sick leave with full pay for the whole period of his absence from work up to 3 May 2011 but are not entitled to ill-health retirement. The application for review and the answering affidavit were filed late and applications for condonation of their lateness were filed. When this matter was argued the applicant and the third and fourth respondents submitted that opposition of the applications was no longer pursued. I have considered them and am satisfied that there are grounds to condone the delay. Both applications are therefore granted.
- [2] The applicant was employed at the fourth respondent in 1999. He is a Warrant Officer. He was exposed to traumatic incidents in the course of his duties, which, in 2004, led him to be diagnosed with Post Traumatic Stress Disorder (“PTSD”) which is an occupational disease. He was on sick leave for an extended period. As he had been diagnosed as suffering from an occupational disease he applied for ill-health retirement. His application was unsuccessful and he was instructed to resume his duties in an administrative post by 6 May 2011. He obliged. He however, displayed violent behaviour for which he was reported to the third respondent. His doctor put him on sick leave in July 2012 during which he was served with a notice of intention to terminate his services owing to absence from duty. A dispute pertaining to the applicant’s entitlement to full pay for the duration of his absence from work as a result of an occupational diseases as well as entitlement to ill-health retirement ensued. It was referred to the first respondent who issued the arbitration award part of which the applicant seeks this court to review and set aside.
- [3] The applicant and the third and fourth respondent (“the respondents”) decided not to lead evidence at the arbitration but to present documents and arguments which the arbitrator used to determine the dispute before him. Deciding the applicant’s entitlement to temporary incapacity leave and ill-health retirement, the arbitrator relied on Resolution 7 of 2000 of the Public Service Co-ordinating

Bargaining Council ("Resolution 7 of 2000") and the National Instruction 2/2004 ("Instruction 2/2004"). He considered that Resolution 7 of 2000 entitled employees who, as a result of their work suffer occupational injuries and contract occupational diseases shall be granted occupational injury and diseases leave for the duration of the period they cannot work. He took into account that Instruction 2/2004 entitles employees who contract an occupational disease to leave with full pay from the time they become unable to work until they resumed their work or discharged from the service. He found that no document was tendered to prove that the applicant was unable to work or could not resume his duties after May 2011. He accepted that the applicant was suffering from an occupational disease and was therefore entitled to sick leave with full pay for the duration of his absence from work until 3 May 2011.

- [4] I have considered the respondents' submission as well as the authority the sought to rely on to the effect that the first respondent lacked jurisdiction to arbitrate the dispute before the arbitrator. It is incorrect. The issue before the arbitrator concerned the application and interpretation of collective agreement and therefore fell within the jurisdiction of the first respondent. On the issue of the applicant's entitlement to ill-health retirement the arbitrator considered the provision of Resolution 7 of 2000 which provides that if both the employer and employee are convinced that the employee will never be able to perform any type of duties at her or his level or rank, the employee shall proceed with an application for ill-health benefits in terms of the pension law. He took into account clause 10.2 of Instruction 2/2004 which provides as follows:

'If the service is satisfied that an employee will never be able to perform official duties at his or her level, steps must immediately be taken to initiate the process of considering his or her medical retirement and the process must, if at all possible, be finalised within 6 months'. He found that from the facts presented at the arbitration, he was unable to conclude that the respondents held or should reasonably hold the view that the applicant would never be able to perform any type of duties at his level or rank. He concluded that the applicant was not entitled to ill-health retirement.

- [5] The applicant submitted that the arbitration award is not justifiable in relation to the reasons given for it based on the evidence tendered at the arbitration. There is no rational connection between the material placed before the arbitrator and his ultimate decision. He failed to apply his mind to evidence and facts when deciding that the respondents interpreted and applied resolution 7 of 2000 correctly by not approving the applicant's application for ill-health retirement and temporary incapacity leave for the period after 3 May 2011. Other grounds for review the applicant sought to rely on are that the arbitrator committed a gross irregularity by failing to apply his mind to evidence, misunderstanding evidence and attributing motives to the applicant which could not reasonably be drawn from the evidence before him. He further committed misconduct in relation to his duties as an arbitrator by disregarding relevant evidence, failure to apply his mind to facts and reaching an unreasonable decision.
- [6] The Labour Court may interfere with a decision of an arbitrator if it is a decision a reasonable decision-maker could not reach on the facts before the arbitrator. *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*¹. Pursuing his case that the arbitration award stands to be reviewed and set aside, the applicant submitted that he was entitled to occupational diseases leave with full pay beyond 3 May 2011. His entitlement continued to the date when he could resume his work alternatively until discharged from service. The reason proffered by the arbitrator for finding that the applicant was entitled to sick leave with full pay up to 3 May 2011 was that no document dated post May 2011 from a medical practitioner or other expert was presented to prove that the applicant was still unable to work or could not resume his work. The only document the applicant sought to rely on in proving his entitlement to paid sick leave beyond 3 May 2011, was a report by a commander dated 13 February 2012 in which he stated that the applicant was not coping in the SAPS working environment. The applicant submitted that she was again booked off sick due to the fact that he was unable to cope within SAPS and was currently still on sick leave. He attached no medical certificate by any health practitioner supporting his allegation that he was on sick leave. The arbitrator's conclusion can therefore

¹[2007] 12 BLLR1097 (CC)

not be faulted because the commander had no authority to put the applicant on sick leave. Absent an official document from the appropriate practitioner, the arbitrator had no facts on which to base the conclusion that the applicant was on occupational disease leave after 3 May 2011. His decision to limit the applicant's sick leave with full pay to 3 May 2011 is reasonable and based on the evidence before him.

- [7] The applicant submitted that he was entitled to ill-health retirement because he was subjected to an independent evaluation process by the fourth respondent. Both the independent psychiatrist and occupational therapist concluded that he must separate from the fourth respondent. The respondents submitted that contrary to the applicant's version, the independent psychiatrist found that he was fit to resume his duties. They further submitted that the occupational therapist did not conclude that the applicant should be separated from the fourth respondent but rather that the applicant should consider separation from the fourth respondent. The occupational therapist reached the following conclusion after assessing the applicant:

'It is unlikely that attending to work at the SAPS would have a successful outcome. He is however capable of work within the open labour market. An appropriate separation from the SAPS should be considered, although I would not consider Mr Adams to be disabled for work by his medical condition'.

- [8] The psychiatrist who assessed the applicant reached the following conclusion:

'He should have recovered by now, but it appears he might be having a secondary gain. He will therefore not be keen to get better or to go back to work. Persons who have been away from work for more than six months on full pay never returned to work in the majority of cases'.

- [9] The reports compiled by the psychiatrist and occupational therapist do not support the applicant's case that he will never be able to perform official duties at his level. They are consistent with the respondents' case that he still can. The arbitrator's decision not to attach value to the commander's report cannot be faulted because his expertise to draw conclusions from the applicant's conduct was not disclosed. A consideration of the totality of the facts presented

at the arbitration reflects that the arbitration award falls within bounds of reasonableness and there are therefore no grounds for this court to interfere with it.

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

10.1 The application for review is dismissed.



Lallie J

Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES

For the Applicant: JM Gouws of Johan Gouws Attorneys.

For the Respondents: L. Pillay for the State attorney Pretoria.

LABOUR COURT