



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JR 788/13

In the matter between:

YELLOW JERSEY LOGISTICS CC

Applicant

and

SHEZI, N N.O.

First Respondent

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

Second Respondent

MACHUSENG, ADAM

Third Respondent

Heard: 06 January 2015

Delivered: 02 July 2015

Summary: Application for an order in terms of Rule 7A(4)

REASONS – ORDER IN TERMS OF RULE 7A(4)

FOUCHE, AJ

Introduction

[1] On 6 January 2015 I issued an order in the following terms:

“1. The First and Second Respondents are compelled to file the part of the record of the arbitration proceedings, consisting of the electronic recording of the arbitration hearing which took place on 26 February 2013 in the Second Respondent as contemplated by Rule 7A(2)(b), with the Registrar of the Labour Court.

2. The First and Second Respondents are directed to file such electronic record as contemplated by Rule 7A (2)(b) within 10 days of the date of receipt of this order.

3. Reasons for this order to follow.”

The facts

[2] There was no appearance on behalf of the First or Second Respondents at the hearing.

[3] The Second Respondent filed, through its attorneys, a notice of compliance in terms of rule 7A(2)(b), 7A(3) and 7(9) on 30 April 2013, which consisted of the mechanical record of the proceedings held under the auspices of the Second Respondent under case number GPRFBC23453 consisting of one compact disc. The Second Respondent also filed an amended notice of compliance dated 27 May 2013 in terms of which the Second Respondent, inter-alia, also filed certain documents with the Court.

[4] The Applicant's attorneys attended at Court on several occasions in order to collect the record, including a compact disc. The said attorneys were informed, presumably by the registrar's office, that the compact disc had not been filed as stated in the Second Respondent's notice of compliance.

[5] The Applicant's attorneys addressed a letter to the Second Respondent's attorneys on 1 July 2013, recording the fact that the compact disc was not filed and requesting the compact disc to be filed. Neither the Second Respondent nor its attorneys responded to the letter.

[6] The Applicant's application for an order in terms of Rule7A(4) of the Rules of the Court was served on the First and Second Respondents by fax on

23 July 2013. Neither the First Respondent nor the Second Respondent has filed an answering affidavit explaining their omission to file the compact disc or any notice of intention to oppose the Applicant's application for an order in terms of rule 7A(4).

Merits

[7] Rule 7A(4) provides as follows:

"(4) If the person or body fails to comply with the direction or fails to apply for an extension of time to do so, any interested party may apply, on notice, for an order compelling compliance with the direction."

[8] The First and/or Second Respondent have not applied for any extension of time to file the compact disc. In the absence of any answering affidavit from the First or Second Respondents to the Applicant's application for an order in terms of Rule 7A(4), it is thus clear that the First and Second Respondents do not intend to oppose the Applicant's application for an order in terms of Rule 7A(4).

[9] There is no confirmation on the Court file that the First or Second Respondents received notice of the set down of the matter. In terms of Rule 16(1) the Registrar must in the absence of a response from the Respondent set a matter down for default on notice only to the Applicant.¹ The notice of set down only recorded the particulars of the Applicant and Third Respondent and there seems to have been no attempt at delivering the notice of set down on the First and Second Respondents.

[10] However, the difficulty with the notice of set down is that it did not record the default nature of the set down and only referred to the review being set down on the unopposed motion roll. I am satisfied that all the parties to the matter were aware that the next step to be dealt with in the review process was the Applicant's application in terms of Rule 7A(4).

[11] Having considered the First and Second Respondents' failure to comply with Rule 7A(2)(b), respond to the Applicant's correspondence and respond to the Applicant's application in terms of Rule 7A(4) I am satisfied that the absence

¹ *BTI World Travel v Alexandrakis* (JR 543/06) [2009] ZALC 198 (22 July 2009) at para 28-31

of notice to the First and Second Respondents should not sway me. The reason for the conclusion is best expressed in the words of Sutherland AJ:

“...it is manifestly clear that the applicant was indeed aware of the application, and had been put on its guard. The fact that it filed its opposing papers late, and then did nothing further in regard to protecting its interest, constitute difficulties which must lie at its own door.”²

- [12] In the interest of justice and in order to avoid any further delays in the resolution of the dispute I have concluded that it would be appropriate to grant the above order. It is inappropriate that applicants and the Court should be burdened with applications of this nature in circumstances where the duties of bargaining councils are clearly provided for in the Rules of the Court.
- [13] The Applicant also sought a cost order against the First and Second Respondents. The First and Second Respondents did not oppose the application. More importantly the notice of set down was not clear that the matter was set down for default judgement and there is no confirmation on the Court file that the First and Second Respondents had received the notice of set down. In such circumstances it would not be appropriate to grant an order for costs against the First or Second Respondents.

FOUCHE AJ

Acting Judge of the Labour Court of South Africa

² *BDO Spencer Stuart (Jhb) Inc v Otto* [2002] 9 BLLR 831 (LC), at para 14-15

Appearances:

For the Applicants: Ms S Morgan
(SNYMAN ATTORNEYS)

For the Respondents: No appearance

LABOUR COURT